

ILLINOIS POLLUTION CONTROL BOARD
November 3, 1994

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 94-127
) (Enforcement)
 JAMES LEE WATTS, individually)
 and d/b/a WATTS TRUCKING)
 SERVICE, INC., and ESG WATTS,)
 INC.,)
)
 Respondents.)

ORDER OF THE BOARD (by G. T. Girard):

This matter is before the Board on several motions filed by the parties. First, on September 26, 1994, the Board received a motion for partial summary judgement and then on September 29, 1994, the Board received a motion to dismiss or in the alternative motion for summary judgement both filed by the respondents. On September 30, 1994, the Board received complainant's response to the first motion and on October 6, 1994, the Board received the complainant's response to the second motion. Finally, on October 14, 1994 the Board received a request by complainant for leave to file superseding complaint.

The respondents argue in its motions that the complainant failed to comply with the requirements of 31(d) of the Act and therefore, the Board does not have jurisdiction to proceed with this matter. (9/29 at 6.)¹ Further, respondents maintain that the respondents have acted "diligently" in this matter by raising this issue "as soon as they obtained" discovery requests "indicating that the requirements of Section 31(d) had not been met". (*Id.*) Respondents argue that failure to allow this motion will prejudice the respondents. Respondents point to documents received by the respondents as a part of discovery on September 26 to support their argument. (9/29 at 3; Res.Exh. 1-6.)

The "request for leave to file superseding complaint" states that:

While the allegations of respondents have been disputed, and the Board has been asked to deny the motion to dismiss, the People seek to proceed with the

¹ The motions will be cited as "9/26 at ___" and "9/29 at __", respectively; the responses will be cited at "9/30 at ___" and "10/6 at ___"; respondents' exhibits will be cited as "Res.Exh. ___".

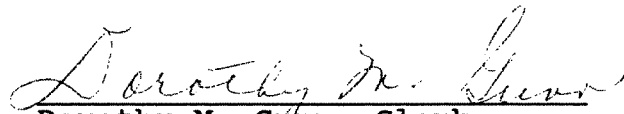
attached complaint in lieu of the complaint previously filed an amended. Therefore, a new '31(d) letter' was issued on September 30, 1994, and a meeting thereupon conducted with respondents on October 11, 1994. (Request at 1.)

The respondents has not filed a response to the request. Therefore, pursuant 35 Ill. Adm. Code 101.241(b) respondents has waived objection to the granting of the request.

The Board will construe the complainant's request as a motion to amend the complaint pursuant to 35 Ill. Adm. Code 103.210 and grant the motion. The remaining motions for summary judgement and dismissal are denied as moot because any alleged notice deficiencies have been cured by the complainant's amended filing.

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 November, 1994, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board