

ILLINOIS POLLUTION CONTROL BOARD  
May 3, 2017

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 12-35
	)	(Enforcement - Water)
SIX M. CORPORATION, INC., an Illinois	)	
Corporation, and WILLIAM MAXWELL,	)	
	)	
Respondents	)	
	)	
and	)	
	)	
JAMES MCILVAIN,	)	
	)	
Necessary Party – Respondent	)	

ORDER OF THE BOARD (by C.K. Zalewski):

This enforcement case involves alleged groundwater pollution and leaking underground storage tank mitigation violations of the Environmental Protection Act at a gasoline station in DeWitt County. An agreed discovery period closed in November 2016 and respondents Six M Corporation (Six M) and William Maxwell filed a motion for summary judgment as to William Maxwell on March 6, 2017. Soon thereafter, on March 15, 2017, the People filed a motion for leave to reopen discovery/amend discovery schedule. Respondents Six M and William Maxwell filed a response opposing the People’s motion on March 29, 2017.

On April 4, 2017, the Hearing Officer granted the People’s motion (H.O. Order) over respondents’ objection, allowing the People to conduct three depositions, and extending to July 5, 2017 the time for the People to respond to the motion for summary judgment. On April 7, 2017, Six M and William Maxwell filed an interlocutory appeal (Appeal) from the hearing officer order. On April 19, 2017, the People filed a response (People Resp.). After considering respondents’ appeal and the People’s response, today’s Board order affirms the hearing officer order.

Section 101.518 of the Board’s procedural rules provides that an interlocutory appeal from a hearing officer order is properly filed within 14 days after receipt of the challenged order. 35 Ill. Adm. Code 101.518. Respondents timely filed their motion three days after the hearing officer order was docketed. Therefore, the Board considers respondents’ motion under Section 101.908 of the Board’s procedural rules. 35 Ill. Adm. Code 101.908.

Respondents’ appeal reiterates an interpretation of Illinois Supreme Court Rule 191(b) initially made in their response in opposition to the People’s motion to reopen discovery—that

the People must file an affidavit showing what testimony they hope to elicit by reopening discovery. Respondents cite two Board cases in support of their position: Des Plaines River Watershed Alliance v. IEPA, PCB 04-88 (April 21, 2005); and White & Brewer Trucking, Inc. v. IEPA, PCB 96-250 (Nov. 21, 1996).

Both of these cases were permit appeal cases. In permit appeals, the Board's review is exclusively based on the record before the Illinois Environmental Protection Agency at the time of the Agency's decision. H.O. Order at 2; *see also, e.g.*, 415 ILCS 5/40(e)(3) (2014); 35 Ill. Adm. Code 105.214(a). Discovery into matters outside the administrative record in a permit appeal is very limited. In contrast, this case is an enforcement matter in which the parties must build the factual record on which the Board will make required factual and legal findings.

In this case, the complaint alleges that respondents (including William Maxwell) owned and operated the gas station where the alleged violations occurred. Compl. ¶ 6. Respondents' motion for summary judgment contests the extent of William Maxwell's personal involvement in the facility's operations. Under these circumstances, the Board agrees with the People that reopening discovery will result in a more complete factual account of respondents' operations at the gasoline station. People's Resp. at 4. The Board also agrees with the Hearing Officer's conclusions that no affidavit is necessary and that the present case is distinguishable from prior Board cases respondents rely upon.

While discovery closed in November 2016, no depositions were taken and the People have changed attorneys since that time. People Resp. at 5. Therefore, the Board finds respondents' argument that reopening discovery would subject the parties to unnecessary expense for redundant discovery misplaced. Appeal at 5, *citing Dep't of Fin. & Prof'l Regulation v. Walgreen Co.*, 2012 IL App 2d 110452. To the contrary, no depositions have been taken in this case, and there is no statutory decision deadline.

Accordingly, the Board affirms the Hearing Officer's order granting the People's motion. Discovery is reopened to allow the People to depose James McIlvain, William Maxwell, and Tom Maxwell. The deadline for the People's response to the motion for summary judgment is July 5, 2017.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 3, 2017, by a vote of 5-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board