

ILLINOIS POLLUTION CONTROL BOARD

February 1, 1996

LASALLE NATIONAL TRUST, N.A. as )  
Trustee under Trust Agreement dated January )  
10, 1966 and known as Trust No. 34565, ) PCB 96-117  
) (Enforcement - Land)  
Complainant, )  
)  
v. )  
)  
STANDARD BANK AND TRUST CO., as )  
Trustee under Trust Agreement dated July 17, )  
1995 and known as Trust No. 14929 and )  
CAPITOL BANK AND TRUST as Trustee )  
under Trust Agreement dated March 12, 1993 )  
and known as Trust No. 2421, )  
)  
Respondents. )

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

This matter is before the Board on a December 28, 1995, motion to dismiss filed by respondent, Capitol Bank and Trust (Capitol). On January 8, 1996, complainant filed a response to Capitol's motion. On January 16, 1996, Capitol filed a motion for leave to file a reply and a reply. The Board hereby grants the motion to file a reply. Capitol asserts that the complaint before the Board is frivolous "because it seeks relief against Capitol which is beyond the Board's authority to grant". (Mot. at 1.)<sup>1</sup>

The complaint sets forth allegations of violation of Sections 21(e) and (d)(1) of the Environmental Protection Act (415 ILCS 5/21(e) and (d)(1)). The complaint, in the request for relief, asks that the Board adopt an order directing respondents to cease and desist further violation of the Act and Board regulations. The complaint additionally includes a request that the Board mandate and direct abatement of continuing violations. Also included in the complaint is a request for attorneys fees and a request that the Board grant "such relief as the Illinois Pollution Control Board may deem appropriate".

Capitol maintains that "it is not physically possible for it [Capitol] to cease and desist from alleged violations of the Act or to cause abatement of continuing violations, because Capitol does not own, control or possess the property. (Reply at 2.) Capitol argues that because the property adjacent to complainant's property has been transferred to respondent Standard Bank and Trust

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<sup>1</sup> Capitol's motion will be cited as "Mot. at \_\_\_"; Capitol's reply will be cited as "Reply at \_\_\_"; the response will be cited as "Res. at \_\_\_".

Co., “the Board has no authority to require Capitol to either cease and desist from further violations of the Act or to cause the abatement of continuing violations of the Act”. (Mot. at 2.) Capitol further argues that the “Board’s authority to grant the relief requested by LaSalle in its complaint has been foreclosed by recent amendments to the Act”. (Reply at 4.) Capitol argues that the “Brownsfield Legislation” (P.A.89-431) prohibits the Board from requiring Capitol, as the mortgagee which obtained ownership through foreclosure, to perform remedial action. (*Id.*)

Complainant first argues that the motion to dismiss was not timely filed and asks the Board to strike the motion. (Res. at 1.) The Board denies the request to strike the motion to dismiss. Complainant next argues that the Board does have the authority to enter an order directing the respondent to cease and desist from further violation. In support of its position, complainant cites to Streit v. Oberweiss Dairy, et.al., PCB 95-122 (September 7, 1995). In that case the Board stated:

If the complainants meet their burden of proof . . . we [the Board] are clearly authorized under the Act to make a determination regarding liability for violating of the Act and ‘necessarily the power to order compliance with the Act’.

(Discovery South Group, Lts. Music Center Associates Ltd. and Tinley Park Jam Corp. v. PCB and the Village of Matteson, No. 1-93-1438 (1st Dist. August 28, 1995), slip op. at 20 citing, Kaeding v. IPCB, (1974), 22 Ill. App. 3d 36, 316 N.E.2d 788.) Consequently, we are authorized to award relief under the Act which may include a compliance plan governing any necessary investigation or corrective action, and compliance with Illinois’ UST program. (Streit at 6.)

The Board finds that the complaint is not frivolous. The Board is authorized to make a determination of liability under the Act. Further, even if an order to cease and desist or abate is not appropriate the Board may direct other relief such as civil penalties. (See Section 42 of the Act.) Therefore, the requests for relief are not frivolous. As to the argument put forward by Capitol regarding the provisions of Public Act 89-431 “Brownsfield Legislation”, this legislation is not effective until July 1, 1996. Further, the record lacks sufficient information for the Board to make a finding on that argument at this time. Capitol is free to develop this argument at hearing and in its briefs.

Section 103.124(a) of the Board's procedural rules, which implements Section 31(b) of the Environmental Protection Act (415 ILCS 5/31(b)), provides:

....If a complaint is filed by a person other than the Agency, the Clerk shall also send a copy to the Agency; the Chairman shall place the matter on the Board agenda for Board determination whether the complaint is duplicitous or frivolous. If the Board rules that the complaint is duplicitous or frivolous, it shall enter an order setting forth its reasons for so ruling and shall notify the parties of its decision. If the Board rules that the complaint is not duplicitous or frivolous, this does not preclude the filing of motions regarding the insufficiency of the pleadings. 35 Ill. Adm. Code 103.124.


As the Board has determined that this complaint is not frivolous the Board must now determine if the complaint is duplicitous. It is well settled that an action before the Board is duplicitous if the matter is identical or substantially similar to one brought in another forum. (Brandle v. Ropp, PCB 85-68, 64 PCB 263 (1985); DoAll Co. v. Skokie Valley Asphalt Company, Inc., PCB 94-256 (July 7, 1995).) The Board finds that the record, at this time, contains no evidence to indicate to the Board that this complaint is duplicitous.

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 the Clerk of the Board shall promptly issue appropriate directions to the assigned hearing officer consistent with this order.

The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that 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 the hearing. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 1<sup>st</sup> day of February, 1996, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board