

ILLINOIS POLLUTION CONTROL BOARD
September 1, 1994

HERRIN SECURITY BANK, an)	
Illinois banking corporation,)	
)	
Complainant,)	
)	
v.)	PCB 94-178
)	(Enforcement)
SHELL OIL COMPANY,)	
a Delaware corporation,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on respondent Shell Oil Company's (Shell) July 7, 1994 motion to deny issuance of complaint. In essence, Shell moves that the Board dismiss the complaint filed against it on June 20, 1994, by Herrin Security Bank (Herrin). Herrin filed a response in opposition to Shell's motion on July 20, 1994. On July 28, 1994, Shell filed a reply to Herrin's response. However, the Board's procedural rules provide that the movant shall not have the right to reply except as specifically allowed by the Board (or hearing officer) to prevent material prejudice. (35 Ill. Adm. Code 101.241(c).) Shell did not include a motion for leave to file its reply, nor has it alleged that material prejudice would result from an inability to reply. Thus, the reply is not accepted.

The complaint which is the subject of this motion was filed by Herrin on June 20, 1994. Herrin alleges that Shell owned or leased the site at issue from approximately 1930 to March 12, 1979; that Shell used the site for the purpose of selling petroleum products and operating a gasoline station; that Shell discontinued its use of the underground storage tanks (USTs) at the site in 1979; that Shell abandoned the USTs and did not remove them prior to relinquishing its interest in the site in 1979; that Herrin did not use the UST system while it owned the site (which it acquired in 1979); and that in 1982 Herrin removed a building and "certain" USTs on the site. Herrin further alleges that in spring and summer 1992 it notified Shell of contamination problems on the site and requested assistance; that Shell failed to assist in remediation of the site; that chemical analysis of the soil at or near the old product lines shows elevated PNA levels which exceed the generic clean-up levels established by the Illinois Environmental Protection Agency; that the contamination was caused or contributed to by a release from the UST system operated and abandoned by Shell; and that Herrin has incurred costs in excess of \$69,000 in responding to the contamination. Herrin alleges that during the period from 1930

to March 1979 Shell deposited contaminants in such manner as to create a water pollution hazard in violation of Section 12(d) of the Environmental Protection Act (Act); caused or allowed the open dumping of waste in violation of Section 21(a) of the Act; and stored, disposed, and abandoned waste at a facility which did not meet the requirements of the Act and regulations, in violation of Section 21(e) of the Act. (415 ILCS 5/12(d), 21(a), and 21(e) (1992).)

Shell raises five contentions in support of its motion. First, Shell argues that the Board has no jurisdiction over the alleged violations of Sections 21(a) and 21(e) because those sections were amended after the date that Shell relinquished its interest in the site, and that those amendments cannot be applied retroactively. Second, Shell maintains that the complaint is moot because the alleged pollution problems have been remedied. Third, Shell contends that the Board has no jurisdiction where no pollution exists and where a respondent has no control over the site at issue. Fourth, Shell alleges that the Board has no subject matter jurisdiction over a private party's claim for damages. Finally, Shell argues that because there is no actual or threatened pollution, an injunction would be overbroad and excessive. Herrin has responded in opposition to Shell's claims.

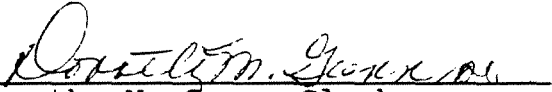
As the Board has previously held, a complaint should not be dismissed unless it clearly appears that no set of facts could be proven that would entitle a complainant to relief. (Miehle v. Chicago Bridge and Iron Co. (November 4, 1993), PCB 93-150, citing Callaizakis v. Astor Development Co. (1st Dist. 1972), 4 Ill.App.3d 163, 280 N.E.2d 512.) After considering the contentions raised by both parties, the Board denies Shell's motion. None of the arguments put forth by Shell convinces the Board that the complaint should be dismissed. For example, we have specifically held that we have the authority to award cleanup costs to private parties. (Lake County Forest Preserve District v. Ostro (March 31, 1994), PCB 92-80.) Additionally, the Board has specific statutory authority to enter a cease and desist order, as requested in the complaint. (415 ILCS 5/33(b) (1992).) As to Shell's other three arguments, the record does not contain sufficient facts for the Board to conclude, at this time, that Herrin is not entitled to relief. Shell's motion is denied.

Pursuant to Section 31(b) of the Act, the Board must make a determination as to whether the complaint is frivolous or duplicitous. (415 ILCS 5/31(b) (1992).) After reviewing the complaint, we find that the complaint is neither frivolous nor duplicitous. The complaint states a cause of action upon which relief can be granted, and there is no indication that there are other cases in another forum or court arising from the same issue. Therefore, this matter is directed to hearing.

The hearing must be scheduled and completed in a timely manner consistent with Board practices. 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 the parties, the hearing officer shall unilaterally set a hearing date. The 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 the credibility of witnesses, and all actual exhibits to the Board within 5 days of the hearing.

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 15th day of September, 1994, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board