

ILLINOIS POLLUTION CONTROL BOARD  
December 20, 2001

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB 02-5  
) (Enforcement – Land)  
ENVIRONMENTAL MANAGEMENT AND )  
ABATEMENT, INC., a California corporation,) )  
and DANNY G. KOHRDT, individually and as )  
president of Environmental Management and )  
Abatement, Inc. )  
)  
Respondent. )

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

On July 19, 2001, the People of the State of Illinois (complainant) filed a two-count complaint against Environmental Management and Abatement, Inc., and Danny G. Kohrtd, individually and as president of Environmental Management and Abatement, Inc. (respondents). Complainant alleged that respondents violated Section 21(a) and Section 21(d)(2) of the Environmental Protection Act (Act) (415 ILCS 5/21(a) and 5/21(d)(2) (2000)) and several subsections of Part 815 of the Board’s regulations (35 Ill. Adm. Code 815) by causing or allowing open dumping and failing to file required reports and information related to the on site disposal of waste at the Joliet Army Ammunition Plant.

**MOTION TO STRIKE**

This matter is before the Board today on respondents’ November 20, 2001 motion to strike portion 5 of complainants’ *ad damnum* clause (motion to strike). Respondent specifically requests that the Board strike paragraph 5 of the *ad damnum* clause in each count of the complaint. The *ad damnum* clause provides, in pertinent part:

WHEREFORE, complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondents, ENVIRONMNETAL MANAGEMENT & ABATEMENT, INC and DANNY G. KOHRDT:

\* \* \*

5. Ordering the Respondents to pay all costs, including attorney, expert witness and consultant fees expended by the State in pursuit of this action;

Respondents cite Section 42(f) of the Act which provides that costs and fees are only available when a respondent has “committed a willful, knowing or repeated violation of the Act.” 415 ILCS 5/42(f) (2000). Respondents state that the complaint fails to allege that the

respondents have committed any willful, knowing, or repeated violations of the Act. Respondents state that, as a result, complainant cannot prevail on its request for costs and fees.

### **RESPONSE**

On December 4, 2001, complainants filed a response to respondents' motion to strike. Complainant states that it sufficiently pled facts in its complaint supporting the allegations that respondents committed willful, knowing or repeated violations of the Act and Board regulations. For example, complainants alleged that respondents abandoned remediation work, meaning that respondents at least had knowledge that they violated the Act and the Board's regulations. Furthermore, complainants stated that Agency inspectors observed violations during a November 23, 1998 inspection which were not corrected until at least June 13, 2000.

Complainant states that, even if it had not pled such facts, it would not be precluded from recovering fees and costs. Complainant claims that respondents have cited no authority that allegations of willful, knowing or repeated violations are a pleading requirement. Complainant states that the Board makes determinations on whether to assess penalties based on evidence presented at hearing.

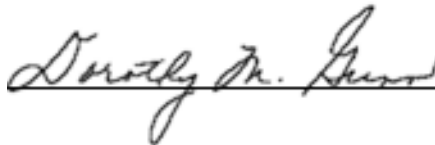
Complainant requests that the Board deny respondents' motion to strike.

### **DISCUSSION AND CONCLUSION**

The Board finds that complainants have alleged facts, which, if proven at hearing, could result in the Board determining that respondents committed willful, knowing, or repeated violations of the Act or the Board's regulations. As a result, the Board denies respondents' motion to strike. The Board directs that this matter proceed to hearing as expeditiously as practicable.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 20, 2001, 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