

ILLINOIS POLLUTION CONTROL BOARD
March 19, 1998

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 96-240
)	(Enforcement - UST)
ROGERS O'HARE MOTOR TERMINAL)	
LIMITED, an Illinois partnership and)	
CAROLINA FREIGHT CARRIERS)	
CORPORATION, a North Carolina)	
corporation,)	
)	
Respondent.)	

ROGERS O'HARE MOTOR TERMINAL)	
LIMITED, an Illinois partnership,)	
)	
Complainant,)	
)	
v.)	PCB 98-107
)	(Enforcement - UST)
ABF FREIGHT SYSTEMS, INC., a)	(Consolidated)
Delaware corporation,)	
)	
Respondent.)	

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

On February 18, 1998, Rogers O'Hare Motor Terminal Limited (Rogers) filed a complaint (Comp) against ABF Freight Systems, Inc. (ABF) alleging violations of the Environmental Protection Act (415 ILCS 5/100 *et seq.*) (Act) and asking that the Board order ABF to reimburse Rogers for clean-up of the site. The alleged violations arise from the removal and clean-up of leaking underground storage tanks. Currently pending before the Board is a May 23, 1996, complaint filed on behalf of the People of the State of Illinois against Rogers and Carolina Freight Carriers Corporation.¹ PCB 96-240, People v. Rogers O'Hare Terminal Limited and Carolina Freight Carriers Corporation (PCB 96-240). In PCB 96-240, the complaint alleges violations of various provisions of the Act all relating to removal and clean-up of leaking underground storage tanks. Rogers asserts in its complaint that "[t]he

¹ Rogers alleges in its complaint that Carolina Carriers Corporation merged with ABF in October of 1996 obtaining all assets and liabilities of Carolina Carriers Corporation.

State of Illinois has filed a complaint against Rogers and Carolina [Freight Carriers Corporation] in PCB 96-240, which alleges the same incident.” Comp. at 4.

Section 103.124(a) of the Board's procedural rules, which implements Section 31(d) of the Act (415 ILCS 5/31(d)), provides:

... If a complaint is filed by a person other than the Agency, the Clerk shall also send a copy to the Agency; the Chairman shall place the matter on the Board agenda for Board determination whether the complaint is duplicitous or frivolous. If the Board rules that 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.

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in another forum. Brandle v. Ropp, PCB 85-68, 64 PCB 263 (1985). 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., PCB 73-173, 8 PCB 46 (1973).

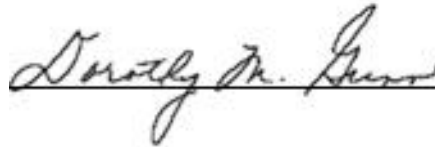
The Board notes that this is not the first time a complaint has been filed by a private citizen against a co-respondent in a case filed by the People. In PCB 95-91, People v. Bell Sports et al., the Board allowed the filing of a cross-claim by co-respondents Waste Hauling Landfill, Inc. (WHLI) and Waste Hauling, Inc. (WHI) against Bell Sports. People v. Bell Sports et al. PCB 95-91, (December 7, 1995). The Board denied a motion to dismiss a cross-claim and determined that WHLI and WHI had the right to file a private citizen enforcement action against Bell Sports. For administrative efficiency, the Board found it was appropriate to allow the cross-claim. People v. Bell Sports et al. PCB 95-91, (December 7, 1995) at 4. The Board also noted that in several private citizen enforcement actions, the Board has allowed the filing of a cross-claim and in one case has consolidated a separate citizens' enforcement action together with a State-initiated enforcement action so as to adjudicate the case in the same proceeding. People v. Boyd Brothers, PCB 94-275 and Boyd Brothers v. Abandoned Mined Lands Reclamation Council, PCB 94-311 (consolidated December 1, 1994). People v. Bell Sports et al. PCB 95-91, (December 7, 1995) at 4. The Board also stated:

In denying the motion to dismiss we find that the counterclaim [cross-claim] is neither frivolous nor duplicitous as we believe that WHLI and WHI are entitled to argue, among other things, and present evidence on the issue of responsible parties, liability for violating the Act and any corresponding regulations. Importantly, WHLI and WHI are entitled to offer evidence on the issue of the proper apportionment of any civil penalties that the Board may award. People v. Bell Sports et al. PCB 95-91, (December 7, 1995) at 4.

After reviewing the complaint filed by Rogers and the complaint filed in PCB 96-240 by the People, the Board finds that this case is analogous to the case in People v. Bell Sports et al. PCB 95-91, (December 7, 1995). Therefore, the Board finds that the complaint is not duplicitous or frivolous. Further, the Board on its own motion will consolidate this case with PCB 96-240 for administrative efficiency and economy. The caption reflects the consolidation of these matters.

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 19th day of March 1998, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board