

ILLINOIS POLLUTION CONTROL BOARD
January 4, 2001

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 00-127
) (Enforcement - Cost Recovery)
DAYNE ROGERS, an individual, and BLACK)
GOLD INTERNATIONAL, a dissolved Illinois)
corporation,)
)
Respondents.)

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

On November 2, 2000, the Board granted the complainant's motion for summary judgment for the cost of corrective action, but ordered the parties to clarify the issue of punitive damages at hearing. The Board found that neither party included sufficient information in the record to show whether respondents had sufficient cause to fail to take such action as required under 55.3(d) of the Environmental Protection Act (Act). The complainant filed a motion for reconsideration on November 29, 2000, requesting the Board to grant punitive damages based upon the evidence supporting its motion for summary judgment. The Board denies the complainant's motion for reconsideration for reasons explained below.

In ruling upon a motion for reconsideration, the Board is to consider factors including, but not limited to, error in the previous decision and facts in the record which are overlooked. 35 Ill. Adm. Code 101.902. The Board has previously held that "[t]he intended purpose of a motion for reconsideration is to bring to the court's attention newly-discovered evidence which was not available at the time of the hearing, changes in the law, or errors in the court's previous application of the existing law." Citizens Against Regional Landfill v. County Board of Whiteside County (March 11, 1993), PCB 93-156 (citing Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 572 N.E.2d 1154 (1st Dist. 1992)).

Complainant argued that the Board erred in applying the law to the facts set forth in its motion for summary judgment when the Board determined that the issue of punitive damages should be presented at hearing. The Board appropriately applied the law concerning motions for summary judgment, and upholds the finding in its November 2, 2000 order that complainant did not present enough evidence in the record to justify granting punitive damages at that time.

As stated in the November 2, 2000 Board order, summary judgment is appropriate when the pleadings and depositions, together with any affidavits and 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. See 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,

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.

The complainant, in its motion for summary judgment on September 14, 2000, failed to show by a preponderance of evidence that it was entitled to punitive damages under Section 55.3(h) of the Act, which states:

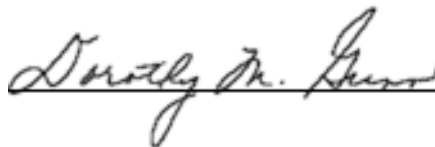
Any person liable to the Agency for costs incurred under subsection (g) of this Section may be liable to the State of Illinois for punitive damages in an amount at least equal to, and not more than 2 times, the costs incurred by the State if such person failed without sufficient cause to take preventative or corrective action pursuant to notice issued under subsection (d) of this Section. 415 ILCS 5/55.3(h) (1998) (emphasis added).

The complainant erroneously stated in its motion for reconsideration that the Board’s November 2, 2000 interim opinion and order found “punitive damages can never be imposed unless respondents present evidence showing they did not have sufficient cause to fail to take action called for in the Section 55.3(d) notice.” Mot. at 3-4. This argument presumes that the complainant first proved by a preponderance of evidence that it was entitled to punitive damages under Section 55.3(h) of the Act. The complainant did not do so.

Although complainant demonstrated in its motion for summary judgment that it was entitled to costs pursuant to Sections 55.3(g) and (k) of the Act, it did not provide any evidence concerning the issue of whether the respondents had sufficient cause to fail to take preventative or corrective action. See 415 ILCS 5/55.3(h) (1998). The complainant did not address the element of sufficient cause in its motion at all, and did not provide any evidence in the record to warrant granting punitive damages without a hearing on the issue. Since the complainant failed to meet its burden on this matter, the Board denies the complainant’s motion for reconsideration. If the complainant seeks to pursue punitive damages, they must proceed to hearing in accordance with this order.

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 4th day of January 2001 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written in black ink. The signature is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board