

ONE NORTH FRANKLIN STREET, SUITE 1200, CHICAGO, ILLINOIS 60606  
TELEPHONE: 312-251-9600  
FACSIMILE: 312-251-9601  
EMAIL: GCARTER@CRMLAW.COM

GARRETT C. CARTER

CONNELLY ROBERTS & MCGIVNEY LLC

ORIGINAL

**RECEIVED**  
CLERK'S OFFICE

**APR 11 2005**

**STATE OF ILLINOIS**  
**Pollution Control Board**

April 8, 2005

VIA U.S. MAIL

Mr. John Therriault  
Illinois Pollution Control Board, Clerk's Office  
James R. Thompson Center, Suite 11-500  
100 West Randolph Street  
Chicago, Illinois 60601

**Re:   Grand Pier Center LLC et al. v. Kerr-McGee Chemical  
      LLC, et al.  
      PCB 05-157**

Dear John:

Pursuant to our telephone conversation from this morning, enclosed please find nine copies of Exhibit "C". Please accept this exhibit as an addendum to Kerr-McGee Chemical LLC's Motion to Dismiss the Complaint. If you have any questions or concerns, please feel free to contact me.

Very truly yours,



Garrett C. Carter

Enclosures

APR 11 2005

STATE OF ILLINOIS  
Pollution Control Board  
Database  
PL ENV-ADMIN

Citation Found Document Rank(R) 1 of 1  
1985 WL 21380  
1985 WL 21380 (Ill.Pol.Control.Bd.)  
(Cite as: 1985 WL 21380 (Ill.Pol.Control.Bd.))

Illinois Pollution Control Board  
State of Illinois

\*1 PATRICK BRANDLE, JOEL DALY, LESTER HOSTE, STEPHEN LAMBERTI MICHAEL  
PASSMORE AND CHARLES WELTY, COMPLAINANTS,  
v.  
DONALD ROPP, RESPONDENT.  
PCB 85-68  
June 13, 1985

ORDER OF THE BOARD  
by J. Theodore Meyer

This matter comes before the Board on a May 6, 1985 complaint filed by Patrick Brandle, Joel Daly, Lester Hoste, Stephen Lamberti, Michael Passmore and Charles Welty (Complainants) against Donald Ropp (Respondent). The complaint alleges that on or about the 1st day of March, 1985 Respondent began operating a waste disposal operation without a permit issued by the Illinois Environmental Protection Agency (Agency) in violation of Section 21(d)(1) of the Illinois Environmental Protection Act (Act). The Respondent moved on May 28 to dismiss the complaint stating that the instant proceeding was duplicative of an action presently pending in Circuit Court. Complainants respondent to the motion to dismiss on June 5, 1985.

Complainants state that they have no objection to resolving this matter in Circuit Court and that it is their intent to do so. However, they suggest that it would be 'more appropriate' to enter a general continuance of the Board proceeding until what matters will be resolved in the court are known.

Under Section 30(b) of the Act the Board is required to schedule hearing in enforcement cases such as this unless it determines that the complaint is 'duplicitous or frivolous'. Duplicitous is not defined in the Act but has been interpreted to apply to complaints which duplicate 'allegations identical or substantially similar to matters previously brought before the Board.' *Winnetkans Interested in Protecting the Environment (WIPE) v. Illinois Pollution Control Board*, 370 N.E. 2d 1176, (Ill. App. Ct. 1977). A complaint is also duplicitous if it is identical or substantially similar to one brought in another forum.

The complaint herein consists of ten allegations; allegations eight through ten concern the alleged waste-disposal operation. The Board finds that the allegations are duplicitous of those currently pending in the Circuit Court for the Fourteenth Judicial District in Cause No. 85-MR-104.

Although the complaints are not precisely identical the issues are substantially similar to those pending before the Circuit Court. One of the issues at the court level concerns whether a Development Permit was properly issued in accordance with an ordinance of the Village of Colona; resolution of the issue of whether an Agency permit is required is a prerequisite to the outcome. The defendant (Respondent herein) disputes the necessity of obtaining an Agency permit and in fact, has filed a third-party complaint against the Agency requesting a Declaratory Judgment to determine whether the activity complained of requires an Agency permit.

The Board finds that the most expeditious and complete resolution of this issue will be accomplished at the court level. Continuance is inappropriate where, as

1985 WL 21380

(Cite as: 1985 WL 21380, \*1 (Ill.Pol.Control.Bd.))

here, the complaint cannot meet the threshold test for Board acceptance. Accordingly, this matter is dismissed, without prejudice.

\*2 IT IS SO ORDERED.

1985 WL 21380 (Ill.Pol.Control.Bd.)

END OF DOCUMENT