

ILLINOIS POLLUTION CONTROL BOARD
July 24, 1997

ANTONIO D.H. NAM,)	
)	
Complainant,)	
)	
v.)	PCB 97-234
)	(Enforcement - UST, Citizens)
KIKON SUH,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

This matter comes before the Board on the filing of a citizens enforcement complaint by Antonio D.H. Nam, owner of a parcel of property located at 5101-17 North Kedzie Avenue, Chicago, Illinois (site), on June 24, 1997. The Board has not yet received a response from Kikon Suh, owner of the site from 1986 to 1994. This matter is accepted for hearing.

Complainant alleges that respondent caused the open dumping of waste at the site by allowing underground storage tanks to leak gasoline into the soil of the site in violation of Section 21(a) of the Environmental Protection Act (Act) (415 ILCS 5/21(a) (1996)). Complainant also alleges that respondent improperly conducted waste storage, waste treatment or waste disposal operation in violation of 35 Ill. Adm. Code 732.200 of the Board's regulations and in violation of Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (1996)). Complainant requests that the Board order respondent to remediate the gasoline contaminated soil at the site and requests that the Board order respondent to reimburse all costs which complainant has incurred due to the alleged contamination of the site by respondent.

Section 103.124(a) of the Board's procedural rules which implements Section 31(b) of the Act (415 ILCS 5/31(b) (1996)), provides that this matter shall be placed on the Board agenda for the Board's determination as to whether or not 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.

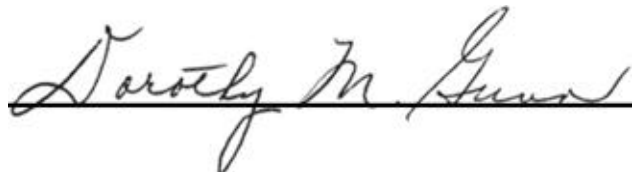
The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and Section 103.125 of the Board's rules (35 Ill. Adm. Code 103.125). The Clerk of the Board shall promptly issue appropriate 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.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 24th day of July 1997, by a vote of 4-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board