

ILLINOIS POLLUTION CONTROL BOARD
February 6, 1992

RONALD E. TEX and SUSAN D. TEX,)
)
 Petitioners,)
)
v.) PCB 90-182
) (Enforcement)
S. SCOTT COGGESHALL and)
COGGESHALL CONSTRUCTION COMPANY,)
)
 Respondents.)

ORDER OF THE BOARD (by M. Nardulli):

This matter is before the Board on the motion of respondents Chester Bross, Mike Bross, Jeff Bross and Chester Bross Construction Company (Bross) to dismiss filed January 27, 1992. On February 3, 1992, respondents S. Scott Coggeshall and Coggeshall Construction Company (Coggeshall) filed their response objecting to the motion to dismiss.

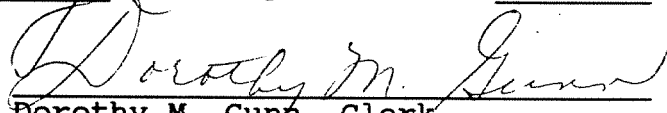
On June 6, 1991, the hearing officer granted Coggeshall's motion to add Bross as respondents in this enforcement action on the basis that Bross entered into "Management and Option to Purchase" agreement with Coggeshall to manage and operate the asphalt plant which is the subject of the instant action. This agreement became effective September 14, 1989 and expired January 7, 1992. Bross seeks dismissal on the basis that it no longer has any control over the property and, therefore, cannot cease and desist from any alleged violations nor can they take any action to bring the plant into compliance.

Coggeshall responds that the complaint was filed June 9, 1990 and that Bross was in control of the subject property during the period of alleged violation. Coggeshall also states that, at hearing, complainant advised the hearing officer that it was seeking all relief allowed under the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1042). Therefore, Coggeshall contends that the motion to dismiss should be denied because Bross' activity on the property may have caused or allowed noise and/or air pollution as alleged in the complaint.

Simply because Bross is no longer in possession of the property does not mean that they did not commit a violation during the time period alleged in the complaint. While Bross may no longer be able to cease and desist from any future violations and may not be able to take actions to achieve compliance does not mean that Bross may not be subject to a penalty. The Board notes that it may impose a penalty even where complainant has failed to request such relief. The Board denies Bross' motion to dismiss.

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 6th day of February, 1992 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board