

ILLINOIS POLLUTION CONTROL BOARD
November 6, 2003

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 04-7
)	(Enforcement - Air)
4832 S. VINCENNES, L.P., an Illinois limited)	
partnership, and BATTEAST)	
CONSTRUCTION COMPANY, INC., an)	
Indiana corporation,)	
)	
Respondents.)	

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

Today the Board accepts for hearing the first amended complaint, which replaces as a respondent Batteast Construction Company of Illinois, Inc., an Illinois corporation, with a different corporate entity, Batteast Construction Company, Inc., an Indiana corporation. The Board also dismisses the former company from this proceeding.

On July 14, 2003, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint against 4832 S. Vincennes, L.P. and Batteast Construction Company of Illinois, Inc. According to the complaint, respondents violated asbestos requirements while renovating a four-story, 67-unit, residential apartment building at 4832 S. Vincennes Ave., in Chicago, Cook County. On July 24, 2003, the Board accepted the original complaint for hearing.

On September 22, 2003, with the hearing officer's leave, Batteast Construction Company of Illinois, Inc. filed a motion to be dismissed from this proceeding, asserting that it was not the operator or manager of the renovation site as alleged in the complaint. On October 6, 2003, the People filed a motion for leave to file a first-amended complaint, attaching the first amended complaint. In its motion, the People state that Batteast Construction Company, Inc. (not Batteast Construction Company of Illinois, Inc.) renovated the site and is the proper respondent in this case. The People seek to have the Board dismiss Batteast Construction Company of Illinois, Inc., and substitute as a respondent Batteast Construction Company, Inc., as reflected in the first-amended complaint.

The Board's procedural rules provide:

The Board will not dismiss an adjudicatory proceeding for misjoinder of parties.
 *** As justice may require, the Board may add new parties and dismiss
 misjoined parties at any stage of an adjudicatory proceeding. 35 Ill. Adm. Code
 101.403(b).

Consistent with this rule, the Board grants the motion of Batteast Construction Company of Illinois, Inc. to be dismissed from this proceeding because it was misjoined after being incorrectly identified as the alleged operator and manager of the renovation site. The Board also grants the People's motion for leave to file the first amended complaint and accepts the first amended complaint for hearing. The first-amended complaint substitutes Batteast Construction Company, Inc. for Batteast Construction Company of Illinois, Inc., but is otherwise materially the same as the complaint the Board accepted for hearing on July 24, 2003. 4832 S Vincennes, L.P., an Illinois limited partnership and alleged owner of the site building, remains the other of the two respondents. Future filings in this proceeding must reflect the amended caption of this order.

A respondent's failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if a respondent fails within that timeframe to file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board will consider the respondent to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d). Here, respondent 4832 S. Vincennes, L.P. timely filed an answer to the original complaint on September 8, 2003. Because the first-amended complaint is substantively unchanged except for the substitution of respondents, the Board will treat the answer 4832 S Vincennes, L.P. has already filed as its answer to the first-amended complaint.

The Board directs the hearing officer to proceed expeditiously to hearing. Among the hearing officer's responsibilities is the "duty . . . to ensure development of a clear, complete, and concise record for timely transmission to the Board." 35 Ill. Adm. Code 101.610. A complete record in an enforcement case thoroughly addresses, among other things, the appropriate remedy, if any, for the alleged violations, including any civil penalty.

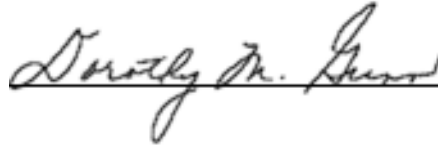
If a complainant proves an alleged violation, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act to fashion an appropriate remedy for the violation. *See* 415 ILCS 5/33(c), 42(h) (2002). Specifically, the Board considers the Section 33(c) factors in determining, first, what to order the respondent to do to correct an on-going violation, if any, and, second, whether to order the respondent to pay a civil penalty. The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation, such as the character and degree of any resulting interference with protecting public health, the technical practicability and economic reasonableness of compliance, and whether the respondent has subsequently eliminated the violation.

If, after considering the Section 33(c) factors, the Board decides to impose a civil penalty on the respondent, only then does the Board consider the Act's Section 42(h) factors in determining the appropriate amount of the civil penalty. Section 42(h) sets forth factors that may mitigate or aggravate the civil penalty amount, such as the duration and gravity of the violation, whether the respondent showed due diligence in attempting to comply, any economic benefit that the respondent accrued from delaying compliance, and the need to deter further violations by the respondent and others similarly situated.

Accordingly, the Board further directs the hearing officer to advise the parties that in summary judgment motions and responses, at hearing, and in briefs, each party should consider: (1) proposing a remedy for a violation, if any, including whether to impose a civil penalty, and supporting its position with facts and arguments that address any or all of the Section 33(c) factors; and (2) proposing a civil penalty, if any, including a specific dollar amount, and supporting its position with facts and arguments that address any or all of the Section 42(h) factors.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 6, 2003, 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