

ILLINOIS POLLUTION CONTROL BOARD  
July 26, 2001

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

---

	)	
SIXTH STREET DEVELOPERS LIMITED	)	
PARTNERSHIP, and FREESSEN, INC.,	)	
	)	
Counter-Complainants,	)	PCB 01-128
	)	(Enforcement – Citizens, Land)
v.	)	
	)	
B.L.T., INC.,	)	
	)	
Counter-Respondent.	)	

---

SIXTH STREET DEVELOPERS LIMITED	)	
PARTNERSHIP, and FREESSEN, INC.,	)	
	)	
Third-Party Complainants,	)	PCB 01-128
	)	(Enforcement – Citizens, Land)
v.	)	
	)	
FIATALLIS,	)	
	)	
Third-Party Respondent.	)	

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

On March 19, 2001, B.L.T., Inc. filed a citizen's enforcement action alleging respondents Sixth Street Developers Limited Partnership, ORF, Inc., Roland Industries Incorporated, VT Properties, Inc. and Freessen, Inc. caused or allowed violations of the Environmental Protection

Act (415 ILCS 5/1 *et seq.* (2000)) and the Board's rules. On May 3, 2001, the Board accepted this matter for hearing. On May 16, 2001, Freesen, Inc. (Freesen) filed three motions with the Board. On May 24, 2001, Sixth Street Developers Limited Partnership (Sixth Street Developers) filed two of the same motions. The first motion filed was for leave to file a counter-complaint against the complainant. The second motion was a motion for leave to file a third-party complaint against FiatAllis. The third motion, filed only by Freesen, was a motion to add Anderson Excavating and Wrecking Co. (Anderson Excavating) as a respondent in this proceeding.

The Board grants both motions to file a counter-complaint against B.L.T., Inc.

As to the motions to file third-party complaints, 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. 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.

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought before the Board or in another forum. *Brandle v. Ropp* (June 13, 1985), PCB 85-68, 35 Ill. Adm. Code 101.202. An action before the Board is frivolous if it requests relief which the Board cannot grant or if the complaint fails to state a cause of action upon which the Board can grant relief. *Lake County Forest Preserve Dist. v. Ostro* (July 30, 1992), PCB 92-80, 35 Ill. Adm. Code 101.202.

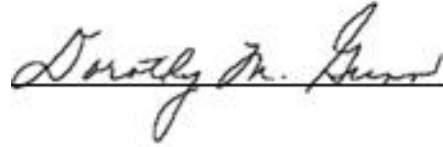
On June 19, 2001, the Board received proof that the motions to file third-party complaints had been served on B.L.T., Inc., and Fiat Allis, the third-party respondent. Based on the record before the Board, the Board finds that the third-party complaints are neither duplicitous nor frivolous and the complaints are accepted for hearing.

As to Freesen's motion to add Anderson Excavating, the Board denies that motion. Section 103.206 of the Board's procedural rules allows the Board to add a respondent "if a complete determination of a controversy cannot be had without the presence of the person who is not already a party to the proceeding." 35 Ill. Adm. Code 103.206. The Board finds that Freesen's motion fails to demonstrate that a complete determination of the controversy requires the presence of the Anderson Excavating and the motion is denied.

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 26th day of July 2001 by a vote of 5-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board