

ILLINOIS POLLUTION CONTROL BOARD
April 11, 1991

KARL CHRIST AND HELEN CHRIST)	
)	
Complainants,)	
)	
v.)	PCB 91-50
)	(Enforcement)
COMPOST ENTERPRISES, INC.)	
)	
Respondent.)	

ORDER OF THE BOARD (by J. C. Marlin):

This matter is before the Board on Respondent Compost Enterprises, Inc.'s ("Compost") Motion to Dismiss filed March 14, 1991. The complaint filed by Karl and Mary Christ against Compost was filed February 22, 1991. The motion asks the Board to dismiss the complaint because it is duplicitous, frivolous and fails to set forth the dates of the alleged noise and odor violations, the location of the facility alleged to be in violation and the nature of the relief requested.

With regard to Respondent's contention that more specific dates of violation are necessary in order to answer the complaint, the Board notes that the complaint (par. 7) alleges "ongoing" violations. The Board does not require more specificity in pleading when the allegation is of a continuing violation.

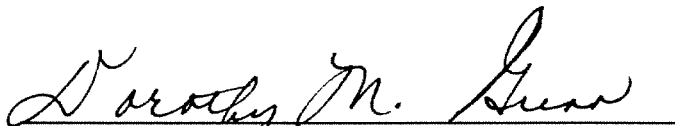
Respondent's main argument is that the complaint is duplicitous and frivolous in that "approximately 25 complaints have been made to the Department of Health of McHenry County" about the compost facility prior to its filing of the instant complaint with the Board. The motion states that "some" of them have been made by the Christs. The Board does not find that the complaints made to the Department of Public Health prevent the Christs from bringing this action to the Board. In addition, as noted previously, the allegation is that the alleged violations are ongoing. The Board therefore finds that the complaint is not duplicitous.

The motion also alleges that the location of the compost facility alleged to be in violation is not identified and that the nature of the violation is unspecified. After review of the complaint the Board finds that the nature of the complaint and the relief requested is pleaded with sufficient specificity. It is true, that the location of the composting facility complained of is not specifically identified. However, the Board does not believe this to be a fatal defect. Therefore, the Board grants the Christs an additional 14 days to cure this deficiency. The Complainant shall serve an amended complaint with the Board with

service upon the Respondent by April 25, 1991. The amended complaint shall identify the location of the facility in question. Respondents motion to dismiss is denied.

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 17th day of April, 1991 by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board