

ILLINOIS POLLUTION CONTROL BOARD
December 18, 1986

AMERICANS FOR A CLEAN ENVIRONMENT)
)
 Complainant,)
)
 v.) PCB 86-68
)
MERVIS INDUSTRIES, INC., and)
H&L LANDFILL, INC.,)
)
 Respondents.)

ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board upon the November 26, 1986 motion to dismiss and motion for summary judgement filed by Mervis Industries, Inc. ("Mervis"). Americans for a Clean Environment ("ACE") filed a response on December 1, 1986.

Mervis' rationale in support of its motion to dismiss is that due to ACE's failure to respond in a timely manner to Respondents' First Request to Admit Facts and Genuineness of Documents ("First Request"), ACE has "admitted" that it is not a "person" within the meaning of Section 3(s) of the Environmental Protection Act ("Act") and therefore has no standing to bring this action.

Mervis served its First Request on ACE on September 19, 1986. ACE responded on October 17, 1986, 28 days after being served. As stated by Mervis, under 35 Ill. Adm. Code 103.162(c) when a request to admit facts has been made, those facts are admitted unless the person to whom the request is directed within 20 days either specifically denies each matter of which admission is requested, provides detailed reasons why he cannot truthfully admit or deny, or provides written objections. ACE states that it believed in good faith that the Board's regulations provided for a 28 day response period, as stated in the First Interrogatories.

Section 3(s) of the Act defines "person" as:

any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

Given this broad definition, the Board cannot ascertain how ACE might be characterized as anything other than a "person", its tardy response notwithstanding. ACE falls somewhere within one or more of the classifications delineated in Section 3(s); failure to meet the technical requirements of Section 103.162(c) cannot eliminate the fact that ACE exists in the form of at least one of the specified entities.

Moreover, ACE has asserted a good faith belief that it had 28 days in which to respond to the First Request, and the Board understands the basis for that belief. On the same date that Mervis filed its First Request, it also filed three other documents: Respondents' First Interrogatories, Respondents' First Request for Documents, and Notice and Demand for Bill of Particulars. The first two of these documents alleged that ACE was allowed, pursuant to Board regulations, 28 days in which to respond. ACE responded within the 28 day timeframe, obviously believing, as it states, that it had 28 days in which to respond to all of the documents filed on September 16. The Board has no reason to doubt ACE's intentions.

Furthermore, citizen suits are clearly encouraged by the Act as a method of providing for the restoration, protection, and enhancement of the quality of the environment (see Section 2). To dismiss ACE's complaint due to its minimally late response would in this instance be putting form over substance, and would frustrate the intent of the Act. For these reasons, Mervis' motion to dismiss must be denied.

Mervis' rationale in support of its motion for summary judgement is similar to that which it espouses in regard to its motion to dismiss. That is, that there are no genuine issues of fact as to any of the facts set forth in the First Request because ACE did not respond to that request in a timely manner. Mervis therefore concludes that the facts as stated in the First Request are admitted by operation of law.

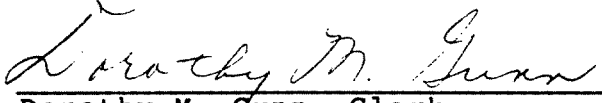
As stated above in regard to Mervis' motion to dismiss, the Board cannot find ACE to have admitted the facts contained in the First Request on the basis of the latter's late filing. Consequently, there remain in this matter many factual issues yet unresolved, but resolvable at hearing to be conducted in the future. The Board must, therefore, deny Mervis' motion for summary judgement.

Mervis' November 26 motions to dismiss and for summary judgement are denied.

The Board note that in reaching these determinations, it is not in anyway prejudging the merit of ACE's or Mervis's respective position.

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 18th day of December, 1986, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board