

ILLINOIS POLLUTION CONTROL BOARD
February 6, 1997

MATTESON WHP PARTNERSHIP,)	
an Illinois General Partnership,)	
)	
Complainant,)	PCB 97-121
)	(Enforcement -Land, Water
)	Citizens)
v.)	
)	
JAMES W. MARTIN AND EVA)	
D. MARTIN, individually and d/b/a)	
MARTIN'S OF MATTESON,)	
)	
Respondents.)	

ORDER OF THE BOARD (by M. McFawn):

This matter comes before the Board on the filing of a complaint by Matteson WHP Partnership (complainant) on January 17, 1997 against respondents, James W. Martin and Eva D. Martin, individually and d/b/a Martin's of Matteson. No answer has been filed by respondents to date. This matter is accepted for hearing.

In the complaint, complainant alleges that respondents improperly disposed of waste and improperly conducted a hazardous waste-disposal operation in violation of Sections 21(e) and 21(f), respectively, of the Environmental Protection Act (Act) (415 ILCS 5/21(e), (f) (1994)). Complainant also alleges that respondents violated Section 12(a) of the Act (415 ILCS 5/12(a) (1994)) and Section 620.115 of the Board's groundwater regulations (35 Ill. Adm. Code 620.115) by causing or allowing the discharge of tetrachloroethene and trichloroethene into the groundwater. Complainant seeks remediation of the contaminated property and removal of all contamination from the property, resulting from the disposal of waste and hazardous waste thereon, and remediation of the groundwater contamination.

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, it 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 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.

IT IS SO ORDERED.

Board Member K. Hennessey abstained.

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