

ILLINOIS POLLUTION CONTROL BOARD

August 9, 2001

COLE TAYLOR BANK, not individually, but)	
solely as trustee under a certain Illinois land)	
trust known as trust 40323; as successor trustee)	
to Michigan Avenue National Bank of)	
Chicago, under trust 1904,)	
)	
Complainant,)	
)	
v.)	PCB 01-173
)	(Enforcement – Land, Citizens)
ROWE INDUSTRIES, INC, a corporation,)	
successor to COLEMAN CABLE and WIRE)	
COMPANY, a corporation, and CHAPCO)	
CARTON COMPANY, a corporation,)	
)	
Respondents.)	

ORDER OF THE BOARD (by S.T. Lawton, Jr.):

On June 26, 2001, complainant, Cole Taylor Bank (Cole Taylor), filed a complaint with the Board. Cole Taylor states that it is the trustee of real property located at 1810 North Fifth Avenue, River Grove, Illinois (site). Cole Taylor alleged in its complaint that Rowe Industries, Inc. (Rowe) and Chapco Carton Company (Chapco) caused or allowed the deposit of hazardous waste at the site in violation of Section 21(e) of the Environmental Protection Act (Act) (415 ILCS 5/21(e) (2000)). Respondents have not filed a response to the complaint. For the reasons discussed below, the Board finds the complaint is neither duplicitous nor frivolous, and accepts this matter for hearing under Section 31(d) of the Act (415 ILCS 5/31(d) (2000)).

BACKGROUND

Cole Taylor succeeded Michigan Avenue National Bank of Chicago (Michigan Avenue National Bank) as trustee of the site. Comp. at 1.¹ Cole Taylor alleges that Coleman Cable and Wire Company (Coleman), predecessor of Rowe, leased the site from Michigan Avenue National Bank in 1971. Comp. at 2. Coleman allegedly sublet the site to Chapco from 1984 until Coleman's lease expired on December 31, 1996. Comp. at 2.

DUPLICITOUS/FRIVOLOUS DETERMINATION

Section 103.212(a) of the Board's procedural rules implements Section 31(d) of the Act (415 ILCS 5/31(d) (2000)), providing that the Board shall schedule a hearing upon receipt of a

¹ Cole Taylor filed with the Board a complaint on June 26, 2001, which is referred to as "Comp. at ____."

citizen's complaint, unless it determines that the complaint is duplicitous or frivolous. 35 Ill. Adm. Code 103.212(a).

Duplicitous

A matter is duplicitous if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. Based on this complaint, the Board has not identified any other cases, identical or substantively similar to this matter, pending in this or any other forum. For this reason, the Board finds the complaint is not duplicitous.

Frivolous

An action before the Board is frivolous if the complaint requests relief that the Board does not have the authority to grant, or "fails to state a cause of action upon which the Board can grant relief." 35 Ill. Adm. Code 101.202. The Board finds that the complaint in this matter is not frivolous in that it states a cause of action under Section 21(e) of the Act (415 ILCS 5/21(e) (2000)) upon which the Board can grant relief, and Cole Taylor requests relief that the Board can grant.

Cole Taylor alleges that, between 1971 and the complaint's filing date of June 26, 2001, Rowe and Chapco caused or allowed hazardous substances, including tetrachloroethene, arsenic, benzo(a)pyrene and lead, to be deposited in the soil at the site, in violation of Section 21(e) of the Act. Comp. at 2, 4. Section 21(e) states that:

No person shall:

* * *

Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder. 415 ILCS 5/21(e) (2000).

Cole Taylor alleged that soil sample results verified the presence of tetrachloroethene, arsenic, benzo(a)pyrene and lead at the site. Comp. at 2. Cole Taylor stated in its complaint that these chemicals are hazardous substances under Section 3.14 of the Act (415 ILCS 5/3.14 (2000)). Comp. at 2. Cole Taylor alleged that these chemicals are "discarded material" resulting from a commercial operation that qualify as "waste" under Section 3.53 of the Act (415 ILCS 5/3.53 (2000)). According to Cole Taylor, this waste was deposited in the soil at the site in a manner constituting disposal under Section 3.08 of the Act (415 ILCS 5/3.08 (2000)). Comp. at 3. Cole Taylor alleges that Rowe and Chapco are liable for the discharge of tetrachloroethene, arsenic, benzo(a)pyrene and lead at the site in violation of Section 21(e) of the Act (415 ILCS 5/21(e) (2000)), because either or both of the respondents were in possession and control of the property at the time the alleged violations took place.

Cole Taylor requests the Board to adopt an order that directs Rowe and Chapco to do the following: cease and desist from further violating Section 21(e) of the Act (415 ILCS 5/21(e) (2000)); abate continuing violations under this section; remediate the site and remove all contamination resulting from the respondents' disposal of this waste; and grant other relief that the Board deems appropriate. The Board finds that the complaint by Cole Taylor states a cause of action upon which the Board can grant relief.

Conclusion

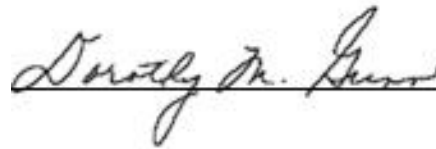
The Board finds that the complaint in this matter is neither duplicitous nor frivolous, and directs that this matter proceed to hearing as expeditiously as practicable. The Board will assign a hearing officer to conduct hearings consistent with this order and Sections 101.600 and 101.612 of the Board's rules. See 35 Ill. Adm. Code 101.600 and 101.612.

The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 30 days within advance of the hearing so that a 21-day public notice of the 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.

Any briefing schedule shall provide for final filings as expeditiously as possible. It is the responsibility of the hearing officer to guide the parties toward prompt resolution or adjudication of this matter, through whatever status calls and hearing officer orders he determines are necessary and appropriate.

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 August 2001 by a vote of 6-0.

A handwritten signature in dark ink, appearing to read "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control