

file a leachate management plan for the landfill, (g) Respondent has pumped leachate into standing water on the landfill site, (h) Respondent has discharged a contaminant into State waters by pumping leachate into standing water on the site, as alleged in "g" above, and (i) Respondent has failed to supervise and failed to compact as refuse was deposited in its landfill.

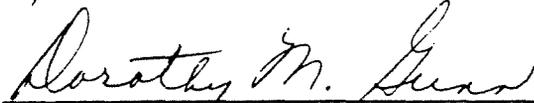
The Agency states that the Complaint before the Chancery Division of the Circuit Court of Cook County, Illinois (87-CH-1909) contains 2 counts and alleges that:

(a) Respondent has engaged in a pattern and practice of dumping in unpermitted areas, including on or before October 6, 1986, and continuing thereafter, and continuing unless the Chancery Court restrained Respondent, by dumping in areas 12, 13, 14 & 15, while not having an operating permit for those areas, and (b) Respondent has, on or about October 6, 1986, pumped contaminant discharge from area 16 into a creek located east of the landfill site, and that Respondent has engaged in a pattern and practice, and would continue to do so unless restrained, of pumping leachate and contaminants into Illinois waters within and without the boundaries of the landfill site.

The Board agrees that these actions do not involve the same precise issues and facts. Further, the remedies sought differ. The Complaint in PCB 86-160 requests the Board to issue an order requiring Fitz-Mar to (1) cease and desist from further violation, and (2) impose a monetary penalty. The Complaint before the Circuit Court requests an Order (1) enjoining Fitz-Mar from further violations, (2) imposing monetary penalties, and (3) permitting the inspection of Fitz-Mar by the Agency. In the enforcement of the Act, the Board and the Circuit Court have different, but concurrent roles. A notable difference lies in the form of relief requested. The Act does not give the Board the power to grant injunctions. The Courts may. Each of the actions is brought in the forum most suited to granting the relief requested. The Board has jurisdiction of the enforcement action before it pursuant to Section 31 of the Act. It is no defense that litigation in another proceeding may cause economic hardship, and further, it is not fundamentally unfair. Fitz-Mar's motion to dismiss is denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 16th day of July, 1987 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board