

ILLINOIS POLLUTION CONTROL BOARD
July 30, 1992

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 92-67
) (Enforcement)
 ESCAST, INC.,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Anderson):

This matter comes before the Board on a May 29, 1992 motion filed by Escast, Inc. (Escast) to strike a portion of the complaint filed May 7, 1992 by the People of the State of Illinois (People).

Escast requests that the Board strike a portion of the complaint that refers to an alleged violation for failure to file a required 1989 Generator Annual Hazardous Waste Report. Escast states that the Illinois Environmental Protection Agency (Agency) sent Escast a Pre-Enforcement Conference Letter (PECL) pursuant to Section 31(d) of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111½, par. 1031(d) (Act)). Escast states that the letter referenced the alleged failure to file its 1990 report by March 1, 1991, but does not refer to an alleged failure to file the 1989 report.

The People did not file a reply to Escast's motion.

Escast argues that because the PECL sent to it does not contain allegations concerning the 1989 report, that notice is defective. Escast concludes that due to the defect in the notice, the portion of the complaint that pertains to the 1989 report should be struck. Escast bases its arguments on the Board's opinion, People v. Chicago Heights Refuse Depot, Inc., PCB 90-112, October 10, 1991. There, the Board noted that Section 31(d) mandates the Agency to serve upon a respondent a written notice informing the person of the charges alleged, that the Agency intends to file a formal written complaint, and offering an opportunity to meet with Agency personnel to resolve conflicts, all prior to the filing of the complaint. The Board found that specific notice is required prior to the filing of the complaint, and that lack of such notice prior to the filing of the complaint results in defective or insufficient notice. The Board further found that the defect in the notice results in a lack of jurisdiction over the person of the respondent. (Id. at 3-4).

A review of the Section 31(d) notice sent to Escast indicates that the Agency advised Escast of alleged violations

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"of 35 Ill. Adm. Code 722.141(a) and Section 21(f)(2) of the [Act]", and added that "Escast failed to submit its Annual Report for 1990 by March 1, 1991". (PECL dated June 24, 1991). The complaint in this matter alleges violations of the above cited sections for the years 1989 and 1990. The PECL indicated the same section of the Board's regulations as alleged in the complaint (Section 722.141(a)).

The Board notes that the complaint further cites alleged violations of Section 21(i) of the Act whereas the PECL cited alleged violations of Section 21(f)(2) of the Act. These sections both contain general prohibitions against conducting a hazardous waste process or operation in violation of the Act or Board regulations. Therefore, there is no practical difference between citing either section for the purpose of section 31(d) notice. Furthermore, Escast does not allege that the PECL fails to contain notice of the sections of the Act and Board regulations alleged to be violated.

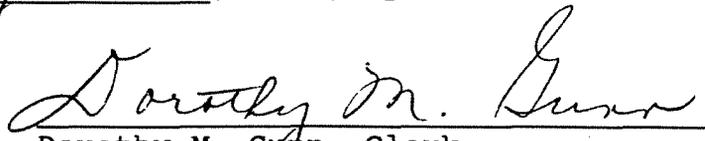
The Board finds that the Agency failed to notify Escast of the charges alleged in the complaint pertaining to the 1989 report. By containing mention of solely the 1990 report, the PECL only notified Escast of the alleged violation pertaining to the 1990 report. Therefore, the requirement in Section 31(d) of the Act to give written notice to a person of the charges alleged has not been satisfied for the charges involving the 1989 report. This is true even though the PECL contained a citation to the regulation which requires the annual reports. However, we note that this situation is distinct from that presented in Chicago Heights Refuse Depot, where the PECL contained nothing pertaining to the alleged violations in counts other than count I of the complaint. (See, Chicago Heights Refuse Depot, supra, at 4).

Accordingly, Escast's motion to strike those charges pertaining to the 1989 report is granted.

IT IS SO ORDERED.

B. Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 30th day of July, 1992, by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board