

ILLINOIS POLLUTION CONTROL BOARD  
August 26, 1993

ERICH J. MANDEL, )  
 )  
 Petitioner- )  
 Counter Respondent, )  
 )  
 v. ) PCB 92-33  
 ) (Enforcement)  
 )  
 THADDEUS G. KULPAKA, )  
 )  
 Respondent- )  
 Counter Claimant. )

ORDER OF THE BOARD (by M. Nardulli):

On February 25, 1992, Erich J. Mandel filed a complaint against Thaddeus G. Kulpaka alleging various violations of the Environmental Protection Act (Act). The allegations concerned several Underground Storage Tanks located on a property owned by Mandel and previously owned by Kulpaka. On January 26, 1993, Kulpaka filed a counterclaim against Mandel. On February 25, 1993, the Board granted Kulpaka leave to file the counterclaim but made no ruling as to whether the counterclaim was duplicitous or frivolous.

While the Board's rules do not specifically require the Board to determine whether counterclaims are duplicitous or frivolous, it has been past Board practice to make such a determination. (See, Lefton Iron and Metal v. Moss-American, (March 9, 1989) PCB 87-191, 97 PCB 109.) Therefore, we turn to consideration of whether Kulpaka's counterclaim is duplicitous or frivolous.

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)

Also, the Board regulations in part provide:

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


The Board finds that the counterclaim is not duplicitous. An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in another forum. (See, In re Duplicitous or Frivolous Determination (June 8, 1989), RES 89-2, 100 PCB 53; Section 31(b) of the Act.) There is no evidence before the Board to indicate this matter is identical or substantially similar to any matter brought in another forum. Moreover, Mandel has not asserted that the counterclaim is duplicitous or frivolous. Therefore, based on the evidence before it, the Board finds that the counterclaim is not duplicitous within the meaning of Section 31(b) of the Act.

The Board finds that the counterclaim is not frivolous. A complaint is frivolous if it fails to state a cause of action upon relief can be granted. (Id.) The counterclaim alleges violations of specific sections of the Act which fall within the Board's purview. In addition, Kulpaka seeks relief which can be granted by the Board. Therefore, the Board finds that the counterclaim is not frivolous within the meaning of Section 31(b) of the Act.

In finding that the counterclaim is neither duplicitous or frivolous, the Board makes no ruling on the merits of the case. The Hearing Officer reports that a hearing on this matter is scheduled for November 8, 1993. The Board takes no further action on this preceeding at this time.

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 24<sup>th</sup> day of December, 1993, by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board