

ILLINOIS POLLUTION CONTROL BOARD

January 21, 1993

PEOPLE OF THE STATE OF ILLINOIS )  
 )  
 Complainant. )  
 )  
 v. ) PCB 92-68  
 ) (Enforcement)  
 CHEM-PLATE INDUSTRIES, INC., )  
 an Illinois Corporation, )  
 )  
 Respondent. )

INTERIM ORDER OF THE BOARD (by J. Anderson):

On December 7, 1992, People of the State of Illinois (complainant) filed Complainant's Motion to Strike Affirmative Defenses in this matter. On December 11, 1992, Complainant filed Complainant's Motion for Summary Judgment.

Chem-Plate Industries, Inc. (respondent) has not filed a response to either motion.

The Board's procedural rule 35 Ill. Adm. Code 103.140(c) states in pertinent part:

Within 7 days after service of a written motion, or such other period as the Board or Hearing Officer may prescribe, a party may file a response in support of or in opposition to the motion, accompanied by affidavits or other evidence. If no response is filed, the parties shall be deemed to have waived objection to the granting of the motion, but such waiver of objection does not bind the Board in its determination...

In its motion to strike, complainant requests the Board "to strike Chem-Plate's first, second and third Affirmative Defenses as well as granting Complainant leave to reply to any response filed by Chem-Plate, if such response is filed." (Compl. motion, December 7, 1992 at 4.) In that the respondent has not responded, the respondent is deemed to have waived objection to grant of the motion.

The Board grants complainants motion to strike. The complaint, filed on May 7, 1992, alleges in Paragraphs #4 and #5 that respondent failed to timely submit annual generator reports for 1989 and 1990, respectively, by March 1, 1990 and 1991, respectively. The complainant alleges that these failures violate the annual reporting requirements for a generator of hazardous waste who ships the waste off-site within the United States, found in Section 21(i) of the Environmental Protection

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Act (Act) and 35 Ill. Adm. Code 722.141(a) of the Board's regulations. The Board has reviewed the respondents September 3, 1992 answer and affirmative defenses. The Board agrees with the complainant that (a) the respondent admits to the untimely filings and to the violations and (b) that its denial that such violations were deliberate or intentional speaks to mitigation, not the violation. In that no response to complainant's motion was received, grant to complainant of leave to reply is denied as moot.

In its motion for summary judgment, complainant requests the following:

1. Granting Complainant's motion for summary judgement as to all counts and issues in the complaint herein;
2. Finding that Respondent has violated Section 21(i) of the [Environmental Protection] Act, Ill. Rev. Stat. 1991, ch. 111-1/2, par. 1021(i), and 35 Ill. Adm Code 722.141;
3. Assessing against Respondent a civil penalty of \$25,000.00 per day;
4. Assessing all costs in this action, including attorney fees, against Respondent;
5. Granting Complainant leave to file an affidavit of fees if the Board should assess costs against Respondent;
6. Granting Complainant leave to file a reply to any response filed by Chem-Plate, if any such response is filed; and
7. Granting such other relief as the Board deems appropriate and just.

In that respondent has not responded, respondent is deemed to have waived objection to grant of the motion. The Board agrees that this case presents no genuine issue of material fact regarding the failure to file the reports and that as a matter of law respondent has violated the Act and Board regulation. The Board grants the complainants motion for summary judgement and finds that respondent Chem-Plate Industries, Inc. has violated Section 21(i) of the Environmental Protection Act and Board regulations at 35 Ill. Adm. Code 722.141.

The Board will determine the issues of the requested penalties and other remedies in a subsequent order.

IT IS SO ORDERED.

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I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Interim Order was adopted on the 21<sup>st</sup> day of January, 1993, by a vote of 6-0.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board