

ILLINOIS POLLUTION CONTROL BOARD
June 13, 1985

PATRICK BRANDLE, JOEL DALY,)
LESTER HOSTE, STEPHEN LAMBERTI)
MICHAEL PASSMORE and CHARLES)
WELTY,)
Complainants,)
v.) PCB 85-68
DONALD ROPP,)
Respondent.)

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter comes before the Board on a May 6, 1985 complaint filed by Patrick Brandle, Joel Daly, Lester Hoste, Stephen Lamberti, Michael Passmore and Charles Welty (Complainants) against Donald Ropp (Respondent). The complaint alleges that on or about the 1st day of March, 1985 Respondent began operating a waste disposal operation without a permit issued by the Illinois Environmental Protection Agency (Agency) in violation of Section 21(d)(1) of the Illinois Environmental Protection Act (Act). The Respondent moved on May 28 to dismiss the complaint stating that the instant proceeding was duplicative of an action presently pending in Circuit Court. Complainants responded to the motion to dismiss on June 5, 1985.

Complainants state that they have no objection to resolving this matter in Circuit Court and that it is their intent to do so. However, they suggest that it would be "more appropriate" to enter a general continuance of the Board proceeding until what matters will be resolved in the court are known.

Under Section 30(b) of the Act the Board is required to schedule hearing in enforcement cases such as this unless it determines that the complaint is "duplicitous or frivolous". Duplicitous is not defined in the Act but has been interpreted to apply to complaints which duplicate "allegations identical or substantially similar to matters previously brought before the Board." Winnetkans Interested in Protecting the Environment (WIPE) v. Illinois Pollution Control Board, 370 N.E. 2d 1176, (Ill. App. Ct. 1977). A complaint is also duplicitous if it is identical or substantially similar to one brought in another forum.

The complaint herein consists of ten allegations; allegations eight through ten concern the alleged waste-disposal

operation. The Board finds that the allegations are duplicitous of those currently pending in the Circuit Court for the Fourteenth Judicial District in Cause No. 85-MR-104.

Although the complaints are not precisely identical the issues are substantially similar to those pending before the Circuit Court. One of the issues at the court level concerns whether a Development Permit was properly issued in accordance with an ordinance of the Village of Colona; resolution of the issue of whether an Agency permit is required is a prerequisite to the outcome. The defendant (Respondent herein) disputes the necessity of obtaining an Agency permit and in fact, has filed a third-party complaint against the Agency requesting a Declaratory Judgement to determine whether the activity complained of requires an Agency permit.

The Board finds that the most expeditious and complete resolution of this issue will be accomplished at the court level. Continuance is inappropriate where, as here, the complaint cannot meet the threshold test for Board acceptance. Accordingly, this matter is dismissed, without prejudice.

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 the 13th day of June, 1985, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board