

Additionally, in Des Plaines River Watershed Alliance v. IEPA, PCB 04-88 (April 21, 2005), “[t]he Board has indicated that, if discovery is considered necessary to respond to a motion for summary judgment, then a party should demonstrate that need through an affidavit that meets the requirements of Illinois Supreme Court Rule 191(b)... That rule permits the court to grant a continuance for discovery if the affidavit names persons whose affidavits cannot be procured and what affiant believes they would testify to if sworn.” *Id.* slip op.at 5.

In Des Plaines, the affidavit did not name a single person from whom discovery was sought and did not specifically indicate the sworn testimony it sought to elicit, so the affidavit did not comply with 191(b). The April 21, 2005 Board order found no valid reason to direct the parties to conduct discovery. It is worth noting that, subsequently on November 17, 2005, the Board denied the motion for summary judgment because it could not conclude that there were no issues of fact.

This docket is distinguishable from the two earlier cases in two significant ways. First, the two cases respondents cite are permit appeals. Permit appeals are decided on the administrative record, and the need for discovery outside the record is scrutinized. This docket is an enforcement matter where all relevant information is generally deemed admissible.

Second, unlike Des Plaines, the People do specifically name the three individuals to be deposed, and state that they will be asked about Six M. Corporation, Walker Service Station, as well as their respective roles.

The Board will not grant a motion for summary judgment if questions of fact exist. If respondents wish to avoid the expense of hearing regarding the case against Mr. Maxwell, resolving issues of fact now increases the likelihood of his case being resolved by summary judgment. Furthermore, if the summary judgment is denied, depositions may ultimately be needed for hearing preparation.

Accordingly, discovery is reopened on a limited basis to allow the People to depose the three individuals named in the motion. The deadline for the People’s response to the motion for summary judgment is July 5, 2017.

The parties have consented to electronic service for this docket.

IT IS SO ORDERED.

Carol Webb

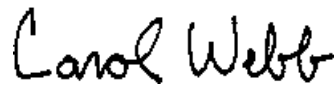
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed on April 4, 2017, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was e-mailed to the following on April 4, 2017:

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