

ILLINOIS POLLUTION CONTROL BOARD
June 21, 1990

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 90-89
) (Enforcement)
)
FRED JOHNSON, HERMAN L. LOEB)
JOHNSON & BRIGGS TANK)
TRUCK SERVICE a/k/a/ JOHNSON)
& BRIGGS TANK TRUCK & HEATER)
SERVICE, an Illinois Corporation,)
)
Respondent.)

ORDER OF THE BOARD (by J. Marlin):

This matter is before the Board on Fred Johnson's and Johnson and Briggs, Inc.'s ("Johnson") Motion to Strike filed May 25, 1990. The motion states that the Complaint filed against it by the Illinois Environmental Protection Agency ("Agency") is insufficient in that it fails to allege any violation by Respondent of regulations, standards or permit requirements which led to its alleged violation of Section 21(j) of the Illinois Environmental Protection Act ("Act"). The Respondent also claims that certain allegations in Count I, II, and III of the Complaint are barred by the applicable statute of limitations and that portions of the Complaint also fail to state with sufficient particularity the violations against Fred Johnson acting in his individual capacity.

The Agency filed a Motion For Leave to File Complainant's Motion for Extension of Time Instantly, with the accompanying motion, on June 12, 1990. In its Motion for Extension of Time the Agency requested that it be given additional time to respond to the Motion to Strike. The Agency filed its Response in Opposition to Respondent's Motion to Strike on June 13, 1990. As an initial matter, the Agency's motion for leave to file instantly and the motion for extension of time are granted. We now turn to the merits of Johnson's motion to strike.

The motion claims that in Count I the Agency did not plead with sufficient particularity the violations of Section 21(j) of the Act Johnson is said to have committed. Our reading, however, of Count I of the complaint reveals "sufficient information as reasonably informs [respondent] of the nature of the claim [respondent is] called upon to meet" (Ill. Rev. Stat. 1989, ch. 110, par. 2-612(b)). Paragraphs 21, 22, 25 and 28 contain the information upon which the People rely to present their cause of

action against the respondent. In our opinion each of these paragraphs relate back to the claimed violation of Section 21(j) and do so with the particularity required by statute. Therefore, the motion to strike Count I is denied.

In addition, we have reviewed the Complaint in its entirety concerning Johnson's assertion that the complaint fails to state a cause of action against him individually, as opposed to his corporate capacity. While we believe that the People's allegations made against Fred Johnson individually, i.e. outside Johnson's authority as an official of Johnson & Briggs, Inc., do not precisely differentiate between the two capacities, this failing is not sufficient to strike them. As we read it respondent is alleged to have violated certain statutes while acting in one or both capacities. If respondent wishes to assert the distinction as a defense at hearing, he may do so.


We turn, finally, to Johnson's contentions that all allegations of violations which occurred prior to May 1, 1986 (five years prior to the filing of this Complaint) are barred by the statute of limitations. We find that the Fifth District Appellate Court's decision in Pielet Brothers Trading, Inc. v. Pollution Control Board, 110 Ill. App. 3d 752, 757-8 (5th Dist. 1982) controls. There the court stated:

"Unless the terms of a statute of limitations expressly include the state, county, municipality or the governmental agencies, the statute, so far as public rights are concerned, as distinguished from private and local rights, is inapplicable to them. Id. at 758.

We do not find Respondent's claim that the general five year limitation statute applies persuasive. Therefore, Johnson's motion to strike all allegations of conduct occurring prior to May 1, 1986 is also 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 31st day of June, 1990 by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board