



Gleason, 181 Ill. 2d at 460, 693 N.E.2d at 358 (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.” Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370.

Summary judgment “is a drastic means of disposing of litigation,” and therefore it should only be granted when the movant’s right to the relief “is clear and free from doubt.” Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370, citing Putrill v. Hess, 111 Ill. 2d 229, 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 arguable entitle [it] to a judgment.” Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994).

### **ANALYSIS**

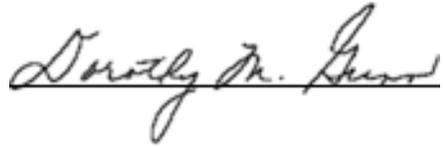
In this case, American Disposal has not responded to the complaint or replied to the People’s motion for summary judgment. In recent cases, the Board has granted motions for summary judgment where the respondents did not file a response or otherwise present any factual basis which would entitle them to judgment. *See* People v. Morrison, PCB 00-212 (Jan. 18, 2001); People v. Rogers, PCB 00-127, (Nov. 2, 2000). However, the complaints in each of these cases were filed after the Board’s new procedural rules took effect. *See* In the Matter of: Revision of the Board’s Procedural Rules: 35 Ill. Adm. Code 101-130, R 00-20 (Dec. 21, 2000). Under the new procedural rules, if a respondent does not timely file an answer to a complaint, the facts alleged are deemed admitted. *See* 35 Ill. Adm. Code 101.618.

The People’s complaint against American Disposal was filed prior to the effective date of the new procedural rules. Under the old rules, if a respondent did not timely respond to a complaint, the allegations were deemed denied, not admitted. 35 Ill. Adm. Code 103.122, effective prior to January 1, 2001. Since the People have not filed a request to admit facts or an amended complaint under the new procedural rules, the Board cannot find the facts alleged in the complaint to be admitted in the absence of an answer. While the People’s motion for summary judgment sets forth facts as if admitted, the facts have not been admitted as a matter of law and procedure. Thus, there are no facts yet presented in this proceeding that entitle the People to summary judgment. Accordingly, the People’s motion is denied.

Finally, the Board notes that Nadine Vorenkamp, named in the complaint as the owner and president of American Disposal, is not an attorney and cannot represent American Disposal in this matter. *See* 35 Ill. Adm. Code 101.400. American Disposal is ordered to have its attorney file an appearance in this matter.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 7, 2002, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board