

ILLINOIS POLLUTION CONTROL BOARD  
April 20, 2000

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB 00-102  
) (Enforcement - Cost Recovery)  
BABSON BROTHERS COMPANY, an )  
Illinois corporation, )  
)  
Respondent.

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

This matter comes before the Board on a motion for summary judgment filed on March 15, 2000, by the Illinois Attorney General's Office on behalf of the People of the State of Illinois (complainant). Complainant alleges that Babson Brothers (respondent) failed to pay for review and evaluation services performed by the Illinois Environmental Protection Agency (Agency) pursuant to a 1994 agreement; and that the Agency is entitled to payment under Section 22.2(m) of the Environmental Protection Act (Act)(415 ILCS 5/22.(m) (1994)), which has been recodified as Section 58.7(b)(1) of the Act (415 ILCS 5/58.7(b)(1) (1998)).<sup>1</sup>

The complaint was filed on December 16, 1999. On February 2, 2000, complainant served upon respondent a request for admission of facts. Respondent did not file a response to this request for admission of facts. Likewise, respondent did not file a response to the complaint or to the motion for summary judgment. For the reasons stated in this opinion, the Board grants summary judgment to the complainant, and awards costs in the amount of \$29,580.

Complainant correctly points the Board to Section 103.162(c) of our rules (35 Ill. Adm. Code 103.162(c)) which provides:

Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless . . . the party to whom the request is directed serves upon the party requesting the admission a sworn statement denying specifically the matters . . . (35 Ill. Adm. Code 103.162(c)).

As the respondent has not filed a response to complainant's request to admit facts, the Board will deem the facts asserted therein to be admitted in accordance with Section

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<sup>1</sup> Section 58.7(b)(1) became effective December 15, 1995. Public Act 89-431.

103.162(c) of the procedural rules. With respect to facts not included in the request to admit, the Board will accept the complainant's evidence of the agreement, an affidavit of services performed, and copies of invoices. Accordingly, the Board finds the following facts.

On June 1, 1994, respondent entered into a Review and Evaluation Services agreement (agreement) with the Agency. Mot. at 3; Exh. B.<sup>2</sup> Pursuant to the agreement, the Agency provided review and evaluation services for removal and remedial actions at a site owned or operated by respondent in Plato Center, Kane County, Illinois, known as Surge Farm (site). Comp. at 1-2. The agreement states that respondent agrees to pay all laboratory fees incurred by the Agency for analytical testing performed at the site, and any reasonable costs incurred and documented by the Agency within 30 days after receiving the billing statement and documentation. Exh. B. The agreement allows respondent to terminate the agreement upon a 15-day written notification, yet respondent has never done so. Mot. at 3; Exh. B.

Although the exact dates and nature of the services performed are not detailed in the evidence, the Agency performed various oversight and sampling analysis activities for respondent and incurred laboratory fees. Mot. at 3; Exhs. C and E. Respondent made proper payments to the Agency through October 12, 1995. Comp. at 2-3. On June 25, 1996, the Agency sent an invoice to respondent for \$10,836. On or about September 10, 1996, the Agency sent respondent a past due notice for the June invoice. Comp. at 3. On or about July 14, 1998, the Agency sent an invoice to respondent via certified mail for \$29,580, which included past due amounts as well as additional charges. Comp. at 3; Exh. C. Respondent failed to pay the invoices, and did not cancel the agreement. Mot. at 3.

### DISCUSSION

Summary judgment is appropriate when the pleadings, together with other items in the record, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 693 N.E.2d 358 (1998). In ruling on a motion for summary judgment, the Board must consider the pleadings and other evidence "strictly against the movant and in favor of the opposing party." *Id.* 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." *Id.*, 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 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 (2d Dist. 1994).

Complainant has provided evidence of the agreement, an affidavit of services performed, and invoices that support the facts alleged. Moreover, respondent has not disputed any fact

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<sup>2</sup> Complainant's motion for summary judgment will be cited as Mot. at \_\_\_\_; exhibits will be cited as Exh. \_\_\_\_; and the complaint will be cited as Comp. at \_\_\_\_.

alleged in the complaint, the request for admission of facts, or the motion for summary judgment.

At the time the parties entered into the agreement, Section 22.2(m) of the Act provided in part:

(m)(1) The Agency may, subject to available resources, agree to provide review and evaluation services for actions at sites where hazardous substances or pesticides may be present for which the owner or operator requested such services in writing or where another person has requested such services in writing and supplied the Agency with the written consent of the owner or operator of the site. As a condition for providing such services, the Agency may require that the owner or operator of a site:

\* \* \*

(D) Agrees to pay any reasonable costs incurred and documented by the Agency in providing such services.

This Section was later amended, and became Section 58.7(b)(1) of Act. That Section provides in part:

(b)(1) Except for sites excluded under subdivision (a)(2) of Section 58.1, the Agency shall, subject to available resources, agree to provide review and evaluation services for activities carried out pursuant to this Title for which the RA<sup>3</sup> requested the services in writing. As a condition for providing such services, the Agency may require that the RA for a site:

(D) Agree to pay any reasonable costs incurred and documented by the Agency in providing such services.

Here, the Agency and respondent entered into an agreement, and the Agency performed review and evaluation services as set forth in the agreement. Respondent failed to pay for these services in the amount of \$29,580.

The Board finds that there are no genuine issues of material fact and that complainant is entitled to judgment as a matter of law. Accordingly, the Board grants complainant's motion for summary judgment.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

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<sup>3</sup> Remediation applicant. See 415 ILCS 5/58.2 (1998).

ORDER

1. The Board grants complainant's motion for summary judgment.
2. Respondent shall pay the amount of \$29,580 to the Hazardous Waste Fund. Payment shall be made by certified check or money order payable to the Hazardous Waste Fund within 30 days from the date of this order, and shall be sent by first class mail to the following address:

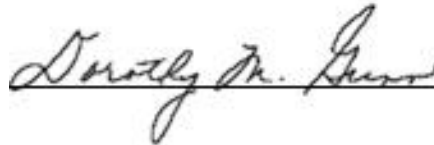
Illinois Environmental Protection Agency  
Hazardous Waste Management Fund  
1021 North Grand Avenue East  
Springfield, Illinois 62702

3. The certified check or money order shall clearly indicate on its face respondent's federal employer identification number, and that the payments are directed to the Hazardous Waste Fund.
4. Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act (35 ILCS 5/1003 (1998)), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty is stayed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 145 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 20th day of April 2000 by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board