

ILLINOIS POLLUTION CONTROL BOARD
February 9, 1984

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 83-163
)
LARRY BITTLE, et al.)
)
Respondent.)

ORDER OF THE BOARD (by J. Anderson):

On January 23, 1984, Larry Bittle filed a Second Motion to Dismiss, alleging that dismissal with prejudice of a Circuit Court action against him, People v. Southern Recycling Co. and Larry Bittle, No. 79CH35, on July 26, 1982 bars pursuit of this action on the grounds of res judicata. On January 24, the Attorney General moved that the motion be stricken by reason of Bittle's failure to include this ground in his original motion, and that further motions be prohibited. Bittle filed a response in opposition February 3, 1984, alleging that jurisdictional objections are always timely.

The Board denies the Attorney General's motion to strike, finding that this jurisdictional objection should be entertained. However, no additional pre-hearing motions to dismiss by Bittle will be heard.

Considering the merits of Bittle's motion, the motion is granted in part. The circuit court complaint charged Bittle only with failure to obtain an operating permit, in violation of Mine Rule 201 and Section 12 (b) of the Act. The instant complaint contains similar allegations in Counts V and Counts VI. These Counts are stricken to the extent that they involve allegations of such violations occurring on or after November 23, 1978 until July 3, 1979, the time frame of the violations alleged in the complaint which was dismissed with prejudice by Judge Keenan; to the extent that such Counts alleged violations before or since that date, the Counts may stand.

Finally, the Board notes that on January 23, 1984, Bittle filed what purports to be a response to Max Mitchell's December 6 motion to join additional parties, which was granted by the Board January 12, 1984. This unexplained late filing is stricken.

Board Members J. D. Dumelle and D. Anderson concurred.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 9th day of February, 1984 by a vote of 7-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board