

ILLINOIS POLLUTION CONTROL BOARD
November 5, 1998

MATTESON WHP PARTNERSHIP,)
an Illinois general partnership,)
)
Complainant,)
)
v.) PCB 97-121
) (Enforcement - Citizens, Land)
JAMES W. MARTIN and EVA D. MARTIN,)
individually and d/b/a MARTIN'S OF)
MATTESON,)
)
Respondent.)

ORDER OF THE BOARD (by M. McFawn):

This case is before the Board on "Complainant's Motion for Summary Judgment," filed by complainant Matteson WHP Partnership (Matteson).

Matteson commenced this proceeding by filing a complaint with the Board on January 17, 1997. The Board accepted the matter for hearing at its February 6, 1997 meeting. Respondents James and Eva Martin filed their answer to the complaint on April 18, 1997. The parties then engaged in discovery. On or about May 2, 1997, Matteson served the Martins with "Complainant's First Request to Admit Facts" (Request to Admit) and "Complainant's First Request to Admit Genuineness of Documents." On May 28, 1997, the Martins filed "Defendants' Response to Complainant's First Request to Admit Facts" (Response) and "Defendants' Response to Complainant's First Request to Admit Genuineness of Documents." On December 24, 1997, Matteson filed a motion for summary judgment, but that motion was withdrawn after the Board ruled that certain documents on which the motion was premised could not support the motion. See Matteson WHP Partnership v. Martin (March 5, 1998), PCB 97-121. Matteson filed the pending summary judgment motion on July 2, 1998. The Martins filed a response on August 20, 1998. Matteson filed a reply on September 2, 1998.

In 1981, Matteson constructed a retail shopping center on a parcel of property located along Vollmer Road in Matteson, Illinois. Before Matteson constructed the shopping center, the property was used for agricultural purposes. The Martins leased a portion of the shopping center in March of 1981 and have been in continuous possession of the leased premises (the Site) since then. Answer at 2.

During their tenancy, the Martins operated a dry cleaning business at the Site. The dry cleaning business used tetrachloroethene (also known as perchloroethylene, or perc), a chlorinated solvent classified as a hazardous substance under the Environmental Protection Act (Act), 415 ILCS 5/3.14 (1996). Answer at 2-3. Matteson claims that the Martins' business is the only business to use perc at the shopping center since it was constructed. Complaint at 3.

Matteson further alleges that soil and groundwater at and around the Site is contaminated with perc and its degradation compounds, and that the contamination results from the Martins' use of perc at the Site. Based on these alleged conditions, Matteson's three-count complaint asserts violations of the Act and its implementing regulations.

In count I of the complaint, Matteson alleges that the Martins have violated Section 21(e) of the Act (415 ILCS 5/21(e) (1996)), which provides that no person may:

Dispose, treat, store or abandon any waste . . . except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

In count II of the complaint, Matteson alleges that the Martins have violated Section 21(f)(1) of the Act, which provides that no person may:

Conduct any hazardous waste-storage, hazardous waste-treatment or hazardous waste-disposal operation:

1. without a RCRA permit for the site issued by the Agency under subsection (d) of Section 39 of this Act[.]

In count III of the complaint, Matteson alleges that the Martins have violated Section 12(a) of the Act (415 ILCS 5/12(a) (1996)) and 35 Ill. Adm. Code 620.115. Section 12(a) provides that no person may:

Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to . . . violate regulations or standards adopted by the Pollution Control Board under this Act.

Section 620.115 provides:

No person shall cause, threaten or allow a violation of the Act, the [Illinois Groundwater Protection Act] or regulations adopted by the Board thereunder, including but not limited to this Part.

Matteson seeks summary judgment on all counts of its complaint. Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (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." *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).

In order to find any of the alleged violations, the Board must first find that the Martins' business is the source of the alleged soil and groundwater contamination. Matteson has

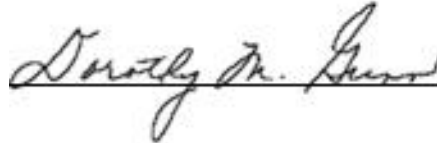
presented various pieces of circumstantial evidence that it contends establish that the Martins' business is the source of the contamination. The Martins have presented an affidavit of Eva D. Martin (Exhibit 1 to the Martins' response), which suggests that the perc could not have come from the Martins' establishment. The Board concludes based on this conflicting evidence that an issue of fact exists as to the source of the alleged contamination. The motion for summary judgment is therefore denied.

The Board has not engaged in a detailed analysis of Matteson's evidence or theories, because even assuming Matteson is correct, there is still an issue of fact raised by Eva Martin's affidavit. By this order, the Board is not deciding whether the evidence presented by Matteson would be sufficient to warrant a grant of summary judgment in the absence of the Martin affidavit.

For the foregoing reasons, Matteson's motion for summary judgment is denied. This matter will proceed to hearing on all counts.

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 5th day of November 1998 by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board