

ILLINOIS POLLUTION CONTROL BOARD
September 11, 1986

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
v.) PCB 86-108
)
JOLIET SAND AND GRAVEL COMPANY,)
)
Respondent.)

ORDER OF THE BOARD (by J. Anderson):

This matter comes before the Board upon several motions filed by the parties in this case.

On August 8, 1986, Joliet Sand and Gravel Company ("Joliet") filed a motion to dismiss the complaint filed against it by the Illinois Environmental Protection Agency ("Agency"). Joliet first contends that the Agency "failed to comply with section 31(d) of the (Illinois) Environmental Protection Act".

Joliet does not allege, in any greater specificity, the manner in which the Agency has failed to comply with section 31(d). Section 31(d) requires the Agency, prior to the issuance of a formal complaint, to notify the person complained of that the Agency intends on issuing such a complaint and to offer such person the opportunity to meet with the Agency within 30 days in order to resolve the conflict. The Board assumes that in raising the allegation concerning section 31(d), Joliet believes that it was not notified prior to the Agency's issuance of a formal complaint in this matter, and/or that it was not offered an opportunity to meet with the Agency in order to resolve the matter in question prior to the issuance of the formal complaint.

On September 3, 1986, the Agency filed a memorandum in opposition to Joliet's motion to dismiss. On September 8, 1986, Joliet filed a motion to strike the Agency's September 3 memorandum. The motion to strike is denied. Attached to the memorandum and labeled Exhibit 1 is a copy of the notice letter sent by the Agency to Joliet on July 3, 1985. That letter requested Joliet attend a "Pre-Enforcement Conference" on July 22, 1985, and moreover stated that the letter was intended to constitute the notice required by section 31(d) (the provisions of which were also explained). The Agency did not file its complaint in this matter until July 24, 1986. The Board finds that the Agency has complied with the requirements of section 31(d).

Joliet next asserts as grounds for dismissal that the complaint fails to allege with sufficient particularity the dates and durations of the discharges complained of. While a greater degree of specificity would be desirable, the Board agrees with the Agency's contention that the complaint's allegations of general time frames are sufficient, given Joliet's ability to obtain more specific information through the discovery process.

For all of the foregoing reasons, then, the motion to dismiss is denied.

Finally, on September 5, 1986, the Agency filed an "emergency motion to the Board to vacate an order requiring certain discovery to be made by Complainant". Joliet filed a response in opposition on September 8. The order the Agency wishes to vacate was issued by the Hearing Officer on August 29, 1986, and requires complainant to produce certain discovery on or before September 15.


The Order was entered in response to Joliet's discovery motion of August 12, 1986, in which Joliet asserted that the parties would be unable to agree on the legitimate scope of discovery. By letter of August 18, the Hearing Officer advised the parties of his intent to allow the Agency "the opportunity to resolve the scope of discovery...before entry of an Order", but that if the matter had not been resolved, that he intended to enter an Order concerning the motion on August 27. No response to the motion was ever filed by the Agency. On August 29, the Hearing Officer entered the order granting the discovery motion. The Agency has not requested the Hearing Officer to reconsider his Order, but has instead filed the instant "emergency motion".

Under these circumstances, the Board declines to vacate the Hearing Officer's Order.

IT IS SO ORDERED.

J. T. Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 11th day of September, 1986 by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board