

ILLINOIS POLLUTION CONTROL BOARD
October 5, 2006

THE THEODORE KOSLOFF TRUST (AS)
FORMED BY THE IRREVOCABLE)
AGREEMENT OF TRUST OF THEODORE)
KOSLOFF, DATED DECEMBER 6, 1989,)
FOR RACHEL KOSLOFF AND ABIGAIL)
KOSLOFF, A PENNSYLVANIA TRUST),)
)
Complainant,)
)
v.) PCB 06-163
) (Citizens Enforcement - Land)
A&B WIREFORM CORPORATION,)
)
Respondent.)

ORDER OF THE BOARD (by T.E. Johnson):

This order denies complainant's August 10, 2006 motion for default judgment, finding that complainant has yet to prove its *prima facie* case as required under Section 101.608 of the Board's procedural rule concerning "default." See 35 Ill. Adm. Code 101.608.

On May 3, 2006, complainant, the Theodore Kosloff Trust (as formed by the irrevocable agreement of trust of Theodore Kosloff, dated December 6, 1989, for Rachel Kosloff and Abigail Kosloff, a Pennsylvania trust) (Trust) filed a complaint against respondent, A&B Wireform Corporation (A&B). According to the complaint, the Trust is the former owner of property located at 7609 Industrial Drive in Forest Park, Cook County. The former Trust property is adjacent to property owned by A&B, which has the address of 7525 Industrial Drive in Forest Park, Cook County.

The Trust alleges that A&B violated Sections 21(d) and (e) of the Environmental Protection Act (Act) (415 ILCS 5/21(d) and (e) (2004)) through releases of hazardous substances from 55-gallon drums and containers of unknown substances. Complaint at 1. As relief, the Trust seeks reimbursement from A&B of costs the Trust claims to have incurred to investigate and remediate contamination that allegedly migrated from the A&B site. The Trust also requests that the Board order A&B to cease and desist its nearby chemical and waste storage practices and to investigate and, if required, remediate contamination. *Id.* at 2. In the Board's June 1, 2006 order accepting the complaint for hearing, the Board struck the Trust's request to recover for diminished property value allegedly due to contamination. The Board noted there that it lacks the authority to award damages for diminution in property value.

In its August 10, 2006 motion for default judgment, the Trust recites that no attorney appearance has been filed on behalf of A&B, that A&B has not filed an answer to the complaint, and that A&B has not participated in the status conferences held by the hearing officer on

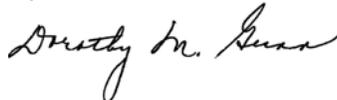
June 29, July 20, and August 10, 2006. The Trust therefore requests that the Board: (1) find “all allegations in the Formal Complaint . . . admitted”; (2) direct A&B to pay “all costs [the Trust] incurred to investigate and remediate the contamination”; and (3) order A&B “to cease and desist its chemical and state waste storage practices in the northwest corner of its parking lot and conduct a subsurface investigation and any required remediation in the vicinity of the drum storage area.” Motion at 1-2. The Trust cites no case precedent or Board rule in support of its motion.

The Trust’s motion for default judgment is denied. The Board’s procedural rule on default provides that, even “if a respondent fails to appear at hearing, complainant . . . must prove its *prima facie* case in order to prevail on the merits.” 35 Ill. Adm. Code 101.608. Proof of a *prima facie* case must be argued in the context of a motion for summary judgment, or presented at hearing. Moreover, in addition to proving that a violation of the Act occurred, the Trust must demonstrate that the specific relief requested is justified, consistent with Section 33(c) (415 ILCS 5/33(c) (2004)) and other provisions of the Act. This is particularly true where, as here, the requested relief includes payment of an unspecified amount in remediation costs.¹

In denying the motion for default judgment today, the Board does not preclude the Trust from proving its *prima facie* case through appropriate proceedings in this action, including the filing of a motion for complete or partial summary judgment or going to hearing. The Trust is reminded that any motions should be supported by citation to statute, rule, and case precedent, and that any request for specific relief must be supported by evidence and argument.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 5, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

¹ The Board notes that even if an alleged violation is proven, there may be limits on any remediation the Board might order. *See, e.g., Matteson WHP Partnership v. Martin*, PCB 97-121 (June 22, 2000) (ordered cleanup conditional on property access), *rev'd in part on other grounds sub nom. Martin v. PCB*, No. 1-00-2513 (1st Dist. June 29, 2001)(unpublished order under Illinois Supreme Court Rule 23); *see also* Section 58.9(d) of the Act (415 ILCS 5/58/9(d) (2004)) and 35 Ill. Adm. Code 741 (proportionate share liability).