

ILLINOIS POLLUTION CONTROL BOARD
September 15, 1994

ERICH J. MANDEL,)
)
Petitioner,)
)
v.) PCB 92-33
) (Enforcement)
THADDEUS G. KULPAKA,)
)
Respondent.)

ORDER OF THE BOARD (by C. A. Manning):

On February 25, 1992, Erich J. Mandel filed a complaint against Thaddeus G. Kulpaka alleging various violations of the Environmental Protection Act. The allegations concerned several underground storage tanks ("USTs") located on property owned by Mandel and previously owned by Kulpaka. On July 30, 1992, the Board denied a motion by the respondent for summary judgment or dismissal. At that time the Board also struck portions of the complaint and dismissed Counts IV and V. On January 26, 1993, Kulpaka filed a counterclaim against Mandel which the Board later found was neither duplicitous or frivolous. We therefore set the case for hearing. While it has been scheduled for hearing on December 16, 1992, March 12, 1993, November 8, 1993 and December 23, 1993, all hearings have been cancelled by the parties and no hearings have therefore been held.

Since the cancellation of the last hearing, the Board has had no further communications from the parties. Accordingly, we ordered on August 11, 1994, that the petitioner show cause why an order dismissing this case should not be entered for lack of prosecution. In response, petitioner timely-filed a "Motion to Voluntarily Dismiss" the petition on August 24, 1994.

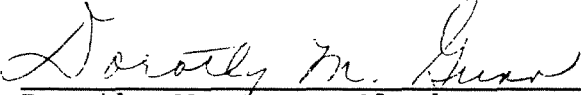
The complainant represents that the parties have reached a settlement in this matter which includes an agreement that they will jointly remediate the subject property currently owned by Erich J. Mandel and formerly owned by Thaddeus G. Kulpaka. Without setting forth the details, Mandel states there are outstanding contingencies to be resolved which warrant a dismissal without prejudice order. Mandel further represents that the respondent is in agreement with the dismissal of the counterclaim.

Petitioner's attorney certifies that he served the Motion to Voluntarily Dismiss on the respondent on August 24, 1994, and we have received no response or objection. Accordingly, we find that respondent's silence is consent to dismissal of the petition

and the counterclaim. We therefore grant the motion and the docket in this matter is hereby closed.

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 15th day of September 1994, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board