

ILLINOIS POLLUTION CONTROL BOARD  
May 3, 2001

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB 96-98  
) (Enforcement – Water)  
SKOKIE VALLEY ASPHALT, INC., )  
)  
Respondent. )

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

This matter is before the Board on a motion for summary judgment (motion) filed on April 18, 2001, by the Illinois Attorney General's Office on behalf of the People of the State of Illinois (complainant). Complainant alleges respondent, Skokie Valley Asphalt, Inc., a vehicle storage, dispatching, and material storage facility, violated Sections 12(a) and (f) of the Environmental Protection Act (Act) (415 ILCS 5 *et seq.* (1998)), and 35 Ill. Adm. Code 302.203, 304.105, 304.106, 304.141(a), 305.102(a) and (b), 309.102(a), and 309.104(a) of the Board's water pollution regulations.

Complainant filed the complaint on November 3, 1995, and an amended complaint on December 29, 1997. Respondent filed a response to the motion for summary judgment on April 30, 2001. For the reasons set forth below, the Board denies the complainant's motion and orders the matter set for hearing.

MOTION

In its motion, complainant provides an affidavit from Chris Kallis, an Environmental Protection Specialist with the Illinois Environmental Protection Agency. In the affidavit, Kallis states that as a result of his inspections at respondent's facility and a review of documents provided by respondent, he concludes among other things, that respondent filed false discharge monitoring reports for December 1990 and January 1991, and has not had a National Pollutant Discharge Elimination System permit since March 1, 1991.

Complainant alleges that the pleadings and affidavit show there is no genuine issue of material fact, and is therefore entitled to judgment as a matter of law.

RESPONSE

In its response, respondent asserts that Kallis' conclusions are not supported by the facts. Respondent opposes the motion and requests a hearing.

### Standard for Summary Judgment

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).

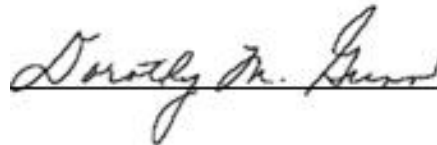
In order to grant complainant’s motion for summary judgment, the Board must find that there is no genuine issue of material fact and that the undisputed facts show that complainant’s right to the relief requested is “clear and free from doubt.” See Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370, citing Purtill, 111 Ill. 2d at 240, 489 N.E.2d at 871.

### CONCLUSION

The Board finds that the facts are disputed. Since complainant’s right to relief is not “clear and free from doubt,” the Board denies complainant’s motion and orders that the matter be set for hearing.

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 3rd day of May 2001 by a vote of 7-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board