

ILLINOIS POLLUTION CONTROL BOARD  
February 5, 1998

MATERIAL SERVICE CORPORATION,	)	
a Delaware corporation,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 98-97
	)	(Enforcement - UST - Citizens)
J.W. PETERS & SONS, Inc., a Wisconsin	)	
corporation,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by J. Yi):

This matter comes before the Board on the January 13, 1998, filing of a citizen's enforcement complaint by Material Service Corporation (Material Service). The Board has received no response from J.W. Peters & Sons, Inc. (J.W. Peters), which allegedly owned and operated underground storage tanks (USTs) at a manufacturing facility located in McHenry County near Algonquin, Illinois (site).

The complainant alleges that J.W. Peters failed to remove and lawfully close USTs in violation of Section 57.1(a) of the Environmental Protection Act (Act) (415 ILCS 5/57.1(a) (1996)). Complainant requests that the Board order J.W. Peters to remove and effect lawful closure of the USTs.

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, 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.<sup>1</sup> 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 requests relief which the Board cannot grant. Lake County Forest Preserve District v. Neil Ostro, Janet Ostro, and Big Foot Enterprises (July 30,

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<sup>1</sup> On February 2, 1998, the Board received pleadings filed by Respondent in this matter including a Motion to Dismiss and two requests for appearance. The Board does not rule on any of these pleadings in this order, but will place them on the Agenda for decision at a future Board Meeting.

1992), PCB 92-80. The complaint asks the Board to order respondent to remove and effect a lawful closure of the USTs at the site. The Board considers this a request for a cease and desist order, and finds that, pursuant to Section 103.124(a), the complaint is neither duplicitous nor frivolous and will be accepted for hearing.

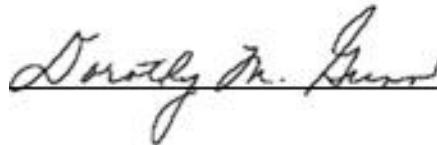
The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and Section 103.125 of the Board's rules (35 Ill. Adm. Code 103.125). The Clerk of the Board shall promptly issue appropriate 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 30 days in advance of hearing so that a 21-day 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 5th day of February 1998, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board