

ILLINOIS POLLUTION CONTROL BOARD  
June 3, 1999

AMERICAN NATIONAL BANK AND )  
TRUST COMPANY OF CHICAGO, a/t/u )  
Trust No. 10357705, )  
 )  
Complainant, )  
 )  
v. ) PCB 99-142  
 ) (Enforcement - Citizens, Land)  
ROBERT DUNHAM, individually and d/b/a )  
DUNHAM CLEANERS, )  
 )  
Respondent. )

ORDER OF THE BOARD (by G.T. Girard):

On May 13, 1999, respondents filed a motion to dismiss this action as duplicitous. On May 19, 1999, complainant filed a response in opposition to the motion. At issue is a complaint filed on April 9, 1999, which alleges that respondent violated Section 21 of the Environmental Protection Act (Act) (415 ILCS 5/21) by improperly disposing of dry cleaning fluids and chemicals. The complainant seeks reimbursement for remediation costs incurred by complainant. For the reasons discussed below the Board denies the motion to dismiss the complaint as it is not duplicitous.

Respondent argues that complainant filed an eight-count complaint against respondent in the Circuit Court of Cook County on April 8, 1999. Respondent asserts that count VI of the circuit court complaint is identical to the complaint filed before the Board. Respondent argues that the Board rules do not allow a party to pursue an enforcement action before the Board while an identical action remains pending in another forum. Respondents cite to Village of Addison v. City of Wood Dale (March 5, 1998), PCB 98-104 (Village of Addison) in support of its proposition.

Complainant asserts that the Board has original jurisdiction over the alleged violation of the Act and cites to Lake County Forest Preserve v. Ostro (March 31, 1994), PCB 92-90. Complainant maintains that the circuit court complaint was filed in order to preserve Complainant's rights under common law. Complainant asserts that the circuit court complaint contains additional counts, theories, and causes of action that are not relevant to the matter before the Board or even subject to the Board's authority.

Complainant maintains that a stay has been entered in the circuit court action, and "no action shall be taken" on that complaint until after action by the Board on the complaint before the Board. Complainant asserts that Board decision may act as *res judicata* with respect to certain counts in the circuit court case. Complainant maintains the actions are not duplicative or concurrent, but rather serial.

DISCUSSION

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in another forum. Brandle v. Ropp (June 13, 1985), PCB 85-68. The complaint filed in circuit court contains allegations of trespass, negligence, public nuisance, and private nuisance in addition to the alleged violation of the Act. See, Respondent Exh. B. These actions in tort generally lie outside the Board's authority for review. Thus, the circuit court complaint is not identical to the complaint before the Board.

Count VI of the circuit court complaint is similar to the allegations before the Board. However, the Board disagrees that the matter should be dismissed. Respondent cites to the Village of Addison to support its motion to dismiss. We believe that the present matter is more analogous to Morton College Board of Trustees of Illinois Community College v. Town of Cicero (January 8, 1998), PCB 98-59 (Morton College). In Morton College a circuit court action was filed and proceeding at the same time as the action before the Board. The Board found that the Board action was not duplicitous and set the matter for hearing.

Conversely, in Village of Addison, cited by respondent, the circuit court case was nearing completion. In fact, it was alleged that a consent decree was to be entered. Addison was seeking identical relief on the bases of identical allegations in both the circuit court case and the concurrent action before the Board. These features distinguish Village of Addison from Morton College. Therefore, the Board dismissed the complaint.

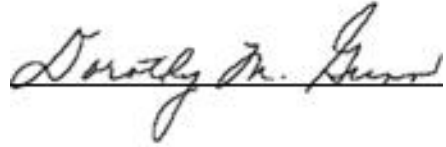
In the instant case, complainant has a stayed circuit court action that is not identical to the action before the Board. The circuit court complaint has several additional counts which generally are not within the Board's authority to review. Therefore the Board finds the complaint before the Board is not duplicitous and this matter should proceed.

The hearing must be scheduled and completed in a timely manner, consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and the Clerk of the Board shall promptly issue appropriate directions to the assigned hearing officer consistent with this order.

The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 30 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses and all actual exhibits to the Board within five days of the hearing. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

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 3rd day of June 1999 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board