

ILLINOIS POLLUTION CONTROL BOARD  
May 15, 1997

EDWARD M. PEARL,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 96-265
	)	(Enforcement - Land)
BICOASTAL CORPORATION, SINGER	)	
CORPORATION, and EATON	)	
CORPORATION,	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by J. Yi):

This matter is before the Board pursuant to several motions filed by complainant, Edward M. Pearl (Pearl or complainant), and respondent, Eaton Corporation (Eaton). Eaton filed a motion to dismiss, a motion for summary judgment and a motion for oral argument on April 21, 1997. The Board notes that Bicoastal Corporation (Bicoastal) and Singer Corporation (Singer) are still a named respondents in this matter, but did not join Eaton's motions. On April 28, 1997, complainant filed two motions: a motion for clarification of the Board's April 3 order which granted a stay in this matter, and a motion for an extension of time to file a response to Eaton's motions which was directed to the Board's hearing officer in this matter, Deborah Frank. Additionally, Eaton sent a letter, dated May 2, 1997, to the Board member assigned to this matter in response to complainant's filings.<sup>1</sup> Finally, complainant filed a motion for leave to file instanter additional statements in support of the motion for clarification and the motion for an extension of time to file a response on May 7, 1997.

Today the Board reserves ruling on Eaton's motions, but will address complainant's motions. For the reasons stated below, the Board lifts the stay granted in the April 3 order in this matter, denies the motion for clarification, grants complainant an extension of time to respond to Eaton's pending motions, and denies complainant's motion for leave to file instanter statements in support of its motions for clarification and extension of time. Additionally, the Board directs the complainant to address whether Bicoastal and Singer should remain respondents in this matter.

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<sup>1</sup> The complainant's motion for clarification will be referred to as (Clarification at ); complainant's motion for an extension of time will be referenced to as (Extension at ); and Eaton's letter will be referred to as (Resp. at .)

## MOTION FOR CLARIFICATION

On April 28, 1997 complainant filed a motion for clarification of the Board's April 3, 1997 order. In its motion, complainant states that "[d]espite the stay and without any discovery being undertaken, Eaton now moves, again, to dismiss and for summary judgment." (Clarification at 2.) Furthermore, complainant states that:

Given the fact of the pending stay, Complainant is uncertain how to respond to Eaton's motion. For instance, given the need for discovery, should Complainant now undertake discovery in response to the motions, or does the Board intend to rule on the motions in six months, when the stay expires?  
(Clarification at 2)

Complainant requests the Board to clarify the order and to give direction as to whether complainant should undertake necessary discovery now, or wait until the stay expires in six months. (Clarification at 2.)

On May 2, 1997 Eaton sent a letter to the Board member assigned to this matter. This letter was not properly filed with the Board pursuant to the Board's procedural rules. Additionally, the Board notes that it is improper for parties to individually contact Board members concerning contested case proceedings. (See 35 Ill. Adm. Code 101.200, Ex Parte Contacts.) Nevertheless, the Board will treat the letter as a properly filed response to complainant's motions since Eaton does have the right to respond to complainant's motions. (See 35 Ill. Adm. Code 103.140.) Eaton asserts that its filings are appropriate and cites to the language on page 8 of the April 3 order which states "the parties may file any other appropriate motion(s) to address any change in circumstances during the period of the stay." (Resp. at 1.) Furthermore, Eaton states that the April 3 order is perfectly clear and that the motion for clarification "is just as disingenuous, and just as abusive of the Board's process, as the underlying Complaint." (Resp. at 1.) Eaton concludes by requesting that the motion be stricken. (Resp. at 1.)

## MOTION FOR AN EXTENSION OF TIME

Also on April 28, 1997, complainant filed a motion for an extension of time to respond to Eaton's April 21, 1997 motions which was directed to the Board's hearing officer. In the motion for an extension of time complainant states that due to the uncertainty of the Board's meaning of its April 3 order granting a stay in the matter and its motion seeking clarification, complainant requests an extension of time "at least until after the Board responds to Complainant's Motion for Clarification". (Extension at 2.) However, complainant also requests adequate time to conduct and conclude appropriate discovery if the Board rules on Eaton's motions prior to the close of the six month stay. (Extension at 2.)

In response, Eaton simply states that "[f]iling a frivolous motion such as a 'Motion for Clarification,' and then using it as a pretext for a 'Motion for Extension of Time,' and all of this in response to a motion to dismiss that contains serious allegations of professional

misconduct, is equally disingenuous and abusive of the Board's process." (Resp. at 2.) Additionally, Eaton requests that the motion be stricken. (Resp. at 2.)

### DISCUSSION

The Board denies the complainant's motion for leave to file instanter additional statements in support of the motions for clarification and extension of time. Complainant does not state how it will be prejudiced by Eaton's response and in fact states that Eaton has the right to file a response under the Board procedural regulations. The Board finds that complainant will not be prejudiced if not allowed to reply to Eaton's May 2, 1997 filing.

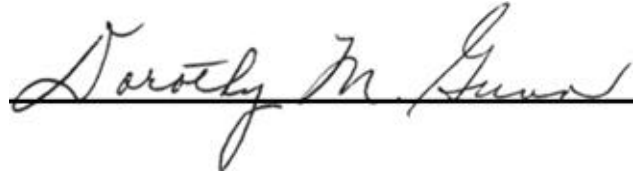
The Board's April 3, 1997 order in this matter was properly interpreted by both parties in that we granted a stay in the matter pending some action by the parties based on a change in circumstances. In that order, we interpreted the parties' desired stay as a request to stay hearings and other associated proceedings, such as discovery, in the matter until circumstances changed so that either party felt that it was appropriate and necessary to restart the proceedings. The Board envisioned any of number of situations, including but not limited to action in the matter filed in the District Court of the Northern District of Illinois, Western Division (Federal Complaint) on January 10, 1997; Eaton's motions are appropriate. Thus, the Board will lift the stay in this matter and rule on the motions filed by Eaton in the time frame as established in this order. Since the Board's April 3, 1997 order does not need clarification the complainant's motion is denied.

Having removed the stay in this matter the Board finds it appropriate for discovery to take place in this matter prior to ruling on Eaton's motions. Therefore, the Board grants the parties 90 days to conduct any appropriate discovery and for the complainant to file a response to the motions filed by Eaton. The complainant's response is due on or before August 13, 1997. The Board directs the hearing officer to schedule any discovery matters in accordance with this order.

The Board notes that the stay in this matter has been lifted for all parties including Bicoastal and Singer. Neither Bicoastal nor Singer have been active in this matter since a letter of October 16, 1996 and neither has joined in Eaton's motions. In the letter, that was sent to the attorney of complainant, it explained that the Singer changed its name to Bicoastal and that it filed for Bankruptcy in United States Bankruptcy Court for the Middle District of Florida. The Board notes that it has been unable to serve Singer while it has served Bicoastal with the Board's previous orders in this matter and no appearances have been filed. The Board directs complainant to file, along with its response to Eaton's motions, reasons why Bicoastal and Singer should remain as two separate respondents and whether either should remain as respondents in this matter.

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 15<sup>th</sup> day of May, 1997, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board