

ILLINOIS POLLUTION CONTROL BOARD
December 1, 1994

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 94-275
) (Enforcement)
 BOYD BROTHERS, INC.,)
 an Illinois Corporation,)
)
 Respondent.)
)
 BOYD BROTHERS, INC.,)
 an Illinois Corporation,)
)
 Complainant,)
)
 v.) PCB 94-311
) (Enforcement)
)
 ABANDONED MINED LANDS RECLAMATION)
 COUNCIL, an Illinois state entity,)
)
 Respondent.)

ORDER OF THE BOARD (by C. A. Manning):

This matter is before the Board on a motion filed by Boyd Brothers, Inc. (Boyd Bros.), an Illinois Corporation, on October 31, 1994, to consolidate the above named matters. Neither the People of the State of Illinois (State) nor the Abandoned Mined Lands Reclamation Council (AMLRC) filed responses to the motion.

On September 28, 1994 the State filed an enforcement action against Boyd Bros. pursuant to Section 31(a) of the Environmental Protection Act (Act) which was docketed by the Clerk of the Board as PCB 94-275. (415 ILCS 5/31(a) (1992).) The complaint alleges that Boyd Bros. violated Section 12(a) of the Act and 35 Ill. Adm. Code 406.106 by causing or allowing the discharge of pH, acidity, iron and manganese at levels that violated the Board's effluent standards.¹ (415 ILCS 5/12(a) (1992).) The State is also alleging that Boyd Bros., by causing or allowing the discharge of mine effluent containing floating debris, colored scum, and color of unnatural origin, violated Section 12(a) of

¹ Part 406 of the Illinois Administrative Code was promulgated to regulate mine waste effluent and water quality standards. In particular Section 406.106 states the effluent limitations for various chemical constituents.

the Act and 35 Ill. Adm. Code 406.107.² The State is basing these violations on the July 31, 1994 observations of an Illinois Environmental Protection Agency (Agency) inspector at the Peabody Utility Mine near Marion, Illinois.

On October 31, 1994, Boyd Bros. filed both a motion to consolidate and a citizens' enforcement action against AMLRC pursuant to Section 31(b) of the Act. Boyd Bros. is alleging that AMLRC violated Section 12(a) of the Act and 35 Ill. Adm. Code 406.106 by causing or allowing the discharge of pH, acidity, iron and manganese at levels that violated the Board's effluent standards and Section 12(a) of the Act and 35 Ill. Adm. Code 406.107 by causing or allowing the discharge of mine effluent containing floating debris, colored scum, and color of unnatural origin. Boyd Bros. alleges that these violation occurred on July 31, 1994 at the Peabody Utility Mine near Marion, Illinois.

DUPPLICITOUS/FRIVOLOUS DETERMINATION

Section 103.124(a) of the Board's procedural rules, which implements Section 31(b) of the Environmental Protection Act (415 ILCS 5/31(b)), 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 in another forum. (Brandle v. Ropp, PCB 85-68, 64 PCB 263 (1985).) An action before the Board is frivolous if it fails to state a cause of action upon which relief can be granted by the Board. (Citizens for a Better Environment v. Reynolds Metals Co., PCB 73-173, 8 PCB 46973).)

AMLRC has made no filing addressing the

² Section 406.107 states:

In addition to the other requirements of this Chapter, no mine discharge effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity shall be reduced to below obvious levels.

duplicitous/frivolous issues. Accordingly, 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. Although Boyd Bros.' complaint involves the same violation as alleged in the People's complaint, the complaint is not "duplicitous" since the parties are not identical in the two actions. 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 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 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.

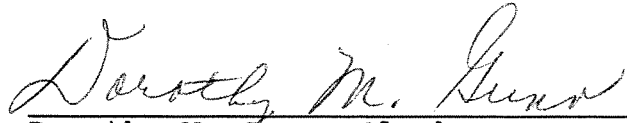
MOTION TO CONSOLIDATE

The motion to consolidate states that the enforcement complaint against AMLRC and itself in PCB 94-275 is the result of the same discharge causing the same alleged violations of the Act and Board regulations. Accordingly, Boyd Bros. argues that both proceedings arise from the same alleged incident at the same site and concern identical factual circumstances and violations. Boyd Bros. requests the Board to consolidate these matters for efficiency of the proceedings. The Board has received no response to the motion to consolidate these matters from either the State or AMLRC.

Section 103.141 of the Board's procedural rules provides that the Board may consolidate enforcement proceedings in the interests of "convenient, expeditious, and complete determination of claims." The Board finds that this case, which is in the nature of a cross-complaint, and PCB 94-275 would be more conveniently, expeditiously, and completely resolved if the two cases are consolidated. The Board grants the motion to consolidate these matters.

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 1st day of December, 1994, by a vote of 1-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board