

ILLINOIS POLLUTION CONTROL BOARD

June 5, 1997

TRUST NUMBER 5439, by its Trustee,)	
THE AMALGAMATED TRUST AND)	
SAVINGS BANK,)	
)	PCB 97-183
Complainant,)	(Enforcement - Citizens)
)	
v.)	
)	
SHELL OIL COMPANY, a Delaware)	
corporation,)	
)	
Respondent.)	

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

This matter comes before the Board on the filing of a complaint by Trust Number 5439, by its trustee, the Amalgamated Trust and Savings Bank (complainant), on April 23, 1997 against respondent, Shell Oil Company (Shell). To date, Shell has not responded to the complaint.¹ By this order, the Board finds that the complaint is neither duplicitous nor frivolous and accordingly accepts the matter for hearing.

In the eight-count complaint, complainant alleges that Shell violated Sections 12(a), 12(d), 21(a), 21(d), 21(e), 21(f), and 57.1(a) of the Environmental Protection Act (Act) (415 ILCS 5/12(a), 12(d), 21(a), 21(d), 21(e), 21(f), 57.1(a) (1994)) and 35 Ill. Adm. Code 732 based on Shell's improper storage, disposal, and handling of waste substances on property located at 15901 Wood Street, Harvey, Illinois (property). Specifically, complainant alleges that between approximately 1959 and 1978 Shell, in connection with the operation of a gasoline station, operated at least six underground storage tanks (USTs) and/or underground storage tank systems (UST Systems) at the property at issue. Complainant maintains that the contamination at the property is the direct result of, and was caused or contributed to by, the release of gasoline and other petroleum products from the USTs and/or UST systems located at the property and owned and/or operated by Shell.

Complainant purchased the property in 1989, and in connection with a potential sale of it, performed a site investigation and discovered that the property was contaminated. Complainant seeks reimbursement for its past investigatory costs, an order directing Shell to undertake investigation/remediation at the property or, alternatively, directing Shell to

¹ Since Shell has not answered the complaint or filed a motion to dismiss within the time allowed under the Board's procedural rules, Shell is considered to have "denied" the allegations of the complaint. (See 35 Ill. Adm. Code 103.122(d).)

reimburse complainant for its further investigatory/cleanup costs, penalties, and attorney's fees and costs.

Section 103.124(a) of the Board's procedural rules, which implements Section 31(d) of the Act (415 ILCS 31(d) (Supp. 1997)), 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. (See 35 Ill. Adm. Code 103.124(a).)

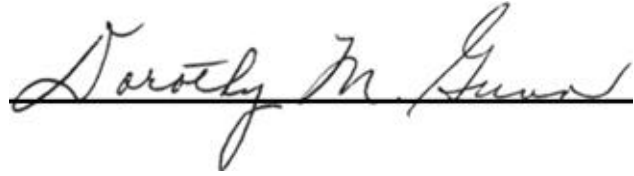
An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in another forum. (Brandle v. Ropp (June 13, 1985), PCB 85-68, 64 PCB 263.) An action before the Board is frivolous if it fails to state a cause of action upon which relief can be granted by the Board. (Citizens for a Better Environment v. Reynolds Metals Co. (May 17, 1973), PCB 73-173, 8 PCB 21.) 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 does note, however, that complainant is seeking attorney's fees and costs in this matter. The Board generally does not have the discretion under the Act to award attorney's fees and costs in enforcement cases brought by citizen complainants (415 ILCS 5/42(f) (1994)). Such costs and fees are allowed by Section 42(f) of the Act only when the Attorney General or a State's Attorney prevails in an enforcement action on behalf of the People of the State of Illinois. (See 415 ILCS 5/42(f) (1994); see also Bill Aden, John Schroder, Velma Schroder, Joe Kendall, Lamorn Morris et al. v. City of Freeport (September 8, 1988), PCB-86-193, 92 PCB 7.) At this time, however, the Board does not make a determination regarding the request for attorney's fees and costs. (See Farmers State Bank, Pittsfield, Illinois v. Phillips Petroleum Co. (January 23, 1997), PCB 97-100, slip op. 2.)

Accordingly, the Board will designate a hearing officer to conduct hearings in this matter consistent with this order and Section 103.125 of the Board's rules (35 Ill. Adm. Code 103.125). The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 30 days in advance of the hearing so that a 21-day public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, the exhibits, and a statement regarding the credibility of the witnesses 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 proceedings as much as possible.

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 5th day of June 1997, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board