

ILLINOIS POLLUTION CONTROL BOARD

May 3, 2001

B.L.T., INC.,)	
)	
Complainant,)	
)	
v.)	PCB 01-128
)	(Enforcement – Citizens, Land)
SIXTH STREET DEVELOPERS, LIMITED)	
PARTNERSHIP, ORF, INC., ROLAND)	
INDUSTRIES, VT PROPERTIES, INC., and)	
FREESSEN, INC.,)	
)	
Respondents.)	

ORDER OF THE BOARD (by G.T. Girard):

On March 19, 2001, B.L.T., Inc., (complainant) filed a complaint against Sixth Street Developers, Limited Partnership, ORF, Inc., Roland Industries, VT Properties, Inc., and Freesen, Inc., (respondents). The complaint alleges that the respondents violated Section 21(a) and 21(d) of the Environmental Protection Act (Act) (415 ILCS 5/21 (a) and (d) (1998)) and 35 Ill. Adm. Code 815.201, 815.301, 812.101(a) and 811.110(d)(1) on real property located at the northeast corner of the intersection of Sixth Street and Adlai Stevenson Drive in Springfield, Illinois (Park South Property).

As evidenced by the certificate of service filed on March 29, 2001, the respondents were served with the complaint and notice of filing on March 9, 2001. An amended notice was filed on March 26, 2001. No other pleadings have been filed.

Section 103.212(a) of the Board's procedural rules directs the Board to determine whether or not a citizen's complaint is duplicitous or frivolous. The Board finds that the complaint is not duplicitous or frivolous, and therefore accepts it for hearing.

DUPLICITIOUS/FRIVOLOUS DETERMINATION

Section 103.212(a) of the Board's procedural rules implements Section 31(d) of the Act. It provides:

Any person may file with the Board a complaint against any person allegedly violating the Act or any rule or regulation thereunder or any permit or term or condition thereof. When the Board receives a citizen's complaint, unless the Board determines that such complaint is duplicitous or frivolous, it shall schedule a hearing. 35 Ill. Adm. Code 103.212.

Duplicitous

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in another forum. Brandle v. Ropp (June 13, 1985), PCB 85-68.

The Board has not identified any other cases, identical or substantially similar to this, pending in other forums. Therefore, based on the record before us, this matter is not duplicitous.

Frivolous

An action before the Board is frivolous if it requests relief which the Board cannot grant. Lake County Forest Preserve Dist. v. Ostro (July 30, 1992), PCB 92-80. The Board finds that the complaint is not frivolous.

CONCLUSION

The Board finds that, pursuant to Section 103.212(a), the complaint, is neither duplicitous nor frivolous and is accepted for hearing.

The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and Section 103.414 of the Board's rules. 35 Ill. Adm. Code 103.414. The Clerk of the Board shall promptly issue appropriate directions to the assigned hearing officer.

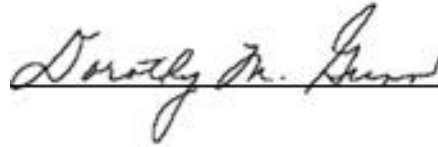
The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 30 days in advance of hearing so that a 21-day public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses, and all actual exhibits to the Board within five days of hearing.

Any briefing schedule shall provide for final filings as expeditiously as possible. If, after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if, after an attempt, the hearing officer is unable to consult with all of the parties, the hearing officer shall unilaterally set a hearing date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

IT IS SO ORDERED.

Board Member E.Z. Kezelis abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 3rd day of May 2001 by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board