

ILLINOIS POLLUTION CONTROL BOARD
September 7, 1995

OLIVE STREIT and LISA STREIT,)
)
Complainants,)
)
v.) PCB 95-122
) (Enforcement-UST)
)
OBERWEISS DAIRY, INC., RICHARD)
J. FETZER and JOHNNIE W. WARD)
d/b/a SERVE-N-SAVE, and RICHARD)
J. FETZER, individually, AMOCO)
OIL COMPANY, MOBIL OIL)
CORPORATION and ILLINOIS)
ENVIRONMENTAL PROTECTION AGENCY,)
)
Respondents.

DISSENTING OPINION (by J. Theodore Meyer):

I dissent from the Board's order because I believe this matter to be duplicitous.

As the Board's order correctly states, in citizen enforcement actions, the Board must make a determination as to whether the complaint is frivolous or duplicitous before sending the matter to hearing. (415 ILCS 5/31(b)(1994); 35 Ill. Adm. Code 103.104.) A matter is considered duplicitous if the allegations are identical or substantially similar to matters previously before the Board or to matters brought in another forum. (Brandle v. Ropp, PCB 85-68, 64 PCB 263 (June 13, 1985).)

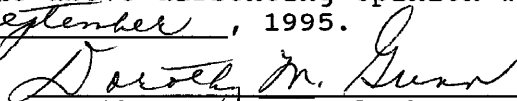
On April 4, 1995, Olive Streit and Lisa Streit filed a complaint before the Board alleging contamination of their water well by one or more of the named defendants. (Pet. at 1.) In 1992, Olive Streit and Lisa Streit had filed a complaint in Kane County, Illinois, under case name L KA 92-0406 in which the exact same allegations were made. This case was pending at the time of the Board filing on April 4, 1995, although it was subsequently dismissed on April 12, 1995. I believe that the filing of a subsequent action with substantially similar allegations makes the subsequent action duplicitous, even if the prior action is withdrawn. The orderly administration of justice should not permit a party to proceed on a matter for 4 years in civil court, only to file a second action with the same complaints in another forum. Not only does this drain the state's resources, but also forces respondents to refile answers to the same allegations.

For these reasons, I respectfully dissent.



J. Theodore Meyer
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was filed on the 13th day of September, 1995.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board