

ILLINOIS POLLUTION CONTROL BOARD

August 24, 2000

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 98-148
) (Enforcement - Land)
DOREN POLAND, LLOYD YOHO, and BRIGGS)
INDUSTRIES, INC.,)
)
Respondents.)

ORDER OF THE BOARD (by E.Z. Kezelis):

On July 17, 2000, Briggs Industries, Inc. (Briggs) filed a motion for leave to join additional parties. Complainant filed its response on July 24, 2000.¹

In its motion, Briggs seeks to join additional parties pursuant to 35 Ill. Adm. Code 103.121(c). Section 103.121(c) of the Board's procedural rules provides, in pertinent part, "[i]f a complete determination of a controversy cannot be had without the presence of other parties, the Board or Hearing Officer shall order them to be brought in." 35 Ill. Adm. Code 103.121(c). Briggs argues that Loren and Michelle West should be joined as additional parties in this proceeding.

BACKGROUND

The complaint in this matter was filed on April 30, 1998. The three-count complaint alleges violations stemming from respondents alleged ownership and operation of an unpermitted dump site in Knox County, Illinois (site). The complainant alleges that from on or before April 18, 1994, and continuing through the date of filing of the complaint, the respondents caused or allowed open dumping on a site not permitted as a sanitary landfill. The complainant alleges that the respondents caused or allowed the development and operation of a solid waste management site without proper permits, and that the development and operation of the solid waste management site was in violation of standards for development of new solid waste sites.

The complainant alleges in its complaint that, at all times relevant to the complaint, Doren Poland and Lloyd Yoho were the owners of the site. The complainant also alleges that Briggs Industries, Inc., is an assumed name for Briggs Plumbing Products, Inc., a Michigan corporation, not in good standing in the State of Illinois as of the filing of the complaint. According to the complaint, the wastes deposited at the site originated from Briggs.

MOTION FOR LEAVE TO JOIN ADDITIONAL PARTIES

Briggs' Motion

According to Briggs, Loren and Michelle West acquired Doren Poland's one-half interest in the site on June 30, 1996. Mot. at 3. Furthermore, Briggs alleges that waste materials continued to be disposed of on the site as late as June 1997. Mot. at 3-4. Therefore, Briggs argues that Loren and Michelle West, as owners and arguably operators of the site are potentially liable under counts I and II of the pending complaint. Mot. at 4. Additionally, Briggs maintains that any relief involving the site will necessarily involve Loren and Michelle West, as one-half owners of the site. *Id.*

¹ Briggs' motion for leave to join additional parties will hereinafter be referred to as "Mot. at ___." Complainant's response to Briggs' motion will hereinafter be referred to as "Res. at ___."

In support of the argument that Loren and Michelle West are potentially liable under counts I and II of the complaint, Briggs refers the Board to Perkinson v. PCB, 187 Ill. App. 3d 689, 543 N.E.2d 901 (3rd Dist. 1989); and IEPA v. Baker (September 12, 1972), PCB 72-23. The court in Perkinson found that the owner of a pollution source can be found to have caused or allowed the pollution, unless the owner lacked the capability to control the source or had taken extensive precautions to prevent it. Perkinson, 187 Ill. App. 3d at 694-95.

Complainant's Response

The complainant objects to the joinder of Loren and Michelle West as parties to this action. Complainant maintains that it does not have a good faith basis to allege violations by Loren and Michelle West and that the motion by Briggs is untimely. Res. at 2. Complainant maintains that the purpose of the motion is to delay the hearing in this matter, tentatively scheduled for November 7 and 8, 2000. *Id.*

In support of its position, complainant states that, "[t]he Board should not speculate as to the [sic] whether or how the anticipated requirement that the wastes either be properly permitted or removed might affect interest of Loren West and Michelle West in the property." Res. at 2. Given that Loren and Michelle West do appear to be partial owners of the site, however, the Board need not speculate in order to conclude that their property interests would be potentially impacted by a final decision affecting the site.

The complainant suggests that the Board should consider whether adding these parties would result in a prejudicial delay to the complainant, insofar as one of the other respondents is "relatively old" and that the "memories of the likely witnesses may decrease with the further passage of time." Res. at 2-3. Complainant also comments that the environmental impacts resulting from the alleged violations will continue unabated if the hearing in this case is delayed. Res. at 3.

DISCUSSION

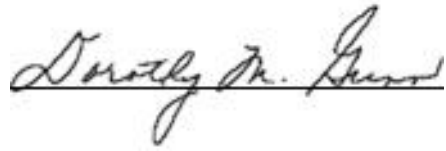
The Board acknowledges Briggs' argument that as part owners of the property, Loren and Michelle West may bear some of the liability for the violations now being alleged by the complainant. However, the Board is hesitant to direct the complainant to file an amended complaint naming these individuals as respondents, because the complainant has asserted that it lacks the evidence upon which to make good faith allegations against Loren and Michelle West. Additionally, the Board does appreciate the complainant's desire to proceed expeditiously with the hearing dates tentatively set for November 7 and 8, 2000. Accordingly, in an attempt to satisfy both concerns, the Board hereby grants leave to Briggs to file a third-party complaint naming Loren and Michelle West as third-party respondents. If a third-party complaint is to be filed by Briggs, it must be filed within 30 days of the date of this order.

The Board notes that Loren and Michelle West were not served with a copy of Briggs' motion to join additional parties. Because the Board's current procedural rules do not require such service on persons not yet a party to the case, the Board will not require it. Nevertheless, any arguments or defenses Loren and Michelle West wish to make in opposition to their inclusion in this matter may still be raised in an appropriate responsive pleading to the third-party complaint, if one is filed.

As previously stated, tentative hearing dates of November 7 and 8, 2000, have been set. The Board directs the hearing officer to consult with the parties as soon as practicable to determine what changes, if any, need be made in the discovery and hearing schedule already in place. The Board notes, however, that the underlying action may proceed to hearing as scheduled. There is nothing in the Board's procedural rules that would prevent the hearing on the underlying complaint from going forward as scheduled and having the third-party complaint heard at a later date.

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 24th day of August 2000 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written in black ink. The signature is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board