

ILLINOIS POLLUTION CONTROL BOARD
August 21, 1997

GORDON KRAUTSACK, an individual,)	
)	
Complainant,)	
)	
v.)	PCB 95-143
)	(Citizens Enforcement - Land)
BHOGILAL PATEL, an individual, SUBHASH)	
PATEL, an individual, ELECTRONIC)	
INTERCONNECT, INC., an Illinois)	
corporation, and ELECTRONIC)	
INTERCONNECT CORPORATION, an)	
Illinois corporation,)	
)	
Respondents.)	

INTERIM OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

This matter is before the Board on a motion for partial summary judgment, with supporting affidavit, filed by Gordon Krautsack (complainant). Complainant moves for summary judgment against one respondent, Electronic Interconnect Corporation¹ (EIC), on three of the four counts: Count I (open dumping), Count II (improper disposal of wastes), and Count III (hazardous waste disposal without required permits). Complainant requests that the Board issue an order directing EIC to cease and desist from the continuing violations by ordering EIC to remove the on-site wastes. Complainant further requests that the Board defer ruling on civil penalties at this time.

For the reasons stated below, the Board finds that there are no genuine issues of material fact remaining regarding Counts I, II, or III against EIC, and that complainant is entitled to judgment under the law. The Board will accordingly grant complainant's motion for partial summary judgment against EIC and order an appropriate remedy.

PROCEDURAL HISTORY

The original complaint in this matter was filed on May 11, 1995. An amended complaint was filed on November 21, 1995. The amended complaint consists of four counts, three of which are at issue here.

¹ Complainant does not seek summary judgment in the instant motion against the remaining respondents, Bhogilal Patel, Subhash Patel, or Electronic Interconnect, Inc.

The motion for partial summary judgment was filed on May 20, 1997. Pursuant to 35 Ill. Adm. Code 101.241(b), and specifically Section 103.140(c), EIC was allowed a response time of seven days after service of the motion. EIC requested, and received, two extensions of time to file such response. Initially, the Board granted EIC an extension to file its response until June 30, 1997. Krautsack (June 5, 1997), PCB 95-143. Subsequently the Board granted EIC another extension until July 7, 1997. Krautsack (July 10, 1997), PCB 95-143. Despite the two extensions, EIC has not filed a response to complainant's motion for partial summary judgment.

On July 22, 1997 complainant filed a motion to bar response from EIC. As no response has been filed by EIC, this portion of the motion is moot. However, complainant's motion also requests that the Board invoke its rules at 35 Ill. Adm. Code 101.241(b) regarding motion filing. Pursuant to Section 101.241(b), if a party does not file a response to a motion, such party shall be deemed to have waived objection to the granting of the motion, but such waiver of objection does not bind the Board in the decision of the motion. Pursuant to Section 101.241(b), and more specifically 103.140(c), the Board finds that EIC has waived objection to complainant's motion for partial summary judgment. However, because the Board is not bound in its decision by such waiver, the Board will fully examine the substance of the motion below.

ALLEGED VIOLATIONS

Counts I, II, and III of the amended complaint allege that EIC violated Sections 21(a), (e), and (f) respectively, of the Environmental Protection Act (Act)(415 ILCS 5/1 et seq. (1996)). Section 21 of the Act provides in pertinent part:

No person shall:

a. Cause or allow the open dumping of any waste.

e. Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

f. 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 29 of this Act, or in violation of any condition imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be

necessary to assure compliance with this Act and with regulations and standards adopted thereunder; or

* * *

415 ILCS 5/21(a), (e) & (f).

FACTS

EIC manufactured printed circuit boards at a facility located at 800 Greenleaf in Elk Grove Village during the period from June 1991 to December 1994. S. Patel Dep. at 8, 51; B. Patel Dep. at 36, 48, 49.² During that period EIC leased the facility from the owners, one of whom is complainant Krautsack. Krautsack Aff. EIC assumed the lease at the site from EII. EIC made generally the same products as EII, using the same operations and chemicals, for the same customers. S. Patel Dep. at 51-52. Respondents Subhash Patel and Bhogilal Patel were sales manager (S. Patel Dep. at 46) and operations manager (B. Patel Dep. at 7, 34), respectively, for EIC during the period in question.³

During the manufacturing operations various wastes were produced. Some of these wastes were collected in a 55-gallon drum which had been sunken into the floor of the facility. S. Patel Dep. at 54; B. Patel Dep. at 11, 39-40. The 55-gallon drum was placed in the ground by EIC sometime between June 1991 and August 1992. Wastes placed in the drum included acid, lead, plating wastes, cleaning materials, and copper. B. Patel Dep. at 25, 45, 46.

No seal was present around the top of the drum, such that when the drum filled and overflowed, the contents of the drum flowed into gravel around the top of the drum and into the soil underneath. S. Patel Dep. at 59-61; B. Patel Dep. at 42-43. According to Bhogilal Patel, the drum overflowed "quite often" (B. Patel Dep. at 41), which he characterized as "more than once and less than 100 times" (B. Patel Dep. at 41).

Some of the wastes that were placed in the 55-gallon drum and which overflowed into the soil were hazardous wastes as classified pursuant to the Resource Conservation and Recovery Act (RCRA). B. Patel Dep. at 67-68; see also hazardous waste manifests, exhibits G and H to motion for summary judgment.

² The motion for partial summary judgment contains several documents as exhibits. Those cited herein are the deposition of Subhash Patel (Exh. B) cited as "S. Patel Dep. at ___"; deposition of Bhogilal Patel (Exh. C) cited as "B. Patel Dep. at ___"; March 16, 1995 letter and attachments from Green Environmental Group by William Frerichs to Greenleaf Properties (Exh. E) cited as "Frerichs Letter at ___"; affidavit of Gordon Krautsack (Exh. F) cited as "Krautsack Aff."; and affidavit of William Frerichs (Exh. J) cited as "Frerichs Aff."

³ From January 1987 through June 1991, Subhash Patel was the president of EII and Bhogilal Patel was the secretary and personally handled manufacturing at EII.

The drum has since been removed and the floor patched. However, subsequent investigations conducted at the site in February 1995 revealed contaminants in the soil, including copper, lead, ammonia, and methyl ethyl ketone (MEK). Frerichs Letter at 1; Frerichs Aff. The contaminants include RCRA hazardous wastes in the categories D002 (corrosive), D004 (arsenic), D007 (chromium), D008 (lead), and F005 (MEK) wastes. Frerichs Aff.

DISPOSITION OF ALLEGED VIOLATIONS

Summary judgment is appropriate when the pleadings, depositions and admissions of fact, together with any affidavits, show there is no genuine issue of material fact to be considered by the trier of fact and the movant is entitled to judgment under the law. Purtill v. Hess, 111 Ill. 2d 229, 240-241, 489 N.E.2d 867, 871-872 (1986); Waste Management of Illinois, Inc. v. IEPA (July 21, 1994) PCB 94-153; ESG Watts v. IEPA (August 13, 1992), PCB 92-54; Sherex Chemical v. IEPA (July 30, 1992), PCB 91-202; People v. ESG Watts (March 6, 1997), PCB 96-233.

With the exception of moving for extensions to file a response, EIC has failed to respond to the motion for partial summary judgment. In fact, EIC has failed to respond to the complaint. As noted above, EIC has therefore waived objection to the motion.

Count I

Count I of the complaint alleges a violation of Section 21(a) of the Act. Section 21(a) prohibits the open dumping of any waste. "Open dumping" is defined in the Act as "the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill," where "refuse" is waste. 415 ILCS 5/3.24 & 3.31 (1996). The Act defines "waste" as "any garbage, sludge from a waste treatment plant...or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations...." 415 ILCS 5/3.53 (1996). A "sanitary landfill" is defined in the Act as "a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act...and without creating nuisances or hazardous to public health or safety...." 415 ILCS 5/3.41 (1996).

Subhash Patel stated in his deposition, that during his entire tenure with EII, he did not know of any spills or releases of chemicals at the site. S. Patel Dep. at 37, 45. Bhogilal Patel supported this answer; he also did not know of any leaks or spills of any kind while EII operated the site.

The eyewitness depositions affirm that EIC caused and allowed the dumping of wastes from the printed circuit board operations, including substances currently found as contaminants in the on-site subsurface. EIC was not permitted by the Illinois Environmental Protection Agency to dispose of waste on-site, and the site is not permitted as a sanitary landfill. Complainant is required to demonstrate, and has

demonstrated, how the placement of the dumped material into the 55-gallon drum resulted in the waste entering the environment through the surrounding soil. Illinois Environmental Protection Agency v. Bennett (April 20, 1995), AC 94-5; Illinois Environmental Protection Agency v. Seaman (May 5, 1994), AC 92-86.

Complainant's affidavit states that prior to 1986 the site was clean and free of environmental contamination. Krautsack Aff. The evidence shows that the 55-gallon drum was placed in the ground by EIC between June 1991 and August 1992. Environmental contamination was discovered on-site in December 1994 when EIC vacated the site; and at that time, there were also numerous signs of spillage and discoloration on-site.

The Board hereby finds uncontested evidence exists to find EIC violated Section 21(a) of the Act.

Count II

Count II of the complaint alleges a violation of Section 21(e) of the Act. Section 21(e) prohibits EIC from disposing and storing any waste except at a facility which meets the requirements of the Act and of regulations and standards thereunder. The Act defines "disposal" as the "discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land...so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters." 415 ILCS 5/3.08 (1996). EIC disposed of wastes into the ground when it allowed the 55-gallon drum to spill over into the soil surrounding and enter the environment. EIC also stored the wastes in the 55-gallon drum without meeting the requirements of the Act. Complainant produced undisputed evidence that EIC violated Section 21(e) of the Act. The Board finds EIC violated Section 21(e) of the Act.

Count III

Count III of the complaint alleges a violation of Section 21(f) of the Act. Section 21(f) prohibits the storage, treatment and disposal of hazardous waste without a proper RCRA permit. According to the depositions, on occasion the wastes were shipped off-site for disposal with accompanying Hazardous Waste Manifests. Attached to the instant motion are several Uniform Hazardous Waste Manifests. See MSJ Exhibits G & H. Confirming the witnesses statements, almost all of the wastes in the Manifests are designated the waste as RCRA hazardous wastes in the categories D002, D004, D007, and D008. MSJ Exhibits G & H. It is uncontested that the wastes in question included hazardous waste.

EIC did not have an Agency-issued RCRA permit to treat, store, or dispose of hazardous waste on-site. On this basis we find that EIC violated Section 21(f) of the Act.

REMEDY

Having found that EIC violated the Act, the Board must determine what constitutes a proper remedy. Complainant requests that the Board order EIC to cease and desist from further violations by removing the wastes. Complainant suggests the Board delay determining the appropriate civil penalty to be imposed until after EIC remediates the site.

The Board's remedy determination is governed by Section 33(b) of the Act. Under Section 33(b) the Board has authority to issue final orders, including orders directing a party to cease and desist from violations of the Act, and orders imposing civil penalties in accordance with Section 42. Under Section 33(c) (415 ILCS 5/33(c)), when issuing its orders and determinations, the Board is to consider all the facts and circumstances bearing upon the reasonableness of the discharges, but not limited to:

- i. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- ii. the social and economic value of the pollution source;
- iii. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
- iv. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- v. any subsequent compliance.

Initially, we consider the character and degree of injury to, or interference with the protection of the health, general welfare, and physical property. EIC polluted the soils and earth with liquid wastes and hazardous wastes and those wastes remain at the site. The environmental investigation performed on the site indicates there are several types of hazardous wastes present, including approximately 750 cubic yards of impacted soil, and a minimum of 1,000 cubic yards of soil are probably impacted. Frerichs Letter. The depositions, answers to interrogatories, and reports show that the chemicals used in EIC's manufacturing operations have overflowed into the soil. Detrimental environmental effects will continue if these contaminants are not removed. There is no indication if any groundwater could possibly be impacted by the contamination, or if the waste could become leachate. The only suggested clean-up option is dig and haul the contaminated soil away to a proper disposal area. Frerichs Letter. The Board finds that the consideration of Section 33(c)(1) of the Act establishes the unreasonableness of the alleged violations and must be weighed against EIC.

There is no information in the record to indicate the amount, if any, of social and economic value of EIC's operations. (Section 33(c)(2)). There is no evidence in the record as

to the location of the site, specifically the suitability or unsuitability of the area. There is certainly nothing in the record to indicate the site was a suitable area to dispose of waste, including hazardous waste. The priority of location does not come into question in this matter because the complainant is the owner of the site and EIC was the lessee.

Lastly, there is no question that it is technically practical to eliminate this environmental harm through monitored waste management at the site and proper off-site disposal. In fact the depositions and Uniform Hazardous Waste Manifests indicate that there were instances when EIC did send the wastes off-site.⁴ The Board finds it was technically practicable to eliminate the spills by emptying the 55-gallon drum when it filled. There were at least two employees on site, Subhash and Bhogilal Patel, and it is reasonable to assume they were not the only employees. Dumping the waste out of the 55-gallon drum and into the 1000-gallon tanks could not have been an economically unreasonable task to perform to prevent the overflow from entering the soil. The Board finds that this factor weighs against EIC.

Lastly, the evidence shows that EIC has not remediated the site and although the drum has since been removed and the hole patched, contamination remains on site. The only document submitted regarding construction on-site after EIC vacated the premises was a general contractor's invoice for patching concrete holes from a sump pit, filling it with gravel, and removing and replacing cement block in the outside wall. EIC did not remove the wastes on-site, it buried them. The Board agrees with complainant's characterization of EIC's conduct as representing the worst kind of corporate behavior, "wanton disregard of environmental safety and regulations, plus a purposeful attempt to conceal the contamination." MSJ at 9. This attempt to cover the hole containing the origin of the contamination weighs heavily against EIC.

According to the subsurface investigation performed by The Green Environmental Group on February 9 and 17, 1995, soil testing confirmed the presence of contamination on site. The report recommends that at least a portion of the site should be excavated, where cleanup of all of the soil is estimated at \$75,000, in addition to excavation of the interior and exterior of the building to remove contaminated areas. The record clearly indicates that EIC has not come into subsequent compliance.

Based upon the record and the factors in Section 33(c) of the Act, the Board hereby orders EIC to immediately cease and desist violating the Act, and directs EIC to remediate the site.

⁴ When the drum was filled, the liquid waste was dumped into one of two 1000-gallon above ground tanks to be disposed of off-site by Envirite. S. Patel Dep. at 17 -19, 36; B. Patel Dep. at 23.

Civil Penalty

With regards to the requested civil penalty, the Board's authority to issue a civil penalty is governed by Section 42 of the Act. In accordance with Section 42(a), any person that violates any provision of the Act or Board regulations is liable for a civil penalty not to exceed \$50,000 for the violation and an additional civil penalty not to exceed \$10,000 for each day during which the violation continues. Section 42(b)(3) is specific to the violation of Section 21(f); if a person violates Section 21(f), they shall be liable to a civil penalty of not to exceed \$25,000 per day of violation.

Complainant seeks a civil penalty of \$50,000 against each respondent for each violation, and an additional civil penalty of \$10,000 for each day the violation continues. However, as noted in Section 42(b)(3), a violation of Section 21(f) of the Act has a maximum civil penalty of \$25,000. In light of complainant's request, the Board reserves ruling on any civil penalty until after EIC has remediated the site.

CONCLUSION

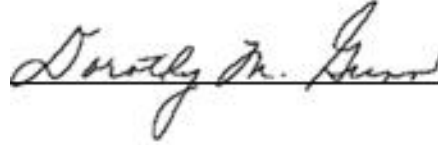
Based upon the record, where complainant's allegations against EIC were supported with depositions, affidavits, uniform waste manifests, and an environmental assessment, the complainant has demonstrated that EIC violated the Act as alleged in Counts I, II, and III of the complaint. EIC has not responded to any of the allegations made against it by complainant. The Board finds that partial summary judgment against EIC is warranted. The Board will direct EIC to cease and desist from further violations of the Act and remediate the site. The Board will address the appropriate civil penalty, if any, after site remediation is completed.

ORDER

1. The Board hereby grants partial summary judgment in favor of Gordon Krautsack, complainant, against respondent Electronic Interconnect Corporation, an Illinois Corporation, (EIC).
2. The Board finds that EIC violated Sections 21(a), (e) and (f) of the Act.
3. EIC is hereby ordered to cease and desist from violations of the Act.
4. EIC is hereby ordered to immediately complete remediation of the site, including removing any waste which was improperly disposed, in compliance with the Act and applicable Board regulations.
5. EIC is hereby ordered to complete remediation at the site by December 31, 1997.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above interim opinion and order was adopted on the 21st day of August 1997, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board