

ILLINOIS POLLUTION CONTROL BOARD  
December 20, 1995

FOREST PRESERVE DISTRICT )  
OF DUPAGE COUNTY, )  
 )  
Complainant, )  
 )  
v. ) PCB 96-84  
 ) (Enforcement - Land)  
MINERAL AND LAND RESOURCES )  
CORPORATION, SOUTHWIND )  
FINANCIAL, LTD., formerly )  
known as ABBOTT CONTRACTORS, )  
INC., BLUFF CITY MATERIALS, )  
INC., )  
 )  
Respondents. )

ORDER OF THE BOARD (by M. McFawn):

This matter is before the Board on a complaint filed by complainant Forest Preserve District of DuPage County (Forest Preserve) against respondents Mineral and Land Resources Corporation (Mineral and Land), Southwind Financial, Ltd. (Southwind), and Bluff City Materials, Inc. (Bluff City Materials). The complaint alleges violations of the following sections of the Environmental Protection Act (Act) (415 ILCS 5/1 et seq.): Section 21(a), Section 21(b), Section 21(d), Section 21(e), Section 12(d), Section 21(o)(1), Section 21(o)(7), Section 21(o)(10), Section 21(p)(4). The alleged violations arise out of mining and fill activities conducted by respondents on a site owned by the Forest Preserve, located at 31W501 Stearns Road in Bartlett, DuPage County. The Forest Preserve seeks an order requiring respondents to abate the improper material at the site by: (1) conducting a comprehensive environmental analysis of the site; (2) removing all improper material from the site; (3) undertaking the complete environmental remediation of the site; and (4) to do and perform such other acts as the Board deems appropriate.

The Board has received several other filings in this matter: (1) a November 6, 1995, motion to quash service, filed by respondents Southwind and Bluff City Materials; (2) a November 13, 1995 response to the motion to quash, filed by the Forest Preserve; (3) a November 6, 1995 motion to dismiss, filed by respondent Mineral and Land Resources; (4) a November 13, 1995 response to the motion to dismiss, filed by the Forest Preserve; (5) a November 28, 1995 motion to withdraw motion to quash and to extend time to answer, filed by respondents Southwind and Bluff City Materials; (6) a December 5, 1995 answer, filed by respondents Southwind and Bluff City Materials; (7) a December 6, 1995 motion to withdraw motion to dismiss and for leave to file an answer, filed by respondent Mineral and Land Resources; (8) a

December 11, 1995 motion to strike and dismiss defenses alleged in answer of Southwind and Bluff City Materials, filed by complainant Forest Preserve; and (9) a December 19, 1995 response to the motion to strike and dismiss defenses filed by Southwind and Bluff City Materials. We grant respondents Southwind and Bluff City Materials' motion to withdraw the motion to quash, and its motion to extend time to answer. We therefore accept its answer as timely. We also grant respondent Mineral and Land Resources' motion to withdraw its motion to dismiss, and grant its request for leave to file its answer, which is now due on or before December 27, 1995. We therefore will not further address any of the filings concerning these motions.

Section 31(b) of the Act states that when a citizen's enforcement complaint is filed:

Unless the Board determines that such complaint is duplicitous or frivolous, it shall schedule a hearing.

(415 ILCS 5/31(b))

Section 103.124 of the Board's procedural rules provides:

If a complaint is filed by a person other than the Agency, the Clerk shall also send a copy to the Agency; the Chairman shall place the matter on the Board agenda for Board determination whether the complaint is duplicitous or frivolous. If the Board rules that the complaint is duplicitous or frivolous, it shall enter an order setting forth its reasons for so ruling and shall notify the parties of its decision. If the Board rules that the complaint is not duplicitous or frivolous, this does not preclude the filing of motions regarding the insufficiency of the pleadings.

(35 Ill. Adm. Code 103.124.)

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought before the Board or in another forum. (Brandle v. Ropp, (June 13, 1985), PCB 85-68, 64 PCB 263; League of Women Voters v. North Shore Sanitary Dist., (October 8, 1970) PCB 70-1, 1 PCB 35.) An action before the Board is frivolous if it fails to state a cause of action upon which relief can be granted. (Citizens for a Better Environment v. Reynolds Metals Co., (May 17, 1973) PCB 73-173, 8 PCB 46.)

There is no evidence before the Board to indicate this matter is identical or substantially similar to any matter brought in another forum, nor is there any evidence that the Board cannot grant the relief requested. At this time, therefore, the Board finds that, pursuant to Section 103.124(a),

the complaint is neither duplicitous nor frivolous. Accordingly, this matter shall proceed to hearing.

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

In the December 11, 1995 motion to strike and dismiss defenses, complainant Forest Preserve requests that the Board strike the six defenses alleged in the December 5, 1995 answer of Southwind and Bluff City Materials. The claimed defenses are as follows: 1) the complaint fails to state a claim entitling complainant to any relief; 2) complainant cannot establish that respondents have violated any provision of the Act or Board regulations; 3) no remediation is required, since complainant cannot show injury to the environment or public health, welfare or property; 4) complainant's conduct constitutes a waiver of any claims against respondents; 5) complainant is barred by laches from asserting any claims against respondents; 6) complainant is estopped from asserting any claims against respondents. Complainant asserts that these defenses should be stricken, since there is no authority for alleging defenses in an answer, and since defendants did not plead sufficient facts to establish affirmative defenses. Complainant asserts that it is not aware of the purported bases of the defenses, and that it may therefore be subject to surprise and unfair prejudice.

We find that respondents' first defense, that the claim fails to state a claim upon which relief can be granted should be stricken, since complainant has properly alleged a violation of the Act for which the Board can grant relief. Concerning defenses two through six, we find that they have been alleged with sufficient specificity to give complainant notice of the grounds upon which they are based. The bases for and validity of these defenses can be further developed during discovery and at hearing.

The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 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 20th day of December, 1995, by a vote of 7-0.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board