

ILLINOIS POLLUTION CONTROL BOARD  
November 2, 2000

STEPHEN G. BRILL,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 00-219
	)	(Enforcement - Noise, Citizens)
HENRY LATORIA, individually and	)	
d/b/a TL TRUCKING FOODLINER,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by S.T. Lawton, Jr.):

On June 12, 2000, Stephen G. Brill filed a complaint concerning respondent Henry Latoria's facility in Franklin Park, Cook County, Illinois. The complaint alleges that the respondent violated the Illinois Environmental Protection Act (Act) and several Board regulations regarding air and noise pollution. Respondent filed a motion for summary judgment with the Board on September 21, 2000. Complainant, Stephen Brill, filed an answer to respondent's motion with the Board on October 4, 2000. The Board denies respondent's motion for the reasons set forth below.

Before discussing respondent's motion for summary judgment, the Board would like to address two other matters recently brought to its attention. Patricia M. Reisin of the Kintzinger Law Firm filed an appearance on behalf of respondent with the Board on September 8, 2000. According to the address given on the appearance, the firm is located in Dubuque, Iowa. Counsel for the respondent has neither stated that she is an attorney licensed to practice in the State of Illinois, nor filed a request to appear *pro hac vice* before the Board in this matter. Counsel for respondent must address this issue before filing any further pleadings with the Board.

Respondent also filed a pleading titled "Resistance to Motion" with the Board on October 13, 2000. The motion, which has no foundation in Illinois law, alleges that the complainant, Stephen Brill, "has not at any time indicated his address on any of the pleadings that he has sent...." See "Resistance to Motion" (October 13, 2000). The complaint, which was served upon respondent via registered mail, clearly contains complainant's complete address and telephone number. Moreover, complainant sent a cover letter to respondent, Henry Latoria, on June 1, 2000. This letter also includes complainant's address twice on the same page. Since Brill provided respondent with his address twice on the front page of the complaint in this matter, as well as twice on a cover letter that was sent via certified mail to the respondent, respondent's pleading titled "Resistance of Motion" is denied.

## RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Respondent alleges the Board should grant its motion for summary judgment because the hearing officer and complainant did not respond to respondent's telephone calls between August 29, 2000, and September 19, 2000. Respondent states such action amounts to lack of prosecution under 735 ILCS 5/2-1005 (1998), and justifies granting summary judgment against complainant. For the reasons expressed below, the Board denies respondent's motion for summary judgment because it does not establish that there is no genuine issue of material fact in this matter and that the party is entitled to judgment as a matter of law.

### Standard for Summary Judgment

The Illinois Supreme Court sets forth standards for consideration of motions for summary judgment in Jackson Jordan, Inc. v. Leydig, Voit & Mayer, 158 Ill. 2d 240, 249, 633 N.E.2d 627, 630 (1994)(citations omitted):

A motion for summary judgment is to be granted if "the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." [735 ILCS 5/2-1005(c) (1998).] The pleadings, depositions, admissions, and affidavits on file must be construed against the movant and in favor of the opponent of the motion, although the opponent cannot rely simply on his complaint or answer to raise an issue of fact when the movant has supplied facts which, if not contradicted, entitle him to judgment as a matter of law. Summary judgment is a drastic means of disposing of litigation, so the right of the moving party to obtain summary judgment must be clear and free of doubt. Where doubt exists as to the right of summary judgment, the wiser judicial policy is to permit resolution of the dispute by a trial.

### Analysis

Respondent did not meet its initial burden of proof for summary judgment because it did not "suppl[y] facts, which, if not contradicted, entitle him to judgment as a matter of law." Jackson Jordan, Inc., 158 Ill. 2d at 249, 633 N.E.2d at 630. Respondent did not allege any facts in its motion regarding the violations found in the complaint concerning air and noise pollution under the Act and Board regulations.

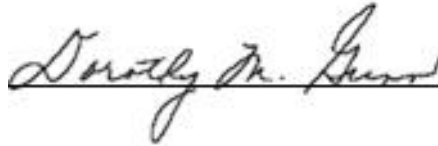
The record indicates that the complainant appeared at a telephone status conference scheduled on August 31, 2000, by hearing officer order dated August 16, 2000. Complainant stated that he could not contact respondent by telephone, and the hearing officer set a new status date of October 3, 2000. (Hearing officer order of September 25, 2000.) Respondent's attorney entered an appearance on September 8, 2000. Respondent asks the Board to summarily dismiss the complaint.

Complainant has been diligent in pursuing his case, and the entry of appearance by counsel for the respondent has indicated her intent to do so as well. Any incomplete or missed communication between the parties or hearing officer gives the Board no grounds for entry of an order of summary judgment or dismissal in this case.

The parties are directed to participate in the telephonic status conference on November 16, 2000, as ordered by the hearing officer order of October 17, 2000.

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 2nd of November 2000 by a vote of 7-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board