

ILLINOIS POLLUTION CONTROL BOARD  
July 8, 1998

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB 96-76  
) (Enforcement - Land)  
CHEMETCO, INC. )  
)  
Respondent. )  
)

ORDER OF THE BOARD (by K.M. Hennessey):

This case comes before the Board on respondent Chemetco, Inc.'s (Chemetco) motion to dismiss Count III of Complainant's First Amended Complaint (Mtn.). The Attorney General, appearing on behalf of the People of the State of Illinois (State), opposes the motion. The Board denies the motion.

Chemetco owns and operates a secondary metal smelting facility near Hartford, Madison County, Illinois. In 1995, the State filed a two-count complaint against Chemetco, alleging that Chemetco had violated various provisions of the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* (1996) (Act) and Board regulations relating to hazardous waste. On April 8, 1998, the State moved to amend its complaint to add count III. The State alleged that during discovery on counts I and II, it learned that Chemetco allegedly failed to update various estimates of closure and post-closure costs, as Board regulations require. Chemetco did not file a response to that motion, and the Board granted it in an order dated May 7, 1998.

On June 15, 1998, Chemetco moved to dismiss Count III on the grounds that the State has not complied with Section 31(a) of the Act. That section, which became effective on August 1, 1996, provides as follows:

(a)(1) Within 180 days of becoming aware of an alleged violation of the Act or any rule adopted under the Act or of a permit granted by the Agency or condition of the permit, the Agency shall issue and serve, by certified mail, upon the person complained against a written notice informing that person that the Agency has evidence of the alleged violation. . . . 415 ILCS 5/31(a) (1996).

The written notice must contain information specified in Section 31(a), and the person complained against is entitled to request a meeting with the Agency to respond to the alleged violations and to attempt to resolve them. 415 ILCS 5/31(a) (1996). If the meeting is waived or does not resolve all issues, the Agency must notify the person complained against that it intends to pursue legal action. 415 ILCS 5/31(b) (1996). The notice must describe the alleged

violations and offer the person complained against an opportunity to meet with Agency personnel to resolve the alleged violations. 415 ILCS 5/31(b) (1996). This notice is a precondition to the Agency's referral of the alleged violations to the Attorney General. See 415 ILCS 5/31(b) (1996). However, the Attorney General (or any other person) also may bring an action to enforce the Act under Section 31(d) of the Act without following the procedures described in Sections 31(a) and (b). See 415 ILCS 5/31(d) (1996).

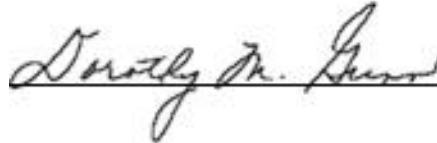
Chemetco states that the State did not follow the procedures outlined in Sections 31(a) and (b) for the violations alleged in count III. Chemetco therefore argues that the State is without authority to bring those allegations and count III must be dismissed. Mtn. at 2.

In Complainant's Response to the Respondent's Motion to Dismiss Count III of Complainant's First Amended Complaint (Resp.), the State argues that the Board has rejected similar Section 31 challenges and should reject this one as well. Resp. at 1-2. The State relies primarily upon People v. Geon (October 2, 1997), PCB 97-62, in which the Board held that the procedures set forth in Section 31(a) and (b) limited the ability of the Agency to refer alleged violations to the Attorney General, but did not limit the ability of the Attorney General to prosecute without a referral from the Agency. In so holding, the Board relied upon the plain language of Section 31. The Board also noted that the legislative history of the amendment to Section 31 indicated that the legislature did not intend to prevent the Attorney General from bringing enforcement actions without an Agency referral. Geon, PCB 97-62, slip op. at 9; see also People v. Heuermann (September 18, 1997), PCB 97-92, slip op. at 7 (same holding). In other cases under Section 31, the Board also has acknowledged Section 31 does not affect the Attorney General's broad authority to enforce the Act. See People v. Heuermann (September 18, 1997), PCB 97-92, slip op. at 7 (citing People ex rel. Scott v. Briceland, 65 Ill. 2d 485, 500-02, 359 N.E.2d 149, 156-157 (1976)); People v. Amsted Industries, Inc. (October 16, 1997), PCB 97-38, slip op. at 5.

The Board finds that Geon controls the outcome of this motion. Nothing in the record indicates that the Agency referred the violations alleged in count III to the Attorney General; instead, the record reveals that the Attorney General learned of the alleged violations during discovery on counts I and II. Under Geon, Sections 31(a) and (b) therefore do not apply, and the State is free to pursue the violations alleged in count III under Section 31(d). The Board further notes that Chemetco waived its objection to the State's motion to amend when it did not file a response to that motion. See 35 Ill. Adm. Code 103.140(c). The Board therefore denies the motion to dismiss.

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 8th day of July 1998, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board