

ILLINOIS POLLUTION CONTROL BOARD
September 21, 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):

This matter is before the Board on the September 7, 2000 motion of respondent Briggs Industries, Inc. (Briggs), for reconsideration of the Board's August 24, 2000 order, and the September 7, 2000 motion of Briggs for leave to add Abingdon Salvage Company, Inc. as an additional party. Complainant filed responses to both motions on September 13, 2000.

MOTION FOR RECONSIDERATION

Briggs seeks reconsideration of the Board's August 24, 2000 order, in which the Board granted Briggs' request to join Loren and Michelle West as parties to this enforcement action, and granted Briggs leave to file a third party complaint against the Wests. In reliance upon complainant's statement that it lacked a good faith basis upon which to state a cause of action against Loren and Michelle West, the Board did not order complainant to file an amended complaint naming Loren and Michelle West, but rather, as stated above, granted Briggs leave to file a third-party complaint.

In its motion for reconsideration, Briggs argues that the Board should compel the complainant to amend the complaint in this matter to add Loren and Michelle West. Additionally, Briggs requests the Board direct the hearing officer to enter a new scheduling order regarding discovery and hearing.

After reviewing Briggs' motion and the complainant's response, the Board finds that Briggs' motion is without merit. The motion for reconsideration is denied.

MOTION FOR LEAVE TO ADD ABINGDON SALVAGE COMPANY, INC.

Briggs also filed a motion seeking leave to add Abingdon Salvage Company, Inc. (Abingdon), as an additional party respondent in this case. In support of its motion, Briggs states that depositions taken on August 24 and August 31, 2000, provided information suggesting that Abingdon should be joined in this action. Briggs claims that because Abingdon was a waste hauler who may have hauled waste from Briggs to the allegedly unpermitted site referred to in the complaint, a complete determination of the controversy cannot be had without Abingdon. Briggs seeks an order from the Board directing the complainant to file an amended complaint naming Abingdon as a respondent. Additionally, Briggs again seeks an order from the Board delaying the discovery schedule and ordering that one all-encompassing hearing be held.

In its response, complainant states that while it does not object to the joinder of Abingdon as a party, it does not agree with Briggs' argument that Abingdon is necessary for a complete determination of the controversy.

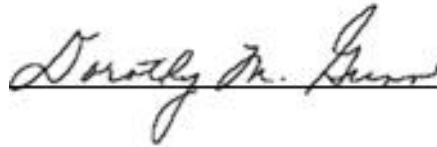
As alleged owners of the property at issue, Loren and Michelle West were found by the Board to be necessary for a complete determination of the controversy. Abingdon's involvement in this controversy is quite different. Nevertheless, if Briggs wishes to include Abingdon in a third-party complaint it is hereby granted leave to

do so. If a third party complaint is to be filed, Briggs must do so within 21 days from the date of this order. The Board denies Briggs' request that the complainant be ordered to name Abingdon in an amended complaint.

The Board will not address Briggs' request for a change in the discovery and hearing schedule. Rather, the Board refers these procedural matters to the hearing officer for a determination as to whether a revision to the schedules already in place is appropriate.

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 21st day of September 2000 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board