

ILLINOIS POLLUTION CONTROL BOARD
November 20, 1986

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 86-38
)
WILLIAMS PIPELINE COMPANY,)
)
Respondent.)

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

This matter comes before the Board upon the October 14, 1986 motion of the Illinois Environmental Protection Agency ("Agency") to strike the affirmative defenses raised by Williams Pipeline Company ("WPL") in the latter's September 8, 1986 filing. WPL responded in opposition to the Agency's motion to strike on October 20, 1986.

The first affirmative defense raised by WPL is that the Board lacks subject matter jurisdiction over the claims made in 14 Counts of the Complaint, due to the Agency's alleged failure to provide preenforcement notice of those claims. Respondent's second affirmative defense is that 38 Counts of the Complaint fail to state a claim upon which relief may be granted due to alleged pleading infirmities on the part of the Agency. The third affirmative defense raised by WPL is that Agency reports indicate that some or all of the alleged discharges from WPL's pipeline had no effect on waters of the State.

None of these three defenses are raised in the form of motions to dismiss or strike all or portions of the Agency Complaint; rather, they are simply submitted in response to the Complaint. These defenses involve questions that are mixed questions of fact and are most suited to being answered at hearing. The Board therefore believes it inappropriate to strike the defenses and hereby denies the Agency's October 14, 1986 motion as to WPL's first, second, and third affirmative defenses.

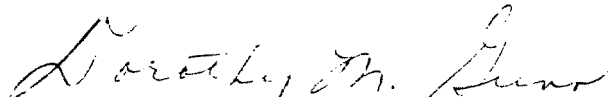
The fourth affirmative defense raised by WPL is not an affirmative defense at all, but rather is a reservation of the right to amend its answer and raise additional affirmative defenses if such defenses "become available, arise, or appear" during discovery as it proceeds in this matter. The Agency objects to the assertion of this defense, which the Agency views as an opportunity for WPL to later "assert a defense which (WPL) may currently have a basis to raise but simply has failed to allege". If WPL was refraining from asserting a defense already known to it, the Agency's objection might have some persuasive merit. WPL's fourth affirmative defense, however, goes to the

possible advocacy of defenses which WPL is currently unaware. As such, the Board does not believe it appropriate to strike WPL's fourth affirmative defense. The Agency's October 14, 1986 motion to strike as it relates to WPL's fourth affirmative defense is consequently denied, that motion thereby being denied in toto.

IT IS SO ORDERED.

Board Members Joan Anderson and Jacob D. Dumelle concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 20th day of November, 1986, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board