

ILLINOIS POLLUTION CONTROL BOARD
April 19, 2001

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 97-20
)	(Enforcement – Water)
BENTRONICS CORPORATION,)	
)	
Respondent.)	

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

This matter is before the Board on a motion for summary judgment (motion) filed on March 5, 2000, by the Illinois Attorney General’s Office on behalf of the People of the State of Illinois (complainant). Complainant alleges respondent, Bentronics Corporation, an electronics manufacturing company, violated Sections 12(a), (d), and (f) of the Environmental Protection Act (Act) (415 ILCS 5 *et seq.* (1998)), and 35 Ill. Adm. Code 307.1101(a), and 307.2301(c)(1) and (2) of the Board’s water pollution regulations.

Complainant filed the complaint on July 19, 1996. On May 14, 1999, complainant served upon respondent a request for admission of facts. Respondent did not file a response to this request for admission of facts, nor did respondent file a response to the complaint or to the motion for summary judgment. For the reasons set forth below, the Board grants complainant’s motion and orders the matter set for hearing to determine penalties.

MOTION

In its motion, complainant relies on 35 Ill. Adm. Code 101.618(f) of the Board’s procedural rules, which state in pertinent part:

Admission in the Absence of Denial. Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters 35 Ill. Adm. Code 101.618(f).

Complainant notes that because respondent failed to answer the request for admission of facts, all of the matters of fact for which admission was requested are deemed admitted. Mot. at 2.

As respondent has failed to file a response to complainant's request to admit facts, the Board will deem the facts asserted therein to be admitted in accordance with Section 101.618(f) of the procedural rules. See People v. Babson Brothers Company (April 20, 2000), PCB 00-102.

Allegations

Complainant alleges respondent violated Section 12(a) of the Act which provides that:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act. 415 ILCS 5/12(a) (1998).

Complainant asserts that respondent violated Section 12(a) of the Act because it caused or allowed the discharge of contaminants into the creek adjacent to respondent's facility so as to cause water pollution in Illinois. Mot. at 4. Complainant also argues that respondent violated Section 12(d) of the Act, which prohibits a person from depositing contaminants upon land in such a place and manner so as to create a water pollution hazard. Mot. at 5. To support its argument, complainant alleges respondent caused or allowed the depositing of liquid wastes which contained high concentrations of copper upon the ground in both the parking lot behind its facility and at the bank of the adjacent creek. Mot. at 5-6.

Complainant also argues that respondent violated Section 12(f) of the Act which states:

No person shall:

- f. Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or any order adopted by the Board with respect to the NPDES program. 415 ILCS 5/12(f) (1998).

Complainant argues that the Village of Bensenville's inspectors discovered on March 24, 1993, that respondent was dumping waste into the Village's publicly owned treatment works (POTW), either by dumping buckets of waste or by pumping out drums directly into the slop

sink (the slop sink was hooked directly into the Village's sanitary sewer). Mot. at 8. Complainants allege the dumping violated Section 12(f). Mot. at 8.

Additionally, complainant alleges that respondent violated Section 307.1101(a)(1) of the Board's water pollution regulations which prohibit persons from introducing from pollutants which pass through a POTW. Mot. at 9. Complainant notes that the Village inspectors obtained a grab sample out of the main sewer line downstream from respondent's facility. Mot. at 8. The analysis of the sample revealed elevated levels of both copper and lead. Mot. at 8. Complainants allege copper is a contaminant that can pass through a POTW. Mot. at 9. Moreover, Title 40 of the Code of Federal Regulations Section 413.14(b), incorporated by reference at 35 Ill. Adm. Code 307.2301(c)(1), places a .6 mg/L limit on lead for facilities discharging less than 38,000 liters per day. Mot. at 9-10. The lead in the sample tested 6.56 mg/L. Mot. at 10. Therefore, complainant alleges respondent also violated 35 Ill. Adm. Code 307.2301(c)(1) and (2). Mot. at 10. Because of all the regulation violations, respondent violated Section 12(f) of the Act. Mot. at 11.

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.

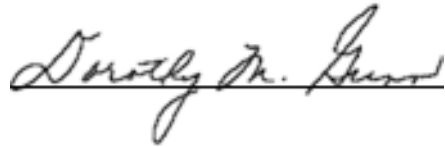
CONCLUSION

The Board finds that there are no genuine issues of material fact because respondent admitted all the facts by failing to respond to complainant's request for admission of facts. The Board finds that absent any genuine issues of material fact, complainant is entitled to

judgment as a matter of law. The Board grants complainant's motion and orders that the matter be set for hearing on 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 19th day of April 2001 by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board