

ILLINOIS POLLUTION CONTROL BOARD  
September 5, 1985

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 85-38  
 )  
HECKETT and INTERLAKE, INC., )  
 )  
Respondents. )

ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon an August 7, 1985, motion to strike filed on behalf of the Illinois Environmental Protection Agency (Agency) and an August 21, 1985, response filed on behalf of Interlake. The Agency requests that certain affirmative defenses contained in Interlake's answer be stricken since "Interlake is precluded from raising matters subsequently in its answer which were considered and ruled upon in its Motion to Dismiss by virtue of the Illinois Code of Civil Procedure and the common law doctrine of 'law of the case.'" The Board had issued an Order denying the motion to dismiss on May 16, 1985.

First, even assuming that the Agency has properly construed and applied the Code of Civil Procedure, that is not binding on the Board. Second, the Board's May 16, 1985, Order was not intended to finally dispose of those matters contained in the motion to dismiss. All the Board decided at that time was that Respondents had failed to establish that dismissal was appropriate as a matter of law without hearing. As the Agency noted in its April 30, 1985, response to the motion to dismiss, "the bare allegations of the Motion do not provide a legal basis to sustain the Motion." The Board has left open the possibility that when all of the facts are in the record one or more of the Respondents' contentions may be sustained. Third, the Board finds no prejudice in allowing the affirmation defenses to remain in the answer.

Therefore, the motion to strike is hereby 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 5<sup>th</sup> day of September, 1985 by vote of 7-0.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board