

ILLINOIS POLLUTION CONTROL BOARD  
March 19, 1987

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

ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon various motions filed on behalf of Mervis Industries, Inc. (Mervis). On January 21, 1987, Mervis moved to vacate the Board's December 18, 1986 Order in this matter denying Mervis' motion to dismiss and motion for summary judgment and also moved for oral argument. Mervis filed a brief in support of that motion on January 30, 1987. Americans for a Clean Environment (ACE) responded to that motion on February 2, 1987. On February 17, 1986 Mervis moved to certify order for appeal and for stay. On March 5, 1987, ACE moved for continuance, and on March 16, 1987, Mervis responded.

Mervis first argues that "the Board, in its efforts to foster citizen complaints, has ignored . . . due process and the . . . law regarding adequacy of pleadings." (Brief at 3-6). Mervis next argues that the Board erred in failing to deem certain facts admitted due to a tardy, incomplete, and unverified response to a request to admit contrary to Board Procedural Rules. (Brief at 6-9). Mervis' final arguments are that the Board improperly denied summary judgement and failed to set forth the basis of its decision. (Brief at 9-13).

The Board's December 18, 1986 Order was issued in response to motion which were premised almost exclusively upon admissions due to the failure of timely response to requests to admit. The Board continues to believe that it has the discretion to allow late filings under circumstances such as exist in this case in that the Environmental Protection Act encourages citizen suits and to place too many technical obstacles in the way of citizens serves to defeat that intent. The Board, therefore, finds no reason to vacate its December 18 Order.

On the other hand, Mervis' instant motion includes several other bases for dismissal which are not without merit. Most

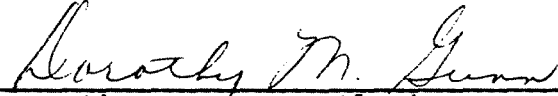
particularly, Mervis continues to assert that ACE's filing in this matter still fail to allege sufficient facts to state a cause of action with sufficient clarity to allow the preparation of an adequate defense. The Board agrees. When the Board first rejected this argument by Order of July 31, 1986, it did so in the hope that the issues could be clarified during the discovery process. That, however, has not been the case. While it may be possible to sift through the various findings to find some combination of statements and allegations to support some violation, nowhere is any coherent set of allegations clearly presented which states a cause of action. It should not be Mervis' obligation to attempt to construct ACE's case for it and then to defend against it. Rather it is ACE's obligation to clearly set forth those allegations which it believes it could prove at hearing which support a violation. That it has failed to do. If anything, ACE's latest filing serves to demonstrate that it has not, as yet, fully developed its case.

The Board, therefore, dismisses this case without prejudice for failure to state a cause of action upon which relief could be granted. ACE is, therefore, allowed to file a new complaint, if it so desires, which clearly sets forth the alleged violations. The remaining motions are denied as moot.

IT IS SO ORDERED.

Board Member Ron Flemal dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 19<sup>th</sup> day of March, 1987 by a vote of 5-1.

  
\_\_\_\_\_  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board