

ILLINOIS POLLUTION CONTROL BOARD
July 30, 1992

LAKE COUNTY FOREST)	
PRESERVE DISTRICT)	
)	
Complainant,)	
)	
v.)	PCB 92-80
)	(Enforcement)
)	
NEIL OSTRO, JANET OSTRO,)	
and BIG FOOT ENTERPRISES,)	
)	
Respondents.)	

ORDER OF THE BOARD (by J. Anderson):

This matter comes before the Board on respondents' July 7, 1992, motion to strike complaint and petitioner's July 17, 1992, response. The time for filing the motion was extended in the Board's Order of June 23, 1992.

The complaint was filed on May 29, 1992. It alleges violations of Sections 12(d) and 21(a), (b), (e), (f) and (n) of the Environmental Protection Act (Act), with respect to real estate transferred, pursuant to a condemnation action, from respondents to the complainant on December 22, 1989. The complaint alleges that the respondents: deposited contaminants on the land so as to create a water pollution hazard; caused or allowed open dumping of waste; abandoned, dumped and deposited waste on public property; stored and disposed of waste at a facility which did not meet the requirements of the Act and regulations; conducted hazardous waste disposal and storage operations without a permit; and, transferred a site which had been used for hazardous waste disposal without notifying the State or the transferee. While many of the allegations relate to actions which began long prior to the transfer of ownership, the complainant also alleges violations in connection with unauthorized clean-up activities by respondents on the site after the transfer of ownership.

The motion asks that the Board strike the complaint on four grounds: that the complaint is "duplicitous" with respect to a U.S. District Court action involving the same parties; that the complaint seeks equitable remedies not possessed by the Board; that the complaint seeks retroactive application of statutes; and, that the cause of action is barred by the five year statute of limitations in Ill. Rev. Stat. ch. 110, Sec. 13-205. The response rejects each of these grounds.

Section 31(b) of the Act and 35 Ill. Adm. Code 103.124 require that, for complaints other than those filed by the

0135-0175

Illinois Environmental Protection Agency, the Board schedule a hearing unless it determines that the complaint is "duplicitous or frivolous". The Board may dismiss any complaint as "duplicitous" that raises claims identical or substantially similar to another action. WIPE v. Pollution Control Board, 55 Ill. App. 3d 475, 480 (1st Dist. 1977). A complaint would be duplicitous if another action was pending between the same parties, alleging substantially the same violations, before another tribunal with power to grant the same relief as the Board. A complaint would be "frivolous" if it requested relief which the Board could not grant.

Respondents have attached a copy of the complaint in Lake County Forest Preserve District v. Neil Ostro, Janet Ostro; Harris Trust & Savings Bank of Chicago and Big Foot Enterprises, No. 92 C 3571, in the U.S. District Court for the Northern District of Illinois, Eastern Division. The complaint was filed on May 29, 1992, the same day as the complaint in this action. Although the complaint involves the same parties (and one more), the same time frame, and the same actions, it is based on statutes and legal theories other than the Act. That complaint alleges violations of Sections 107 and 310 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq. (CERCLA), and common law counts including fraud, negligence and trespass. On the other hand, the complaint in this matter is strictly based on the Act. Moreover, this complaint asks for an order directing respondents to cease and desist from violating the Act, and requests a statutory penalty, which would be payable to the State. None of this relief is available in the District Court action.

Respondents also contend that the complaint "seeks equitable remedies" which the Board does not possess. On the contrary, the complaint is requesting statutory remedies which the Board can grant pursuant to Sections 33(a) and (b), and 42 of the Act.

Respondents also contend that the complaint "seeks retroactive application of the statutes it alleges to have been violated". The motion is not, however, specific as to which acts predated which provisions. Among other things, the complaint is alleging violations which occurred on October 18, 1989, long after the effective dates of the provisions alleged to have been violated. Moreover, some of the allegations are of continuing violations, for which the Board could find a violation and order remedial action, even if they began long before the Act was adopted. Although the complainant may fail to prove that all of the alleged violations occurred after the effective date of the respective provisions, this is no reason to strike the complaint at the outset.

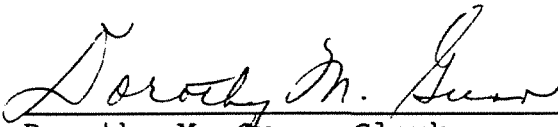
Respondents also contend that the complaint is barred by the

five-year statute of limitations in Ill. Rev. Stat. ch. 110, Sec. 13-205. However, Section 13-205 is a limitation on personal actions to recover damages. In this action, the Lake County Forest Preserve District is acting as a "private attorney general" to protect the public's rights and to collect penalties which may be due the State. Section 13-205 does not apply to an action for the protection of the public's right to a clean environment. Pielet Bros. Trading, Inc. v. Pollution Control Board, 110 Ill. App. 3d 752 (5th Dist. 1982).

For the foregoing reasons, the motion to strike is denied. The Board finds that the complaint is not duplicitous or frivolous. A hearing officer will be designated and this matter will be set for 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 30th day of July, 1992 by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

0135-0177