

ILLINOIS POLLUTION CONTROL BOARD

August 9, 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. Flegal):

This matter is before the Board on a motion to reconsider (motion) filed on June 6, 2001, by the Illinois Attorney General's Office on behalf of the People of the State of Illinois (complainant). Complainant also filed a petition for oral argument (petition) on July 25, 2001. Complainant requests that the Board reconsider its May 3, 2001 order denying complainant's motion for summary judgment. On June 28, 2001, respondent filed a motion for leave to file *instanter* a response to the motion and a response. On July 25, 2001, complainant filed a reply to the response. The Board grants respondent's motion for leave to file a response *instanter*. Complainant's motion to reconsider is granted, and the petition for oral argument is denied.

In ruling on a motion for reconsideration the Board will consider factors including new evidence, or a change in the law, to conclude that the Board's decision was in error. 35 Ill. Adm. Code 101.902. In Citizens Against Regional Landfill v. County of Board of Whiteside (March 11, 1993), PCB 93-156, we observed that "the intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law." Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992).

Complainant asserts that in its motion for summary judgment, complainant provided an affidavit from Chris Kallis, an inspector with the Illinois Environmental Protection Agency. Mot. at 3. In the affidavit, Kallis stated that as a result of his inspections at respondent's facility and a review of documents provided by respondent, he concluded 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 notes that in respondent's response to the motion for summary judgment, respondent did not contradict Kallis' assertions with a counter-affidavit, and therefore Kallis' assertions must be taken as admitted. Mot. at 3, citing Getman v. Indiana Harbor Belt R.R., 172 Ill. App. 3d 297, 526 N.E. 2d 557 (1st Dist. 1988); Patrick Media Group, Inc. v. City of Chicago, 255 Ill. App. 3d 1, 626 N.E. 2d 1066 (1st Dist. 1993). Complainant further argues that the well-pleaded facts in its motion for summary judgment, taken as admitted, make summary judgment appropriate. Mot. at 6.

In respondent's response to petitioner's motion, respondent argues that because of the travel schedule of its affiant, James Huff, respondent could not get a signed affidavit in a timely manner. *Instantly* Mot. at 1. Now attaching an affidavit from Huff, respondent alleges that genuine issues of material facts exist in this matter. Response at 1.

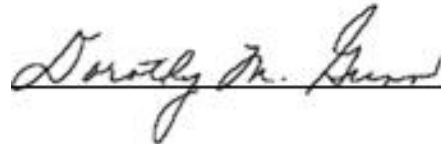
In complainant's reply to the response, complainant argues that respondent waived the right to dispute the facts in Kallis' affidavit, when respondent failed to file a counter-affidavit in its response. Reply at 2, 3.

The Board finds that respondent's response to the motion for summary judgment lacked an affidavit to prevent the facts of complainant's affidavit from being admitted. The Board therefore grants complainant's motion for reconsideration. However, the Board continues to find that genuine issues of material fact exist. Therefore, the Board orders that the matter be set for hearing.

The petition for oral argument is denied as moot.

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 9th day of August 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