

ILLINOIS POLLUTION CONTROL BOARD

April 6, 2006

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 05-51
)	(Enforcement - Air)
ENVIRONMENTAL HEALTH AND)	
SAFETY, INC., an Illinois corporation,)	
)	
Respondent.)	

ORDER OF THE BOARD (by T.E. Johnson):

On December 6, 2004, the People of the State of Illinois (People) filed an amended complaint against Environmental Health and Safety Services, Inc., an Illinois corporation (EHSS). *See* 415 ILCS 5/31(c)(1) (2004); 35 Ill. Adm. Code 103.204. The amended complaint alleges that EHSS, an asbestos removal contractor located at 1304 Derby Lane, Rockford, Winnebago County, conducted asbestos removal activities in violation of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2004)), and both state and federal regulations. The amended complaint alleges that these violations occurred at the Lincoln Park School, 4103 West State Street, Rockford, Winnebago County.

This matter is before the Board on a number of pleadings concerning the People's January 31, 2006 motion to deem facts admitted. For the reasons outlined below, the Board denies the motion to deem facts admitted and directs the hearing officer to proceed expeditiously to hearing.

PROCEDURAL BACKGROUND

On December 19, 2005, the People served a request for admission of facts on EHSS. EHSS served the People with a response to the request on January 17, 2006. The EHSS response was signed only by an attorney, and not by a representative from EHSS. On January 31, 2006, the People filed a motion to deem facts admitted. On March 3, 2006, EHSS filed an amended response to the request for admission of facts and a response to the motion to deem facts admitted.

During a status conference on March 9, 2006, EHSS made an oral motion to file both pleadings *instanter*. Board Hearing Officer Brad Halloran granted the oral motion in regards to the response to motion to deem facts admitted. However, in light of an objection by the People, the hearing officer directed EHSS to file a written motion for extension of time in regards to the amended response to the request for admission of fact. On March 14, 2006, EHSS filed a motion for extension of time to file an amended response to the request for admission of facts. The People filed a response to the motion for extension of time on March 15, 2006.

ARGUMENTS

In its motion to deem facts admitted, the People argue that Board rules require that a party responding to a request to admit facts serve a sworn statement denying the matters of fact on the filing party. Mot. to Admit at 3. The People assert that since the response was signed only by EHSS' attorney; EHSS has admitted each of the matters of fact contained in the request to admit. *Id.* The People ask that the Board find EHSS has admitted all facts contained in the request. *Id.*

In its motion for extension of time to file an amended response to the request to admit facts, EHSS asserts that throughout much of February, the principal officer of EHSS was working on projects that took him out of town and he was unable to appear in counsel's office to execute the response to the request to admit facts until February 28, 2006. Mot. for Ext. at 1. EHSS contends that as the responses to the request did not change, the People were not prejudiced by the delay. Mot. for Ext. at 2. EHSS asserts that while the People object to the motion for extension, the People believe a favorable decision on the motion will further a just result in this matter. *Id.*

In its response to the motion to deem facts admitted, EHSS asserts that the response filed on March 3, 2006, is the same as the one served on January 17, 2006, but for the fact that it now contains a verification from the president of EHSS. EHSS Resp. at 1. EHSS argues that as the responses remain the same, the People have not been jeopardized in any respect with regard to the preparation of this case, and that to grant the motion to deem facts admitted would not justly decide this matter. *Id.* EHSS requests that the Board deny the motion to deem facts admitted. EHSS Resp. at 2.

In its response to EHSS' motion for extension of time to file an amended response to the request for admission of facts, the People assert that good cause is needed to extend the time for filing, and that inadvertence or mistake by the attorney is not sufficient to establish good cause. People's Resp. at 1-2. The People argue that EHSS has not stated good cause for its failure to file the sworn responses to the request to admit facts in a timely fashion. People's Resp. at 2. The People note that in correspondence dated February 9, 2006, the attorney for EHSS apologized for the "oversight" but did not provide a reason for the failure to file the sworn response on or before January 23, 2006. *Id.* Thus, the People ask that the motion for extension of time be denied.

DISCUSSION

Initially, the Board must determine if either of EHSS' responses to the request to admit facts was sufficient to act as a denial of the request. It follows that if EHSS did not deny the requests in question, the motion to deem facts admitted must be granted. As noted by the People, each matter of fact of which admission is requested, is admitted unless the party to whom the request is directed, timely serves on the party requesting the admission either a sworn statement denying the facts in question or provides a written objection or explanation as to why the facts in issue cannot be answered or are otherwise improper. *See* 35 Ill. Adm. Code 101.618(f).

In this case, EHSS did timely respond to the request to admit facts, but did not respond properly in that no sworn statement denying the facts was included in the response. The initial response contained only the attorney for EHSS' signature. Illinois courts have specifically found that the signature of, and verification by, a party's attorney on the answer to a request to admit is insufficient. *See, for example, Moy v. Winsen NG*, 341 Ill. App. 3d 984, 793 N.E.2d 919 (1st Dist. 2003).

EHSS subsequently served the People with a proper amended response containing a sworn statement, however the amended response was served and filed well after the response time had lapsed. EHSS has asserted that a proper response was not timely filed because the principal officer of EHSS was out of town and unable to appear in counsel's office to execute the amended response to the request to admit facts until February 28, 2006. The responses are substantively identical but for the sworn statement.

The Board finds that EHSS sufficiently denied the request to admit facts. While the first response was lacking the necessary sworn statement, EHSS remedied that problem with the filing of the amended response. Illinois caselaw does provide that leave to file a sworn response to a Supreme Court Rule 216 request for admission of fact after the 28-day response time has expired, should not be granted without a showing of good cause. *Bright v. Dicke*, 166 Ill. 2d 204, 652 N.E.2d 275 (1995). However, the Board has wide discretion in determining what constitutes good cause. *Bright*, 166 Ill. 2d at 209. Further, EHSS did initially file a response to the request to admit facts that while not containing a sworn statement was, at least, timely served on the People.

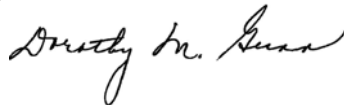
The Board finds that the explanation proffered by EHSS constitutes good cause. Further, as EHSS did file a timely response identical to the response subsequently filed, no material prejudice has resulted. Accordingly, the Board grants EHSS' motion for extension of time to file an amended response to the request to admit facts, and denies the People's motion to deem facts admitted.

CONCLUSION

EHSS' amended response to the request to admit facts is accepted, the motion for extension of time to file an amended response being granted. The People's motion to deem facts is denied. The Board directs the hearing officer to proceed expeditiously to hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 6, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board