

ILLINOIS POLLUTION CONTROL BOARD
March 16, 1995

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 94-288
) (Enforcement - Air)
 GRAYSLAKE GELATIN COMPANY, an)
 Illinois corporation; BLIDCO, INC.,)
 an Illinois corporation; ACME)
 CONSTRUCTION CO., INC., an Illinois)
 corporation; and DIVERSIFIED)
 ABATEMENT CONTRACTORS INC., an)
 Illinois corporation,)
)
 Respondents.)

ORDER OF THE BOARD (by E. Dunham):

This matter comes before the Board on a "Motion for Summary Judgment" filed by Grayslake Gelatin Company (Grayslake) on February 8, 1995. Grayslake seeks summary judgment on Counts IV and V on the basis that Grayslake did not own the property where the alleged offense took place at the time alleged in the complaint. Grayslake included a copy of the deed conveying the property and an affidavit from its president in support of its motion for summary judgment. Complainant filed a "Request to Defer Consideration of Respondent's Motion for Summary Judgment" on February 16, 1995. Grayslake filed a response to the motion to defer consideration on February 17, 1995.

Complainant requests that the Board delay consideration of the motion for summary judgment to allow the complainant to investigate the factual allegations in the motion for summary judgment. Complainant requests that the Board delay consideration until after discovery has been taken.

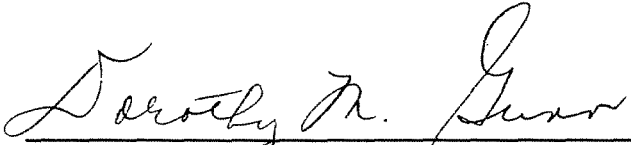
Respondent Grayslake states that by failing to deny the facts contained in respondent's affidavit, the facts must be considered admitted. Complainant states that, without further discovery, the affidavit of respondent cannot be admitted or denied.

The Board finds that a material fact regarding the location of the alleged violation relative to the property line remains in dispute. The Board finds that the affidavit and deed provided by respondent are not dispositive on the issue of the relationship of the lot line to the place of the alleged violation. Therefore, the motion for summary judgment is denied. Having

denied the motion for summary judgment, the complainant's motion for an extension of time to file a reply is moot.

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 16th day of March, 1995, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board