

ILLINOIS POLLUTION CONTROL BOARD
January 16, 1973

ENVIRONMENTAL PROTECTION AGENCY)
)
) #72-155
 v.)
)
 ILLINOIS CENTRAL RAILROAD COMPANY,)
 a Corporation)

ORDER OF THE BOARD (BY SAMUEL T. LAWTON, JR.):

Motion to dismiss the above-captioned complaint has been filed by the railroad on the basis of res judicata. Injunction had been entered against the railroad in the Circuit Court of Champaign County enjoining the railroad from "knowingly, intentionally and wilfully burning railroad ties". The burning incident, which is the subject of the present complaint, was asserted in the Champaign Circuit Court as constituting a violation of said injunction based on a complaint and petition for rule to show cause.

On March 30, 1972, an Order was entered on this petition in favor of the railroad and the rule to show cause discharged. The contention of the railroad is that the foregoing favorable order constitutes res judicata so far as the present proceeding is concerned. The position of the Agency is that the violation of the injunction required a finding of wilful action whereas the complaint in the instant case requires only a demonstration that the open burning was threatened or allowed by respondent which, of course, is sufficient to constitute violation of the Environmental Protection Act, Section 9(a).

In addition, we note that the railroad, in an independent action, entitled Illinois Central Railroad v. Environmental Protection Agency, #72C563, filed in the Circuit Court of Champaign County, had sought to enjoin the Agency from prosecuting the instant complaint before this Board premised on the concept of res judicata based on the March 30, 1972 order discharging the rule to show cause. Order was entered by the Circuit Court of Champaign County in the railroad's injunction proceeding dismissing the complaint with prejudice and finding the issues in favor of the Environmental Protection Agency. Accordingly, we will dismiss the railroad's motion to strike and dismiss this proceeding based on the absence of res judicata as found by the Circuit Court of Champaign County.

We have further held that failure to hold hearing within sixty days from the filing of the complaint is not a jurisdictional defect and does not constitute a basis for dismissal. All other contentions raised in the motion are equally lacking in merit. The motion to strike and dismiss is denied.

IT IS SO ORDERED.

I, Christian Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Order was adopted on the 16th Day of January, 1973, by a vote of _____ to _____.
