

ILLINOIS POLLUTION CONTROL BOARD
April 16, 1987

KENNETH MCNEIL AND)
LIBBY MCNEIL,)
)
Complainants,)
)
v.) PCB 86-44
)
CONTINENTAL GRAIN COMPANY,)
)
Respondent.)

ORDER OF THE BOARD: (by J.D. Dumelle):

This matter comes before the Board on a March 24, 1987 Motion for Reconsideration filed by Respondent Continental Grain Company (Continental) in response to the Board's March 19, 1987 Order denying Continental's Motion to Dismiss. Continental alleges that because the Complainants, Kenneth McNeil and Libby McNeil (McNeils), had personal notice that they were required to respond to discovery and because the McNeils failed thereafter to comply, the Motion to Dismiss should have been granted.

On April 3, 1987, the McNeils filed with the Board their Response to Motion for Reconsideration. The McNeils alleged that their new attorneys were unaware until March 23, 1987, that a response to discovery was required, that materials in response to discovery had been prepared, and that such materials would be available for production on or before April 10, 1987. On April 10, 1987, the McNeil's filed with the Board their response to discovery.

On April 9, 1987, Continental filed with the Board a Motion for Leave to File Reply to Response to Motion for Reconsideration Instanter.

The Motion for Leave to File Reply Instanter is hereby granted. Continental argues in its Reply that the significant issue is not whether the McNeils counsel had notice of discovery requirements but whether the McNeils had personal notice that compliance with discovery was required.


For the record, the Board notes that the discovery process has been plagued with delay. Continental began discovery in May of 1986 and, finally, on April 10, 1987, the McNeils responded. In the interim, Continental served several requests for production on the McNeils' former counsel, and the Board granted Continental's Motion to Compel on December 5, 1986. In response to Continental's January 23, 1987 Motion to Dismiss, the Board, on February 19, 1987 ordered the McNeils to show cause as to why

the matter should not be dismissed. The Board specifically directed that this Order be personally served on the McNeils. The McNeils responded, by letter dated March 10, 1987 and filed March 13, 1987, that they had written to the Board in December of 1986, advising that their former counsel had been replaced, that any further correspondence should be directed to them, and that the only correspondence they had received was the Board's recent order, presumably the Order dated February 19, 1987. The Board, however, has no record of any letter sent by the McNeils in or around December of 1986. Further, the Board notes that the Hearing Officer, on September 23, 1986, sent a letter to the McNeils enclosing a copy of the September 19, 1986 Hearing Officer Order requesting response to the Interrogatories filed by Continental. Thus, it would appear that the McNeils did have notice that a response was required.

Notwithstanding the incidences aforementioned, the McNeils have demonstrated their desire to adjudicate the allegations contained in their complaint by retaining other counsel and by responding to discovery. As responses to discovery have been filed, the Board finds that it is in the best interests of justice and administrative convenience to move forward. The Motion for Reconsideration is therefore denied.

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 16th, day of April, 1987, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illionois Pollution Control Board