

ILLINOIS POLLUTION CONTROL BOARD
December 6, 2001

ESG WATTS, INC., an Iowa corporation,)	
)	
Petitioner)	
)	
v.)	PCB 01-139
)	(Permit Appeal - Land)
ILLINOIS ENVIROMENTAL PROTECTION)	
AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On October 25, 2001, the Board received a motion for summary judgment filed by petitioner in these consolidated cases. On October 29, 2001, petitioner filed a document entitled "Suggestions in Support of Motion for Summary Judgment" to support the motion.

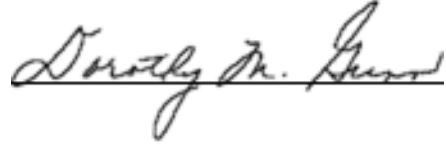
The Board has not received a response from respondent to either filing. Therefore, pursuant to 35 Ill. Adm. Code 101.500(d), respondent is deemed to have waived objection to the granting of the motions.

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 299, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on its pleadings, but must "present a factual basis which would arguably entitle [it] to a judgment." Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2d Dist. 1994).

The Board finds that based on the pleadings petitioner has not proven that there is no genuine issue as to any material fact and the petitioner is entitled to judgment as a matter of law. Therefore, the Board denies the motion for summary judgment and directs that PCB 01-139 proceed to hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the Board adopted the above order on December 6, 2001, by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board