

ILLINOIS POLLUTION CONTROL BOARD
June 15, 1995

GORDON KRAUTSACK,)
)
 Complainant,)
)
 v.) PCB 95-143
) (Enforcement-Land)
 BHOGILAL PATEL, an individual,)
 SUBHASH PATEL, an individual, and)
 ELECTRONIC INTERCONNECT, INC.,)
 an Illinois Corporation,)
)
 Respondents.)

ORDER OF THE BOARD (by R.C. Flemal):

This matter is before the Board on a complaint filed on May 11, 1995 by complainant Gordon Krautsack, and a Motion to Dismiss filed on June 1, 1995 by respondents Bhogilal Patel, Subhash Patel, and Electronic Interconnect, Inc. Complainant filed a Response to Motion to Dismiss on June 9, 1995.

The complaint alleges that respondents have violated Sections 21(a), 21(e), and 21(f)(1) of the Environmental Protection Act (Act) (415 ILCS 5/21(a), 21(e), 21(f)(1)(1992)) as a result of their storage and manufacturing of electronic circuitboards at the site located at 800 Greenleaf Avenue, Elk Grove Village, Illinois. The site was used by respondents from 1986 through 1994.

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. (See, Fore v. Midstate Kart Club (October 7, 1993) PCB 93-171; Mandel v. Kulpaka PCB 92-33 (August 26, 1993); In re Duplicitous or Frivolous Determination (June 8, 1989), RES 89-2,

100 PCB 53.) There is no evidence before the Board to indicate this matter is identical or substantially similar to any matter brought in another forum. At this time, therefore, the Board finds that, pursuant to Section 103.124(a), the complaint is not duplicitous.

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 46 (1973).) Complainant requests that the Board find respondents have each violated Sections 21(a), 21(e) and 21(f)(1) of the Act, assess civil penalties for each violation, issue a cease and desist order from further violations of the Act, and undertake corrective action to remove the wastes. There is no 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 not frivolous.

Next the Board must address respondents' Motion to Dismiss. When ruling upon a motion to dismiss, the Board relies upon the same principles as applied in the Illinois Code of Civil Procedure 2-615 and 2-619. (735 ILCS 5/2-615 and 5/2-619.) The Board will take all well-plead allegations in the complaint as true. (Miehle v. Chicago Bridge and Iron Company, PCB 93-150, November 4, 1993.) The complaint should not be dismissed unless no set of facts could be proven that would entitle complainant to relief. (Id.)

Respondents' Motion to Dismiss includes a number of factual assertions which are not of record and are not supported by affidavit as required pursuant to Board procedural rule 35 Ill. Adm. Code 101.242(b). Therefore those portions of the Motion to Dismiss will not be considered by the Board.

Even if the Board were to consider respondents' factual allegations notwithstanding the absence of affidavit, those assertions would not require dismissal of the petition. For instance, respondents' claim the complaint is improperly directed at respondent Electronic Interconnect, Inc. because of a change in legal status to Electronic Interconnect Corporation in 1991. The argument ignores the fact that the complaint alleges violations of the Act from 1986 through 1994. Also, as to respondents Bhogilal Patel and Subhash Patel (Patels), it asserts that because they have not been owners or operators of the site since the corporate change in 1991, the complaint is improperly directed at them. First, this assertion ignores the alleged violations against the Patels from 1986 through 1991. Second, the complaint alleges violations of Sections 21(a), 21(e), and 21(f)(1) of the Act, which prohibit any "person" from violating those provisions. The Patels have not clarified their status with regards to these allegations and Electronic Interconnect Corporation. Therefore the Patels may be liable for violations


after 1991 even if they are not owners or operators of Electronic Interconnect Corporation. The Board hereby denies respondents' Motion to Dismiss and sends this matter 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.

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 15th day of June, 1995, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board