

ILLINOIS POLLUTION CONTROL BOARD  
October 29, 1992

CITY OF DES PLAINES, GAIL	)	
PAPASTERIADIS, and GABRIEL AND	)	
LINDA GULO,	)	
	)	
Complainants,	)	
	)	
v.	)	PCB 92-127
	)	(Enforcement)
SOLID WASTE AGENCY OF NORTHERN	)	
COOK COUNTY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by R.C. Flemal):

On September 1, 1992, complainants filed a complaint alleging violation by respondent of Section 22.14 of the Illinois Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111½, par. 1022.14)(Act). On September 14, 1992 respondent filed a motion to dismiss on the basis that the complaint is duplicitous and frivolous. That motion was denied by Board order of October 1, 1992. On October 15, 1992, respondent filed its answer to the complaint. At various points buried within the answer respondent moves that certain portions of the complaint be stricken.

On October 16, 1992, respondent filed a separate document entitled "Motion to Strike and Dismiss", that contains essentially the same arguments to dismiss as are included in the answer. The October 16 motion to strike and dismiss is accompanied by a motion to file instanter. On October 22, 1992, complainants filed their reply to respondent's motion to strike and dismiss, and on October 23, 1992, complainants filed a response to the respondent's motion for leave to file the motion to strike and dismiss instanter. On October 27, 1992, respondent filed a motion for leave to file a reply to complainants' responses. On October 28, 1992, complainants filed a response to respondents motion for leave to file a reply.

The Board initially addresses respondent's October 16 motion to file instanter.

The Board's procedural rules for enforcement proceedings require that "all motions by respondent to dismiss or strike the complaint or challenging the jurisdiction of the Board shall be filed within 14 days after receipt of the complaint". (35 Ill. Adm. Code 103.140). In its motion to file instanter, respondent claims that its motion to dismiss or strike the complaint could not be filed until after the Board made its determination on respondent's previous motion to dismiss on the duplicitous-frivolous determination. Respondent further states that if the Board fails to consider its motion to strike and dismiss, the

0137-0073

respondent will be required to defend allegations of a violation which it believes do not constitute a violation under the Act.

As part of the duplicitous or frivolous determination, the Board determines whether it has jurisdiction of a matter brought before it. The Board recognizes that a respondent may wish to wait to file a motion to dismiss until after the duplicitous-frivolous determination is made. However, where jurisdiction does exist, the date of filing is not forward-dated to the date of the Board's duplicitous-frivolous determination. Even if the date of the Board's determination were taken as the "date of filing" for the purposes of calculation of time under Section 103.140, respondent's motion is late.

In this case, respondent has already taken the opportunity to file a motion to dismiss within 14 days after filing of the complaint. Respondent's previous motion to dismiss included allegations regarding matters other than those pertaining to the duplicitous-frivolous determination. Regarding those other matters, the Board found in its October 1, 1992 order that the complaint sufficiently stated a cause of action. On respondent's second argument that it would be prejudiced by being required to defend allegations it believes do not constitute a violation, the Board does not see how defense of an enforcement action alone would constitute prejudice. Any respondent in any enforcement action would be in the same position. Therefore, the Board fails to see how respondent would be prejudiced by the Board's denial of its motion to file.

Even if the Board were to grant the motion to file, it would find that the issues raised in the motion to dismiss and strike indicate that the facts and law are inextricably linked in this matter such that hearing on the merits is necessary before any determinations can be made. Respondent is free to argue the merits of its positions at the hearing in this matter.


For these reasons, respondent's October 16, 1992 motion to file instanter is hereby denied. Also, to the extent that there are motions to dismiss and strike embedded within respondent's filing of October 15, 1992, these motions are denied as untimely filed. Respondent's October 27, 1992 motion for leave to file its reply to complainants' motions is denied as moot.

As a final matter, the Board notes that neither respondent nor complainant has served the hearing officer with their filings. Such service is required under the procedural rules. (See, 35 Ill. Adm. Code 103.104.) The parties are directed to properly serve the hearing officer with all documents filed.

IT IS SO ORDERED.

0137-0074

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 29<sup>th</sup> day of October, 1992, by a vote of 7-6.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

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