

ILLINOIS POLLUTION CONTROL BOARD  
January 19, 1989

LEFTON IRON AND METAL COMPANY, )  
INC., a Missouri Corporation, )  
and LEFTON LAND AND DEVELOPMENT )  
COMPANY, INC., a Missouri )  
Corporation, )  
 )  
Complainants, )  
 )  
v. ) PCB 87-191  
 )  
MOSS-AMERICAN CORPORATION, )  
a Delaware Corporation, and )  
KERR-McGEE CHEMICAL CORPORATION, )  
a Delaware Corporation, )  
 )  
Respondents. )

ORDER OF THE BOARD (by J. Marlin):

On December 29, 1988, Kerr McGee filed a counterclaim in this action. No motions or pleadings responsive to the counterclaim have been filed.

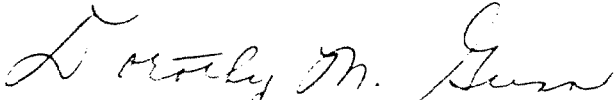
The Board notes that, until cancelled by Hearing Officer Order entered January 17, 1989, hearing concerning Lefton's complaint was scheduled to commence January 30, 1989.

The cancellation was premised upon a January 5, 1989 letter from counsel for Lefton which, among other things, noted uncertainty about the validity of a counterclaim in a Board proceeding. The Board believes that an early ruling could expedite the progress of this litigation.

It would appear that Kerr McGee's asserted claim is in the nature of a complaint pursuant to Section 31 of the Act. It would further appear that the Board is required first to determine whether the "complaint" is duplicitious or frivolous (Section 31(b)), and then whether the "complaint" should proceed as a counterclaim as filed, or should instead be docketed and proceed as a separate action. Kerr-McGee is directed to address these issues by way of brief or other appropriate filing on or before February 6, and Lefton to file any response on or before February 17, 1989 so that the Board can address this matter at its February 23 meeting.

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 14<sup>th</sup> day of January, 1989, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board