

ILLINOIS POLLUTION CONTROL BOARD
February 6, 1997

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|--------------------|---|---------------------|
| JERRY AUSTMAN AND |) | |
| THERESA STRAHM, |) | |
| |) | |
| Complainants, |) | |
| |) | |
| v. |) | PCB 97-94 |
| |) | (Enforcement - UST) |
| AMOCO OIL COMPANY, |) | |
| |) | |
| Respondent. |) | |

ORDER OF THE BOARD (by C.A. Manning):

This matter comes before the Board on the filing of a complaint by Jerry Austman and Theresa Strahm (complainants) on November 25, 1996 against respondent Amoco Oil Company (Amoco Oil). Amoco Oil filed an answer to the complaint on January 24, 1997. This matter is accepted for hearing.

In the complaint, complainants allege that Amoco Oil improperly disposed of and abandoned waste, consisting of soils contaminated with gasoline and other petroleum constituents, in violation of Section 21(e) of the Environmental Protection Act (Act) (415 ILCS 5/21(e) (1994)). Complainants further allege that Amoco Oil improperly deposited contaminants upon the land in such a place and manner so as to create a water pollution hazard in violation of Section 12(d) of the Act (415 ILCS 5/12(d) (1994)) and that Amoco Oil violated Sections 731.165 and 731.166 of the Board's rules (35 Ill. Adm. Code 731.165, 731.166) by failing to perform investigations of soils and groundwater and by failing to draft and implement a corrective action plan. Complainants seek reimbursement for the costs they incurred in performing corrective actions and for the costs of this litigation.

Section 103.123(a) of the Board's procedural rules, which implement Section 31(b) of the Act (415 ILCS 5/31(b) (1994)), provides that the Chairman shall place the matter on the Board's agenda for the Board to determine whether the complaint is duplicitous or frivolous. This section further states that if the complaint is duplicitous or frivolous, the Board 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(a).)

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in another forum. (Brandle v. Ropp (June 13, 1985), PCB 85-68.) An action before the Board is frivolous if it fails to state a cause

of action upon which relief can be granted by the Board. (Citizens for a Better Environment v. Reynolds Metals Co. (May 17, 1973), PCB 73-173.) At this time, the Board finds that, pursuant to Section 103.124(a), the evidence before the Board does not indicate that this complaint is either duplicitous or frivolous. The Board notes that in its answer to the complaint, Amoco Oil raised a number of affirmative defenses, including challenges to the jurisdiction of the Board over this matter. These defenses, however, were not thoroughly discussed nor were appropriate citations given in support of the defenses. Amoco Oil is free to develop a record on these issues, and to argue them at hearing and in its closing brief.

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 Section 103.125 of the Board's rules (35 Ill. Adm. Code 103.125). The Clerk of the Board shall promptly issue appropriate directions to that assigned hearing officer.

The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 21 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.

Any briefing schedule shall provide for final filings as expeditiously as possible. 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 and the parties are encouraged to expedite this proceeding as much as possible.

Finally, the Board notes that on January 21, 1997 the parties filed a joint stipulation correcting a named respondent, pursuant to Section 103.121(b) of the Board's rules (35 Ill. Adm. Code 103.121(b)). The parties stipulate that references to Amoco Corporation in the caption and throughout the complaint be changed to Amoco Oil Company. The parties further stipulate that the appearance previously filed on behalf of Amoco Corporation be changed to an appearance on behalf of Amoco Oil Company and request that the Board similarly change the caption in this matter to reflect Amoco Oil Company as respondent. The Board hereby accepts the stipulation in this enforcement proceeding. The caption of this order reflects the Board's decision in this matter. All future pleadings should reflect the same.

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 ____ day of _____, 1997, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board