

ILLINOIS POLLUTION CONTROL BOARD

October 19, 2000

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 00-9
)	(Enforcement - UST)
BRAKE'S ENTERPRISES, INC. d/b/a)	
BRAKE'S AMOCO,)	
)	
Respondent.)	

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

This matter is before the Board on the complainant's August 16, 2000, motion for summary judgment (motion). Brake's Enterprises, Inc. d/b/a Brake's Amoco (Brake's) is represented by counsel and has been participating through counsel in this proceeding. During a conference call on October 10, 2000, Brake's counsel advised the Board's hearing officer that they would not be responding to the motion for summary judgment.

BACKGROUND

In its complaint, filed on July 21, 1999, complainant alleges that Brake's is an Illinois corporation that owns a gasoline station (facility) in Fisher, Champaign County, Illinois. The complainant further alleges that on March 4, 1998, Brake's contacted the Illinois Emergency Management Agency (IEMA) to report the release of an unknown quantity of gasoline from an underground storage tank located at the facility. Complainant further alleges that since March 4, 1998, Brake's has failed to comply with the reporting and response requirements of 35 Ill. Adm. Code 732.202(a), (b), (c), and (d).

Brake's has not responded to the complaint. Nor has Brake's responded to a request for admission of facts filed by the complainant on March 29, 2000. In that request, complainant sought admission of the following relevant facts:

- a. At all times relevant to the complaint, Brake's has owned a gasoline service station, known as Brake's Amoco, in Fisher, Illinois;
- b. On March 4, 1998, Brake's contacted IEMA to report a release of gasoline from an underground storage tank at the facility;
- c. Since March 4, 1998, Brake's has not performed initial abatement measures pursuant to 35 Ill. Adm. Code 732.202(a);
- d. Since March 4, 1998, Brake's has not performed initial response actions pursuant to 35 Ill. Adm. Code 732.202(b);
- e. Since March 4, 1998, Brake's has not submitted the 20-day report pursuant to 35 Ill. Adm. Code 732.202(c); and
- f. Since March 4, 1998, Brake's has not submitted the 45-day report pursuant to 35 Ill. Adm. Code 732.202(d).

Complainant maintains that pursuant to Section 103.162 of the Board's procedural rules, the absence of a response to the request for admission of facts establishes the violations alleged in the complaint. See 35 Ill. Adm. Code 103.162. Section 103.162(c) provides, in relevant part:

Admission in the Absence of Denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 20 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters
35 Ill. Adm. Code 103.162(c).

Complainant argues that once the facts for which admissions were sought are deemed admitted, there is no genuine issue of material fact remaining and complainant is entitled to judgment as a matter of law as to Brake's liability. In its motion, complainant seeks a finding of violation as well as an order that this matter proceed to hearing and the appropriate penalty to be imposed.

DISCUSSION

Summary judgment is appropriate when the pleadings and depositions, together with any affidavits and other items in the record, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 693 N.E.2d 358 (1998). In ruling on a motion for summary judgment, the Board "must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party." Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370.

Summary judgment "is a drastic means of disposing of litigation," and therefore it should be granted only when the movant's right to the relief, "is clear and free from doubt." Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370, citing Purtill v. Hess, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on its pleadings, but must "present a factual basis which would arguably entitle [it] to a judgment." Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994).

We find that Brake's failure to respond to the complainant's request for admissions and motion for summary judgment has resulted in each of those factual matters being deemed admitted, pursuant to 35 Ill. Adm. Code 103.162(c). We find that these admitted facts are sufficient to demonstrate that Brake's is the owner of the facility and that Brake's did report a gasoline leak from an underground storage tank to IEMA on or about March 4, 1998. Furthermore, we find that since March 4, 1998, Brake's has failed to perform any of the response and remediation tasks required under to Section 732.202(a), (b), (c), and (d).

Accordingly, we find that Brake's has violated 35 Ill. Adm. Code 732.202(a), (b), (c), and (d) as alleged in the complaint. Having found this violation, the Board orders this matter proceed to hearing as expeditiously as possible so that a determination of the appropriate remedy, including penalty, may be determined.

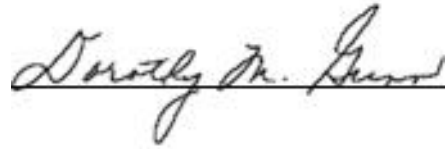
ORDER

1. The Board hereby grants the complainant's motion for summary judgment.
2. The parties are ordered to proceed to hearing on the issue of remedy as expeditiously as possible.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of the date of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 19th day of October 2000 by a vote of 7-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board