

ILLINOIS POLLUTION CONTROL BOARD
December 4, 1997

DONALD MCCARRELL and)
ANN MCCARRELL,)
)
Complainants,) PCB 98-55
) (Enforcement - Land)
v.)
)
AIR DISTRIBUTION ASSOCIATES, INC.,)
)
Respondent.)

ORDER OF THE BOARD (by C.A. Manning):

On October 16, 1997, complainants Donald and Ann McCarrell (complainants) filed this citizens' enforcement action against respondent Air Distribution Associates, Inc. (respondent). The complaint alleges that respondent violated Section 21 of the Environmental Protection Act (Act) (415 ILCS 5/21 (1996)) by contaminating the soil at 935 Lively, Woodale, Illinois (the property), with trichlorethane. Comp. at 2. Complainants seek reimbursement for cleanup costs of the contaminated property in the sum of \$37,261.81. Comp. at 2.

On October 30, 1997, respondent filed a motion to dismiss this action. The motion alleges that this action should be dismissed as frivolous because the Board has no authority to order a respondent to pay money damages to a complainant. Mot. to Dism. at 1. On November 13, 1997, complainants filed a motion for leave to file a response to the motion to dismiss, as well as the response. The Board grants complainants' motion for leave to file a response. In their response, complainants assert that they are seeking reimbursement for the cleanup costs of the contaminated property and that the Board is authorized to award such relief. Resp. at 1. For the following reasons, the Board denies respondent's motion to dismiss and sends this matter to hearing.

An action before the Board is frivolous if a complainant requests relief which the Board cannot grant. See Klich v. Wal-Mart Stores, Inc. (November 6, 1997), PCB 98-57, slip op. at 2. As stated previously, complainants seek reimbursement for environmental cleanup costs incurred in remediating the contaminated property. See Comp. at 1. The Board has asserted on numerous occasions that it does have the authority to award cleanup costs to private parties as a remedy for violations of the Act. See Dayton Hudson Corp. v. Cardinal Industries, Inc. et al. (August 21, 1997), PCB 97-134, slip op. at 6-7; Richey v. Texaco Refining and Marketing, Inc. (August 7, 1997), PCB 97-148, slip op. at 1; Streit v. Oberweis Dairy, Inc. (September 7, 1995), PCB 95-122; Herrin Security Bank v. Shell Oil Co. (September 1, 1994), PCB 94-178; Lake County Forest Preserve District v. Ostro (March 31, 1994), PCB 92-80, slip op. at 13). Respondent does not present any argument that persuades the Board to

change its position here. Since complainants seek reimbursement for cleanup costs associated with the remediation of the contaminated property, the Board denies respondent's motion to dismiss.

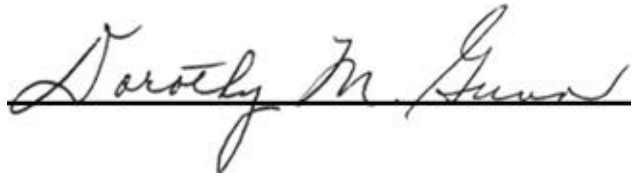
Having denied the motion to dismiss on the ground that the action is frivolous, the Board next turns to the question of whether the complaint is duplicitous. In a citizen's enforcement action, the Board is required to make a duplicitous or frivolous determination prior to setting this matter for hearing. See 35 Ill. Adm. Code 103.124(a). Section 103.124(a) further provides that if the complaint is duplicitous or frivolous, the Board shall enter an order setting forth the reasons for so ruling and shall notify the parties of the decision. See 35 Ill. Adm. Code 103.124(a). If the Board rules that the complaint is neither duplicitous or frivolous, this does not preclude the filing of motions for insufficiency of the pleadings. See 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. The complaint alleges that there is no other known proceeding against respondent for the same alleged pollution discharge (Comp. at 3), and respondent has not indicated that one exists. Therefore, the Board finds that the action is not duplicitous.

Having found that the action is neither duplicitous or frivolous pursuant to Section 103.124(a), the Board accepts this matter for hearing. As such, this matter will proceed to hearing as required by the Board's procedural rules.

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 4th day of December 1997, by a vote of 6-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board