

ILLINOIS POLLUTION CONTROL BOARD
December 16, 1993

ROBERT MIEHLE)
)
 Complainant,)
)
 v.) PCB 93-150
) (Enforcement)
 CHICAGO BRIDGE AND)
 IRON COMPANY,)
)
 Respondent.)

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

This matter is before the Board pursuant to a two-count complaint filed August 18, 1993 by Robert Miehle (Miehle) against Chicago Bridge and Iron Company (CBI), located in Chicago, Cook County, Illinois. The complaint alleges that respondent violated 415 ILCS 5/21(e) of the Environmental Protection Act (Act) in that respondent disposed or abandoned waste at a facility which does not meet the requirements of the Act, and 35 Ill. Adm. Code Section 731.160, in that respondent failed to undertake corrective action regarding an alleged release of petroleum from underground storage tanks (USTs). On November 24, 1993, CBI filed its answer to the complaint containing seven affirmative defenses and two counterclaims.

While the Board's rules do not specifically require the Board to determine whether counterclaims are duplicitous or frivolous, it has been the Board's past practice to make such a determination. (See, Lefton Iron and Metal v. Moss-American, (March 9, 1989) PCB 87-191, 97 PCB 109 and Mandel v. Kulpaka, (August 26, 1993) PCB 92-33, ___ PCB ___.) Therefore, we turn to consideration of whether CBI's counterclaim is duplicitous or frivolous.

Section 31(b) of the Act states that when a citizen's enforcement complaint is filed:

Unless the Board determines that such complaint is duplicitous or frivolous, it shall schedule a hearing.

415 ILCS 5/31(b) (1992)

Also, the Board regulations in part provide:

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

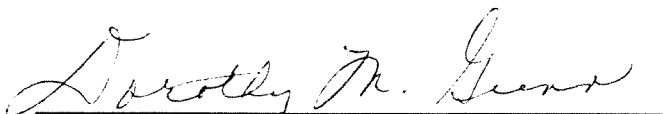
The Board finds that the counterclaim is not duplicitous. An action before the Board is duplicitous if the matter is identical or substantially similar to one brought before the Board or in another forum. (Brandle v. Ropp, (June 13, 1985), PCB 85-68, 64 PCB 263; League of Women Voters v. North Shore Sanitary Dist., (October 8, 1970) PCB 70-1, 1 PCB 35). There is no evidence before the Board to indicate that the counterclaims are identical or substantially similar to any matter brought by CBI before the Board or in another forum. Therefore, based on the evidence before it, the Board finds that the counterclaim is not duplicitous under Section 31(b) of the Act.

The Board also finds that the counterclaims are not frivolous. The counterclaim is frivolous if it fails to state a cause of action upon relief can be granted. The counterclaim alleges violations of specific sections of the Act which fall within the Board's jurisdiction. In addition, without addressing the merits, the relief sought by CBI appears to be that which can be granted by the Board. Therefore, the Board finds that the counterclaims are not frivolous under Section 31(b) of the Act.

In finding that the counterclaims are neither duplicitous or frivolous, the Board makes no ruling on the merits of the case. The underlying complaint in this case was accepted for hearing on September 9, 1993 and on November 4, 1993, the Board denied a motion to dismiss the complaint allowing the case to proceed to hearing. The counterclaims filed with the Board on November 24, 1993 shall be taken with the case and shall be considered in the course of the hearing.

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 16th day of December, 1993, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board