

ILLINOIS POLLUTION CONTROL BOARD  
October 1, 1992

CITY OF DES PLAINES, GAIL )  
PAPASTERIADIS, and GABRIEL AND )  
LINDA GULO, )  
 )  
Complainants, )  
 )  
v. )  
 )  
SOLID WASTE AGENCY OF NORTHERN )  
COOK COUNTY, )  
 )  
Respondent. )

PCB 92-127  
(Enforcement)

ORDER OF THE BOARD (by R.C. Flemal):

On September 1, 1992, complainants filed an action alleging violation by respondent of Section 22.14 of the Illinois Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111½, par. 1022.14)(Act). On September 14, 1992 respondent filed a motion to dismiss on the basis that the complaint is duplicitous and frivolous. On September 22, 1992, complainants filed their response to the motion to dismiss.

On September 28, 1992, the respondent filed a motion for leave to file a reply to the complainants' response. The motion alleges that the response is misleading in that it contains alleged factual inaccuracies. The Board may allow replies to responses in order to prevent material prejudice. (35 Ill. Adm. Code 101.241(c)). The complainant does not specifically allege that it will be prejudiced if it is not allowed to file its reply. However, the Board finds that the allegations in the motion to file, if proven true, would amount to material prejudice. Therefore the Board allows the reply.

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in another forum. (See, In re Duplicitous or Frivolous Determination (June 8, 1989), RES 89-2, 100 PCB 53; section 31(b) of the Act.) A review of City of Des Plaines v. County of Cook (June 12, 1991), 90 CH 12163, cited by respondent, indicates that that case was solely an appeal of zoning actions alleging procedural flaws in the zoning proceeding, and it is not identical or substantially similar to the complaint brought here, which is an action involving alleged violations of setback provisions of Section 22.14 of the Act.

On the issue of whether the complaint is frivolous, the Board states that a complaint is frivolous under the Act if it fails to state a cause of action upon which relief can be granted. (See, In re Duplicitous or Frivolous Determination, and section 33(b), *supra*.) Here, the complaint states a cause of

action upon which relief can be granted in that it requests an order that respondent cease and desist from violating the setback provisions of Section 22.14 of the Act. The Board is empowered to adjudicate enforcement actions and can issue cease and desist orders under the Act. (See Section 33 of the Act.) Therefore the Board finds that the complaint is not frivolous, and respondent's arguments on this issue are unconvincing.

The motion to dismiss and reply also give other arguments which go to the merits of the matter; such are not proper for a motion to dismiss based on a duplicitious or frivolous determination or that the complaint fails to set forth a cause of action. The Board denies the motion to dismiss and finds that the complaint sets forth a basis for a cause of action before the Board. Today the Board makes no determination on the merits of the case (whether violation as alleged has occurred); the Board finds only that the case is properly before it.

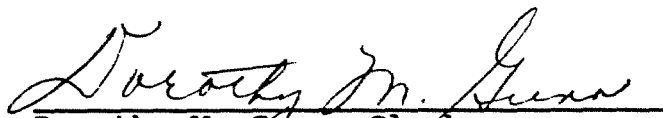
Also on September 1, 1992, complainants filed a motion for expedited hearing. Complainants ask that the Board hold an expedited hearing on the basis that "it is in the interest of the parties that a determination be had relative to Complainant's allegations as quickly as possible so that activities in furtherance of the development of the Wheeling Transfer Station be stopped and no further funds be expended" (Motion for Expedited Hearing at 2). While the Board makes no determination regarding the pace of the development of the transfer station at this time, the Board notes that respondent filed no objection to the motion for expedited decision and accordingly has waived objection (see 35 Ill. Adm. Code 101.241(b)). The Board will thereby expedite consideration, consistent with available resources and decision deadlines in other matters.

Accordingly, this matter is accepted for hearing. A hearing officer will be designated and this matter will be set for hearing.

IT IS SO ORDERED.

Board Member Bill Forcade concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 1st day of October, 1992, by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board