

ILLINOIS POLLUTION CONTROL BOARD  
June 22, 2000

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB 97-9  
) (Enforcement - Land)  
C & S RECYCLING, INC., an Illinois )  
corporation, FLOOD BROTHERS )  
DISPOSAL COMPANY, INC., an Illinois )  
corporation, WILLIAM FLOOD, )  
individually and as president of C & S )  
Recycling, Inc., and BRIAN FLOOD, )  
individually and as treasurer of C & S )  
Recycling, Inc., )  
)  
Respondents. )

ORDER OF THE BOARD (by E.Z. Kezelis):

This matter is before the Board on a request for reconsideration of a hearing officer ruling. Complainant, People of the State of Illinois, seeks review of the hearing officer's April 28, 2000 order dismissing the complainant's motion to compel as moot. For the reasons set forth below, the Board denies the motion to reconsider and affirms the hearing officer's ruling.

BACKGROUND

On January 20, 1998, the complainant filed its first set of interrogatories and document production requests with the respondents. Having allegedly received no responses to its discovery requests, the complainants filed a motion to compel on September 2, 1998. There is no indication in the Board's records that this motion to compel was ever resolved. A second motion to compel document production was then filed by the complainant on September 23, 1999. In the second motion, the complainant sought an order compelling respondents to produce all documents responsive to the January 20, 1998 interrogatories and request for production, specifically including load and dump tickets pertaining to respondents' operations.

On October 1, 1999, respondents filed a response to the motion to compel in which the respondents sought additional time to produce the requested documents under the supervision of the hearing officer. Additionally, in their response, the respondents maintain that all documents relevant to the discovery requests, except one for which an objection was filed, had been produced. Respondents concluded that the motion to compel was aimed at certain documents referred to and requested by complainant during the deposition of Brian Flood on

April 23, 1999. Specifically, respondent maintains that the complainant sought production of those documents referred to as “load tickets” and other records containing calculations of the percentage of recyclables compared to the total receipts. See Respondent’s Response to Complainant’s Motion to Compel Document Production, October 1, 1999.

At the request of the parties, the September 23, 1999 motion was held by the hearing officer until an April 25, 2000 status conference. At that time, complainant requested a ruling. The hearing officer did not rule during that status conference because the respondents did not participate in the conference.

After that April 25, 2000 conference, the respondents sent a letter to the hearing officer and complainant, in which they stated that the requested documents had all been produced. In light of that assertion, the Board’s hearing officer dismissed the complainant’s motion to compel as moot. The complainant’s motion to reconsider was filed on May 5, 2000. Respondents’ response to the motion to reconsider (Response) was filed on May 15, 2000. On May 31, 2000, the complainant filed a motion for leave to file a reply and a reply. The hearing officer referred complainant’s motion for reconsideration to the Board.

### DISCUSSION

The Board finds that based on the information before him at the time, the hearing officer’s reasons for denying the motion to compel as moot were sound. Complainant sought the production of specific information in its September 23, 1999 motion to compel, and that information has now been produced.

Section 101.100(b) of the Board’s procedural rules provides that while the provisions of the Code of Civil Procedure and the Illinois Supreme Court Rules do not expressly apply to proceedings before the Board, they may be used as guidance for the Board or hearing officer. 35 Ill. Adm. Code 101.100(b). Accordingly, for guidance, the Board looks to Supreme Court Rule 214, which governs the discovery of documents, objects, and tangible things. 172 Ill. 2d R. 214.

The complainant suggests that the respondents have violated Supreme Court Rule 214 by including non-responsive documents with the relevant ones. Complainant correctly points out that the committee comments to Rule 214 require a party “to make a good-faith review of documents produced to ensure full compliance with the request, but not to burden the requesting party with nonresponsive documents.” See Committee Comments to 172 Ill. 2d R. 214.

Respondents argue that the documents produced do not constitute an impermissible overproduction. Specifically, respondents point to the instructions that accompanied the complainant’s interrogatories and request for production, and argue that the instructions dictated the production of the documents. For example, respondents cite to the following instructions:

All documents should be produced in the same order as they are kept or maintained by you.

All documents should be produced in a file, folder, envelope, or container in which the documents are kept or maintained by you.

Documents attached to each other should not be separated.

Documents not otherwise responsive to this request shall be produced if such documents refer to, relate to, or explain the documents called for by this request. Response at 2.

Respondents further claim that the definitions of “documents,” “communications,” and “respondents” contained in complainant’s interrogatories and request for production are so broad that the document production provided by respondents is appropriate. Respondents included with their December 12, 1999 document production an affidavit of compliance, as required by Supreme Court Rule 214, attesting to the completeness of the production.

An *in camera* inspection of the documents at issue was neither requested of nor required by the hearing officer. Nevertheless, from the assertions made by the parties, it appears that some arguably nonresponsive documents may have been produced, but that in an attempt to comply with the instructions and definitions contained in complainant’s interrogatories and request for production, the “otherwise nonresponsive” documents were properly produced. Based on the record before it, the Board cannot find that respondents failed to use good faith in reviewing the documents produced. Accordingly, the Board finds that the production did not violate Supreme Court Rule 214.

Complainant also raises an issue regarding respondent’s failure to produce or account for any pre-1999 documents. Complainant maintains that these pre-1999 documents exist, are relevant, and were not accounted for by the respondents.

The requested documents were produced by respondents on December 17, 1999, along with an affidavit by Robert Flood. In the affidavit, Flood attests to the fact that:

a diligent search of the records of Flood Brothers Disposal Company, Inc, and the records of C & S Recycling, Inc. [has been made] . . . for records concerning C & S Recycling, Inc. records of receipt and shipment for the period of 1992-present. All documents responsive to this request are being produced on December 17, 1999. Response Exhibit 3.

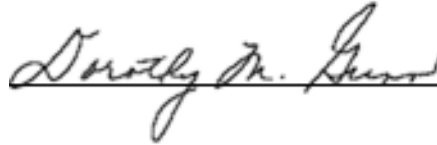
Based on this assertion, the Board cannot find that all documents responsive to complainant’s request have not been produced. We note, however, that respondents have repeatedly offered affiant Robert Flood for deposition. If complainant still believes there to be a deficiency in the documents produced, the complainant may avail itself of the offered deposition. Furthermore, should any additional discovery issues result from the taking of said deposition, the complainant is, of course, free to seek relief through any of the relevant procedures available before the Board.

In conclusion, the complainant's motion for leave to file a reply is granted. The Board denies complainant's motion to reconsider and affirms the hearing officer's April 28, 2000 order dismissing complainant's motion to compel as moot.

The Board notes that there may be other outstanding discovery issues that the parties may need to address with the hearing officer. However, since the only narrow issue currently before the Board is the propriety of the hearing officer's April 28, 2000 ruling, we will not insert ourselves into the midst of ongoing discovery issues that are not properly before us at this time. Nothing in this order should be construed as precluding the filing of additional motions to compel or motions for protective order, if deemed necessary by the parties.

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 22nd day of June 2000 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