

ILLINOIS POLLUTION CONTROL BOARD  
July 8, 1998

GORDON KRAUTSACK, an individual,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 95-143
	)	(Enforcement - Land - Citizens)
BHOGILAL PATEL, an individual,	)	
SUBHASH PATEL, an individual, and	)	
ELECTRONIC INTERCONNECT, INC.,	)	
an Illinois Corporation, and ELECTRONIC	)	
INTERCONNECT CORPORATION, an	)	
Illinois Corporation.	)	
	)	
Respondent.	)	

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

This matter is before the Board on both Respondent Electronic Interconnect Corporation's (EIC) June 17, 1998, motion for extension of time to comply with the Board's August 21, 1997, remediation order, and on complainant's response renewing its motion for default of the Board's August 21, 1997, order in which the Board directed Respondent to remediate the site. Also pending before the Board is EIC's reply to complainant's response, complainant's motion to strike EIC's reply and EIC's response to complainant's motion to strike.

For the reasons stated below, the Board denies EIC's motion, strikes its reply and response, grants complainant's default motion and sets the matter for hearing on the remaining penalty issue.

BACKGROUND

Complainant owns the property which respondents used from 1986 through 1994 for manufacturing and storing electronic circuit boards. On August 21, 1997, in an interim opinion and order, the Board granted complainant's partial summary judgment motion, finding there was no genuine issue of material fact that EIC caused or allowed open dumping of waste, improperly disposed of wastes, and disposed of hazardous wastes without the required permits. The Board reserved ruling on the penalty issue pending remediation of the site. The Board ordered EIC to cease and desist from violating the Act and to complete remediation of the site by December 31, 1997. On January 22, 1998, the Board granted EIC's motion for extension of time to and including April 23, 1998 to comply with the remediation order. On April 17, 1998, EIC filed a second motion for extension of time requesting an additional 120 days in

which to comply with the Board's remediation order. On April 21, 1998, complainant filed a motion for default of the Board's January 22, 1998, order. On May 7, 1998, the Board granted EIC an additional 45 days to remediate the site and denied complainant's motion for default. On June 17, 1998, EIC filed a third motion for extension of time asking that it be granted until August 1, 1998, to file a status report with the Board advising the Board of EIC's progress towards remediation (EIC motion). On June 24, 1998, complainant filed a response (response) opposing the motion for extension of time and renewing its April 21, 1998, default motion. On July 2, 1998, EIC submitted a reply to complainant's response. Also on July 2, 1998, complainant filed a motion to strike EIC's reply, or in the alternative, for time to file a surreply. On July 6, 1998, EIC submitted a response to complainant's motion to strike.

### EIC MOTION

EIC asserts that before it can begin remediation work, it must conduct a Phase II soil investigation of the property. EIC motion at 2. On June 16, 1998, six days before the June 22, 1998, remediation deadline, EIC's environmental consulting firm submitted a work plan for a specific Phase II investigation of the property. EIC motion at 3. EIC asserts that when the Phase II fieldwork is done, a final report of the work and a recommendation for required remediation, if any, will be prepared. EIC motion at 3. EIC acknowledges that it cannot offer the Board a date certain for compliance with the Board's remediation order. EIC motion at 3.

On June 24, 1998, complainant filed a response to the EIC motion, contending that in the additional 45 days granted by the Board on May 7, 1998, all EIC accomplished was to draft an investigation plan. Response at 2. Complainant also quoted language from the Board's May 7, 1998, order that "the Board does not look favorably on EIC's failure to meet previous deadlines and will be reluctant to grant EIC further extensions of time absent extenuating circumstances." Response at 1. Complainant renewed its April 21, 1998, motion for default, which the Board denied on May 7, 1998. Response at 2. Complainant indicates that it wants to enforce the desired default order in circuit court. Response at 2-3. Complainant asks that the Board deny the motion for extension of time, find EIC in default regarding the Board's remediation order, order EIC to immediately perform clean-up, direct complainant to enforce the Board's orders in circuit court, and order any other such relief as the Board deems appropriate. Response at 3.

The Board denies EIC's motion for extension of time. Other than noting that a work plan has been prepared by its consultant, Versar, Inc., EIC has provided no information regarding the nature or progress of the remediation. In the absence of information regarding the work plan, field investigation, data analysis, development of remediation alternatives, etc., the Board cannot determine whether EIC is conducting the site remediation in a timely manner or whether there are extenuating circumstances to justify granting additional time. The motion for additional time is accordingly denied

Default Motion

Complainant's renewal of its April 21, 1998, default motion is granted. As of the date of this order, EIC has failed to remediate the site as ordered by the Board.

EIC's Reply , Complainant's Motion to Strike and EIC's Response

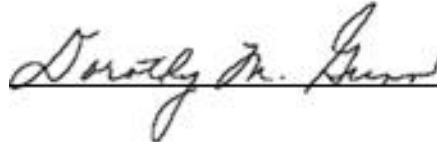
On July 2, 1998, EIC submitted to the Board a reply to complainant's response opposing EIC's motion. Complainant followed with a motion to strike EIC's reply. In its motion to strike the reply, complainant correctly noted that EIC did not have the right to reply, absent permission from the Board or the hearing officer to prevent material prejudice. In its response submitted on July 6, 1998, EIC sought leave to file the July 2, 1998, reply *instanter*. The Board strikes EIC's reply and response.

CONCLUSION

EIC's motion for extension of time is denied. Complainant's motion for default is granted. EIC's reply and response are stricken. The matter shall be sent to hearing to address the issue of penalties.

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 8th day of July 1998 by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board