

ILLINOIS POLLUTION CONTROL BOARD

March 2, 2006

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 06-33
)	(Enforcement - Land)
J & S COMPANIES, INC. and FIRST)	
CHOICE CONSTRUCTION, INC.)	
)	
Respondents.)	

ORDER OF THE BOARD (by N.J. Melas):

The Office of the Attorney General, on behalf of the People of the State of Illinois (People) has moved for entry of default judgment against both respondents. The People filed their motion against respondent J & S Companies, Inc., a Missouri corporation, on February 1, 2006, and against First Choice Construction, Inc., an Illinois corporation, on February 15, 2006. Neither respondent has filed a response to the motion. The Board denies the motions for default judgment.

In each motion, the People recite that the complaint was filed on September 1, 2005, and that respondents have filed no appearance, answer or other pleading. The People claim that they are therefore entitled to a finding of default pursuant to Section 2-1301 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1301 (2004)). The People also cite to a non-existent "Section 101.204(d) of the Board's Procedural Rules" in support of its motion, but do not cite any cases or other precedent in support of the motion.

Section 101.100(b) of the Board's procedural rules states that:

The provisions of the Code of Civil Procedure [735 ILCS 5] and the Supreme Court Rules [Ill. S. Ct. Rules] do not expressly apply to proceedings before the Board. However, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent. 35 Ill. Adm. Code 101.100(b).

The Board's rules are not silent on the issue of default findings. The Board's default rule for enforcement cases states that "[t]he procedures for default can be found at 35 Ill. Adm. Code 101.608." 35 Ill Code 103.500. Section 101.608 states:

- (a) Failure of a party to appear at the hearing, or failure to proceed as ordered by the Board or hearing officer, will constitute default.

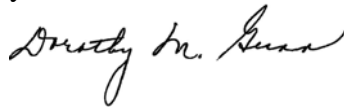
- (b) If a respondent fails to appear at hearing, the complainant or petitioner must prove its prima facie case in order to prevail on the merits. 35 Ill. Adm. Code 101.608.

Section 103.204(d) discusses the subject of answers to a complaint. 35 Ill. Adm. Code 103.204(d). It does not speak of default. *See id.* Instead, the rule provides in pertinent part that “[a]ll material allegations of the complaint will be taken as admitted if no answer is filed.” *Id.*

As the Code of Civil Procedure does not apply in this instance, and as respondents have not “defaulted” within the meaning of the Board’s procedural rules, complainant’s motion is denied. The People are free to file any appropriate motion for judgment on the pleadings.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 2, 2006, by a vote of 4-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board