

ILLINOIS POLLUTION CONTROL BOARD
September 9, 1993

ROBERT MIEHLE,)
)
 Complainant,)
)
 v.) PCB 93-150
) (Enforcement)
 CHICAGO BRIDGE AND)
 IRON COMPANY,)
)
 Respondent.)

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

This matter is before the Board pursuant to a two-count complaint filed August 18, 1993 by Robert Miehle against Chicago Bridge and Iron Company, located in Chicago, Cook County, Illinois. The complaint alleges that respondent violated 415 ILCS 5/21(e) of the Environmental Protection Act (Act) in that respondent has disposed or abandoned waste at a facility which does not meet the requirements of the Act, and 35 Ill. Adm. Code Section 731.160, in that respondent has failed to undertake corrective action regarding an alleged release of petroleum from underground storage tanks.

Though the Act does not specifically require the Board to make an express determination as to whether a complaint is frivolous or duplicitous, the Board is required to do so pursuant to Board rule. 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) (1992).

Section 103.124(a) of the Board's procedural rules provides:

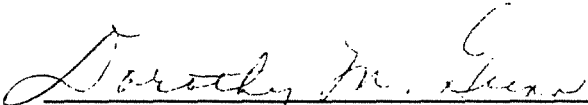
... If a complaint is filed by a person other than the Agency, the Clerk shall also send a copy to the Agency; the Chairman shall place the matter on the Board agenda for Board determination whether the complaint is duplicitous or frivolous, it shall enter an order setting forth its reasons for so ruling 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. (Citizens for a Better Environment v. Reynolds Metals Co., PCB 73-173, 8 PCB 46 (1973).) 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 frivolous nor duplicitous. Accordingly, this matter shall proceed to hearing. A hearing officer will contact the parties to schedule a hearing date.

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 ^{9th} day of September, 1993, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board