

ILLINOIS POLLUTION CONTROL BOARD

October 2, 2003

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 97-119
)	(Enforcement - Land)
G&M TOTAL, INC., an Illinois corporation,)	
and GEORGE PAPAS, individually and as)	
president of G&M TOTAL, INC.,)	
)	
Respondents.)	

ORDER OF THE BOARD (by W.A. Marovitz):

On January 8, 1997, the Illinois Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against G&M Total, Inc., an Illinois corporation (G&M), and George Papas, individually and as president of G&M (Papas). The People allege that G&M and Papas violated the Environmental Protection Act (415 ILCS 5/12(a) (2002)) and Board rules (35 Ill. Adm. Code 731.160, 731.162, 731.163) by not timely responding to a leaking underground storage tank (UST) at their gasoline station. On August 5, 2003, the People filed a motion to deem facts admitted, to which neither G&M nor Papas responded. The Board grants the People’s motion for the reasons below.¹

DISCUSSION

G&M allegedly owns and operates a gasoline station located at 2301 Sheridan Road, Zion, Lake County. Comp. at 2. Papas allegedly owns the real property, leases it to G&M, and is responsible for and involved in the day-to-day operation of the gasoline station. *Id.* On December 1, 1997, the People mailed to respondents a request to admit facts. Mot. at 2. According to the People, the document requested the admission of all material facts alleged in the complaint. *Id.*

The facts requested to be admitted address many subjects, including: (1) property and gasoline station ownership and operation; (2) Papas’ capacity with G&M; (3) the presence, use, tightness testing, and removal of USTs at the gasoline station; (4) the failure of a UST to pass a tightness test; (5) UST notifications submitted by Papas to the Office of the State Fire Marshal; (6) subsurface soil testing indicating a release of gasoline or kerosene or both at the site; (7) G&M reporting a release to the Illinois Emergency Management Agency (formerly known as the Illinois Emergency Services and Disaster Agency); and (8) when G&M submitted “20 day” and “45 day” reports to the Illinois Environmental Protection Agency. Mot., Exh. B at 3-7.

¹ The Board cites the complaint as “Comp. at _” and the motion to deem facts admitted as “Mot. at _.”

At the time the People served the request to admit facts, the Board's procedural rules provided:

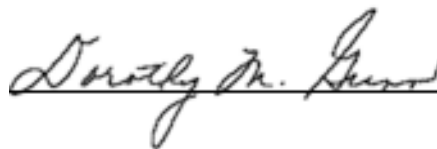
Each of the matters of fact . . . of which admission is requested is admitted unless, within 20 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. 35 Ill. Adm. Code 103.162(c) (repealed Jan. 1, 2001).

This rule was repealed on January 1, 2001, when the Board adopted an entirely new set of procedural rules. However, the current rule on admissions in the absence of denial (35 Ill. Adm. Code 101.618(f)) is nearly identical to the repealed rule, and which one applies makes no difference in today's outcome. Because the Board applies the procedural rule in effect at the time the document in question was filed or served (*see People v. John Crane, Inc.*, PCB 01-76, slip op. at 2-3 (May 17, 2001)), former Section 103.162(c), quoted above, applies to the People's 1997 request to admit.

Besides not responding to the People's August 5, 2003 motion to deem facts admitted, G&M and Papas have never responded to the 1997 request to admit. Accordingly, under former Section 103.162(c), the facts set forth in the request to admit are deemed admitted by respondents. The Board therefore grants the People's motion to deem facts admitted. *See* 35 Ill. Adm. Code 101.500(d) (non-movant waives objection to granting motion if non-movant fails to respond to motion).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 2, 2003, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board