

ILLINOIS POLLUTION CONTROL BOARD
August 3, 1995

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 95-91
) (Enforcement-Land)
 BELL SPORTS, INC., A CALIFORNIA)
 COPORATION, AND WASTE HAULING)
 LANDFILL, INC., AN ILLINOIS)
 CORPORATION, AND WASTE HAULING,)
 INC., AN ILLINOIS CORPORATION,)
)
 Respondents.)

DISSENTING OPINION (by J. Theodore Meyer):

I respectfully dissent from the majority opinion in this matter based on the doctrine of prior jurisdiction. I also believe today's opinion and order goes against the public policies of preserving judicial economy and minimizing litigation expenses.

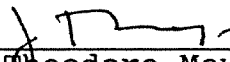
In Illinois, one court is not free to ignore an action pending in another court when that action involves the same parties on the same subject. (First Nat. Bank of Skokie v. Puetz, 124 Ill.App.3d 240, 464 N.E.2d 704 (1st Dist. 1984); Kanter & Eisenberg v. Madison Associates, 144 Ill.App.3d 588, 494 N.e.2d 493 (1st Dist. 1986).) The public policy behind this doctrine is the prevention of duplicitous and vexatious litigation. (Bloink v. Olson, 265 Ill.App.3d 711, 638 N.E.2d 406 (2nd Dist. 1994).) Courts have contrued "same parties" as those litigants with sufficiently similar interests even though the litigants differ in name and number. (Skipper Marine Electronics, Inc. v. Sibernet Marine Products, 120 Ill.App.3d 692, 558 N.E.2d 324 (1st Dist. 1990).) The "same subject" or "same cause" element is satisfied when both cases are based on substantially the same facts or issues, the crucial inquiry being: do the two actions arise from the same transaction or occurrence? (Quantum Chemical Corporation v. Hartford Steam Boiler Inspection and Insurance Company, 246 Ill.App.3d 557, 616 N.E.2d 686 (3rd Dist. 1993).)

In the present matter, complainant originally filed an action in the Circuit Court of Macon County, Illinois on January 23, 1992 against Waste Hauling Landfill, Inc. for allegedly violating section 28 of the Environmental Protection Act, and various sections of part 807 of the Pollution Control Board regulations. (Respondents' Motion to Dismiss, p. 1.) On March 14, 1995 complainant filed with the Board a second action, naming three defendants, including Waste Hauling Landfill, Inc. All three defendants named in the second action have similar

interests in the site at issue. In addition, the second action involved the same site over the same timeframe as the first action. (Id. at p.2.) Both prongs of the prior jurisdiction test have been met in this situation. Therefore, it is not proper for the Board to accept this matter until the Circuit Court of Macon County has resolved the action before it.

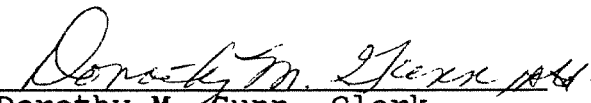
I also believe that complainant cannot be heard to vigorously assert that the present matter should be heard in circuit court, then two months later argue that the same matter could be heard in both jurisdictions. (Respondents' Motion to Dismiss, Exhibit "B".)

For the above reasons, I respectfully dissent.



 J. Theodore Meyer
 Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was filed on the 16th day of August, 1995.



 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board