

ILLINOIS POLLUTION CONTROL BOARD
May 3, 2001

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 96-256
) (Enforcement – Water)
CRIER DEVELOPMENT COMPANY,)
and BRADLEY S. COWELL,)
)
Respondents.)

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

This matter is before the Board on a motion for summary judgment (motion) filed on April 11, 2001, by the Illinois Attorney General's Office on behalf of the People of the State of Illinois (complainant). Complainant alleges respondents, Crier Development Company, a general building contractor, and Bradley S. Cowell, Crier's vice-president, violated Section 12(b) of the Environmental Protection Act (Act) (415 ILCS 5 *et seq.* (1998)), and 35 Ill. Adm. Code 309.202(a) of the Board's water pollution regulations.

Complainant filed the complaint on June 19, 1996. On April 20, 1998, complainant served upon respondents a request for admission of facts.¹ Respondents did not file a response to this request for admission of facts, nor did respondent file a response to the complaint or to the motion for summary judgment. For the reasons set forth below, the Board grants complainant's motion and orders the matter set for hearing to determine penalties.

MOTION

In its motion, complainant relies on 35 Ill. Adm. Code 101.618(f) of the Board's procedural rules, which went into effect on January 1, 2001, and states in pertinent part:

Admission in the Absence of Denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters 35 Ill. Adm. Code 101.618(f).

¹ Complainant's motion indicates the request was served on June 4, 1998. Pet. at 2. A copy of the request filed with the Board indicates that the request was served on April 20, 1998.

Complainant notes that because respondents failed to answer the request for admission of facts, all of the matters of fact for which admission was requested are deemed admitted. Mot. at 2.

The Board notes that under the Board's procedural rules that were in effect in 1998 when the request for admission of facts was served, former 35 Ill. Adm. Code 103.162(c) contained similar language to the current 35 Ill. Adm. Code 101.618(f). Section 103.162(c) stated:

Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless . . . the party to whom the request is directed serves upon the party requesting the admission a sworn statement denying specifically the matters. . . . 35 Ill. Adm. Code 103.162(c).

As respondents have failed to file a response to complainant's request to admit facts, the Board will deem the facts asserted therein to be admitted. See People v. Babson Brothers Company (April 20, 2000), PCB 00-102.

Allegations

Complainant alleges respondents violated Section 12(b) of the Act which provides that:

No person shall:

- b. Construct, install, or operate any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution, or designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit. 415 ILCS 5/12(b) (1998).

Complainant asserts that respondents violated Section 12(b) of the Act because they caused or allowed the construction of a sanitary sewer without an Agency construction permit. Mot. at 3.

Additionally, complainant alleges that respondents violated Section 309.202(a) of the Board's water pollution regulations which prohibits, among other things, persons from causing or allowing construction of any sewer without a construction permit from the Agency.

Standard for Summary Judgment

Summary judgment is appropriate when the pleadings and depositions, together with any affidavits and other items in the record, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 693 N.E.2d 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 be granted only 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 Purtill 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 arguably entitle [it] to a judgment.” Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994).

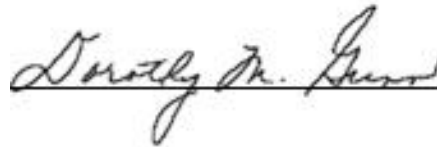
In order to grant complainant’s motion for summary judgment, the Board must find that there is no genuine issue of material fact and that the undisputed facts show that complainant’s right to the relief requested is “clear and free from doubt.” See Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370, citing Purtill, 111 Ill. 2d at 240, 489 N.E.2d at 871.

CONCLUSION

The Board finds that there are no genuine issues of material fact because respondents admitted all the facts by failing to respond to complainant’s request for admission of facts. The Board finds that absent any genuine issues of material fact, complainant is entitled to judgment as a matter of law. The Board grants complainant’s motion and orders that the matter be set for hearing on the issue of penalties.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 3rd day of May 2001 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