

ILLINOIS POLLUTION CONTROL BOARD

May 16, 2002

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 00-110
) (Enforcement – Air)
JOE DECICCO DEMOLITION, INC., an)
Illinois corporation,)
)
Respondent.)

ORDER OF THE BOARD (by N.J. Melas):

This matter is before the Board on a Motion for Clarification filed by complainant on April 26, 2002. Complainant requests that Board clarify its interim order of April 18, 2002, in this matter. For the reasons provided below, the Board grants complainant's motion.

Complainant filed a complaint on December 29, 1999, alleging that Decicco violated asbestos notification requirements for demolition projects. On November 19, 2001, complainant filed a motion for summary judgment. Decicco did not answer the complaint or respond to the motion for summary judgment.

In its April 18, 2002 interim order, the Board granted complainant's motion for summary judgment in part and denied it in part. The Board applied Sections 103.204 (d) and (e) of its procedural rules. Sections 103.204(d) and (e) were promulgated when the Board adopted its new procedural rules which went into effect on January 1, 2001. See Revision of the Board's Procedural Rules: 35 Ill. Adm. Code 101-130, R00-20 (Dec. 21, 2000). Section 103.204(d) and (e) state that all material allegations in a complaint are deemed admitted if a respondent does not file an answer within 60 days or does not file a motion to stay the 60-day deadline. See 35 Ill. Adm. Code 103.204(d) and (e).

In the motion for clarification, complainant asked if the new procedural rules at Sections 103.204(d) and (e) apply in this situation.

The Board held that the new procedural rules "will apply to all proceedings pending as of that date and to all proceedings initiated after that date." Revision of the Board's Procedural Rules: 35 Ill. Adm. Code 101-130, R00-20, slip op. at 1 (Dec. 21, 2000). However, even after the new rules took effect, the former procedural rules still applied to filings made or due when the former rules were in effect. See People v. John Crane, Inc., PCB 01-76, slip op. at 2 (May 17, 2001).

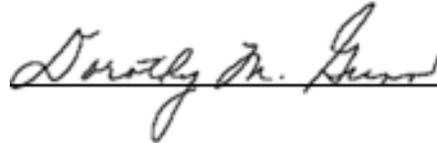
The former procedural rule addressing answers to complaints stated that a respondent could file an answer to a complaint within 30 days. The former rule also stated that material allegations would be deemed *denied* if not specifically admitted in the answer or if no answer is filed. 35 Ill. Adm. Code 103.122(d) (repealed Jan. 1, 2001). The complaint here was filed December 29, 1999, and any answer was due January 28, 2000 while the former procedural rules were in effect. Decicco's lack of an answer constituted a denial of the material allegations in the complaint. See People v. American Disposal Co., PCB 00-67 (Feb. 7, 2002).

Complainant has not filed any requests to admit or any amended complaint under the new procedural rules.

The Board finds that Decicco, by operation of the former procedural rule, denied the material allegations in the complaint. Since there are genuine issues of material fact in this matter, a finding of summary judgment would be precluded. The Board therefore rescinds its interim order of April 18, 2002, denies complainant's November 19, 2001 motion for summary judgment in its entirety, and directs the parties to hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 16, 2002, 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