



“must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party.” Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370.

Summary judgment “is a drastic means of disposing of litigation,” and therefore it should be granted only when the movant’s right to the relief “is clear and free from doubt.” Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370, citing Purtill v. Hess, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on its pleadings, but must “present a factual basis which would arguably entitle [it] to a judgment.” Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994).

### UNCONTESTED FACTS

Summary judgment is appropriate here in that the Board has found no issues of material fact in this matter. The relevant facts are as follows:

Waukegan owns and operates a sanitary sewer lift station known as the McGaw Road Lift Station (lift station), also known as the Lakehurst Lift Station, located at 4200 West McGaw Road in Waukegan. Two electric pumps at the lift station send untreated sewage from a wet well to an elevated discharge pipe. The discharge pipe leads to a sewage treatment plant. Mot. at 3; resp. at 2.

During April 1999, one of the pumps failed. Waukegan officials made efforts to replace the failed pump, but they were unable to do so before the second pump failed at about 10:30 am on July 23, 1999. With both pumps failed, untreated sewage began to back up at the lift station. In order to avoid untreated sewage from backing up into nearby residences, Waukegan officials employed mobile pumps to direct the sewage from the lift station to a nearby unnamed drainage ditch. Mot. at 3-4; resp. at 2-3.

Illinois Environmental Protection Agency (Agency) personnel then advised Waukegan officials against pumping the untreated sewage into the drainage ditch. From 1:00 p.m. on July 23, 1999, until noon on July 27, 1999, Waukegan pumped approximately 31,600 gallons of untreated sewage into the drainage ditch. At around noon on July 27, Waukegan officials began pumping sewage to a tanker truck. The truck then took the sewage to a gravity flow sewer line. Waukegan officials obtained two new pumps on July 27 and, once the pumps were installed, the lift station resumed normal operation on July 28, 1999. Mot at 4; resp. at 3-4.

Waukegan did not have a National Pollution Discharge Elimination System (NPDES) Permit to discharge sewage from the lift station directly into a water of the State. Mot. at 5.

### STATUTORY FRAMEWORK

In the four-count complaint, complainant alleges that Waukegan violated Sections 12(a), 12(c), and 12(f) of the Act and Sections 304.141(b), 306.102(a), 306.304, 306.305(c), and 309.102(a) of the Board’s regulations. Comp. at 4-6, 8, 10. In the motion for summary

judgment, complainant contends that it is entitled to summary judgment on all of the allegations in the complaint. Mot. at 5-7. In its answer, Waukegan admits to all of the allegations in the complaint except for one; Waukegan denies the alleged violation of Section 306.305(c) of the Board's regulations. Waukegan asks that complainant's motion for summary judgment be denied on Count III with respect to Section 306.305(c) only. (Waukegan does not contest the other alleged violation in Count III which is Section 306.304 of the Board's regulations.) Ans. at 1-4; surreply at 5.

Section 306.305(c) provides:

Section 306.305 Treatment of Overflows and Bypasses

All combined sewer overflows and treatment plant bypasses shall be given sufficient treatment to prevent pollution, or the violation of applicable water quality standards unless an exception has been granted by the Board pursuant to Subpart D. Sufficient treatment shall consist of the following:

\* \* \*

- c) Flows in excess of those described in subsection (b) shall be treated, in whole or in part, to the extent necessary to prevent accumulations of sludge deposits, floating debris and solids in accordance with 35 Ill. Adm. Code 302.203, and to prevent depression of oxygen levels; or

Complainant alleges that Waukegan violated Section 306.305(c) when Waukegan bypassed its sewage treatment facility and pumped the untreated sewage from the lift station into the drainage ditch. Comp. at 8; mot. at 6.

Waukegan denies that it has violated Section 306.305(c). Waukegan claims that the sewage discharge from the lift station to the drainage ditch was not a "treatment plant bypass." Resp. at 4.

ARGUMENTS AND DISCUSSION

The parties present several arguments regarding the meaning, common understanding, legislative intent, judicial interpretation, and federal definition of the term "treatment plant bypass". See Resp. at 5; Reply at 4; Surreply at 2-5.

After considering the facts and the record in this situation, the Board finds that Section 306.305(c) does not address the discharge of sewage to the drainage ditch in this situation. Since, as a matter of law, Section 306.305(c) does not apply to the facts at hand, the Board denies complainant's motion for summary judgment with respect to Section 306.305(c).

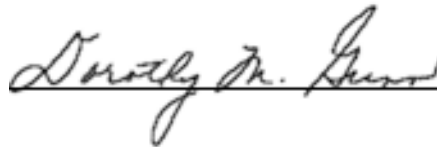
Waukegan admits that it violated all of the other alleged violations in the complaint except for Section 306.305(c). The Board can find no issues of material fact with respect to the other alleged violations in the complaint. Complainant is entitled to summary judgment on those allegations as a matter of law.

#### CONCLUSION

The Board denies complainant's motion for summary judgment in Count III only with respect to Section 306.305(c) of the Board's regulations. The Board grants complainant's motion for summary judgment with respect to Sections 12(a), 12(c), and 12(f) of the Act and Sections 304.141(b), 306.102(a), 306.304, 309.102(a) of the Board's regulations.

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 23rd day of August 2001 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board