

ILLINOIS POLLUTION CONTROL BOARD
July 30, 1992

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
v.) PCB 91-53
) (Enforcement)
)
ENAMELERS AND JAPANERS, INC.,)
)
Respondent.)

ORDER OF THE BOARD (by G. T. Girard):

This proceeding is before the Board on a series of motions filed by the parties. The Complainant has filed three motions which include a May 19, 1992, "Motion for Summary Judgement"; a May 26, 1992, "Motion to Strike Respondent's Answer to First Amended Complaint"; and a July 2, 1992, "Motion for Summary Judgement as to Counts IV and XII" of the amended complaint. In addition the Complainant filed a June 15, 1992, "Reply to Respondent's Answer to Complainants Motion for Summary Judgement" and a July 24, 1992, "Reply to Respondent's Answer to Complainants Motion for Summary Judgement". The respondent filed a June 4, 1992, "Answer to the Complainant's May 19, 1992, Motion for Summary Judgement"; and a July 15, 1992, "Answer to Complainant's July 2, 1992, Motion for Summary Judgement".

The Board will first address the motion for summary judgement filed on May 19, 1992. The complainant based its May 19, 1992, motion for summary judgement on the failure of the respondent to answer the original complaint (filed on March 20, 1991) and on the failure of the respondent to reply to the complainant's request for admission of facts (filed on February 18, 1992). Respondent, in its June 4, 1992, response, maintains that the request for admission of facts was filed prior to the entry of appearance by counsel for the respondent and therefore was not properly served. Respondent also filed its answer to the original complaint on June 4, along with a motion to file instanter which the hearing officer granted. The Board notes that the complainant did file a June 15, 1992, reply to the respondent's response; however, the complainant did not file a motion requesting the right to reply. (See 35 Ill. Adm. Code 101.242(c).) Therefore, the Board will not consider the reply.

Summary judgement is appropriate when there are no genuine issues of fact to be considered by the trier of fact. Although, the complainant has properly cited to the Board's procedural rules, it is clear that the respondent does believe there are issues of fact to be resolved. The Board is reluctant to grant summary judgement based on procedural error on the part of either party, especially when the procedural errors are correctable and

have to some extent been corrected. The Board notes that the procedural errors do not appear to have prejudiced the complainant. Therefore, the Board denies the May 19, 1992, motion for summary judgement.

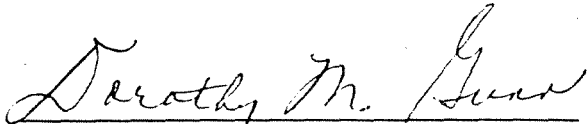
With regard to the motion for summary judgement filed on July 2, 1992, the complainant states that the answer filed by respondent admits the use of "solvent based paints". Such admission, according to complainant, is an admission to the violations alleged in Count IV of the amended complaint. In addition, the complainant alleges that the respondent has admitted each allegation in count XII of the complaint. Respondent filed an answer to the motion on July 15, 1992, and stated that the admission of use of "solvent based paint is based upon an ambiguity in the regulations referred to in complainant's motion". The respondent states that it will present evidence to establish that "water based paint" is a misnomer. The respondent also affirms its admissions regarding count XII. The Board notes that the complainant did file a July 23, 1992, reply to the respondent's response; however, the complainant did not file a motion requesting the right to reply. (See 35 Ill. Adm. Code 101.242(c).) Therefore, the Board will not consider the reply.

The Board finds that with regard to count IV, there is an issue of fact which should be further explored at hearing. Therefore summary judgement on count IV is denied. However, as there is no dispute that the respondent has admitted the violations alleged under count XII, the Board grants summary judgement to count XII.

The Board also notes that the motion to strike filed on May 26, 1992, cites to failure to answer the original complaint as the reason for striking the answer to the amended complaint since the answer to the amended complaint referenced an answer to the original complaint which had not been filed. The answer to the original complaint was filed and accepted by the hearing officer on June 9, 1992. Therefore, the Board will deny the motion to strike.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above order was adopted on the 30th day of July, 1992, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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