

ILLINOIS POLLUTION CONTROL BOARD
October 5, 1995

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 95-163
) (Enforcement-Air, Water & RCRA)
 CLARK REFINING & MARKETING, INC.)
)
 Respondent.)

ORDER OF THE BOARD (by E. Dunham):

This matter comes before the Board on a "Motion to Reconsider and Vacate" filed on September 13, 1995 by complainant. Complainant requests that the Board reconsider and vacate its September 7, 1995 order granting in part Clark Refining & Marketing, Inc.'s (Clark's) motion to strike and dismiss portions of the complaint. Complainant requests that the Board deny respondent's motion as untimely or in the alternative to allow complainant 14 days from the entry of this order to respond to the motion to strike. Clark filed its response to the motion to reconsider and vacate on September 19, 1995.

Complainant maintains that it did not receive a copy of Clark's motion to strike or dismiss prior to the entry of the Board's order. Without a copy of the motion the complainant cannot specify all the objections it would have made in response to the motion. However, the complainant contends that Clark's motion to strike or dismiss was not filed within 14 days of the filing of the complaint as required by 35 Ill. Adm. Code 103.140(a). Complainant argues that since the motion was untimely it must be denied. Complainant states that it would likely prevail on aspects of Clark's motion if given an opportunity to respond to the motion. In addition, complainant notes that it could rectify the alleged 31(d) notice deficiencies by sending out additional notices and then amending the complaint but believes that this would be an inappropriate expenditure of complainant's and respondent's resources.

Clark states that an attorney's certificate of service was attached to its motion to strike showing service by first class mail on the complainant. Clark further maintains that the complainant should have been aware of the pending motion when it appeared on the Board's agendas for the August 24 and September 7, 1995 Board meetings. Clark contends that the filing of its motion to strike was not untimely but was properly filed in accordance with 35 Ill. Adm. Code 101.243. Clark disputes complainant's claim that correction of the alleged deficiencies through the filing of new notices would be a waste of resources. In fact, Clark maintains that proper notice and the opportunity to meet with the Agency could possibly avert future litigation.

Clark further maintains that complainant's request for an additional 14 days from the date of this order to respond to the motion to strike is inconsistent with the Board's procedural rules and would result in unreasonable delay of the proceedings.

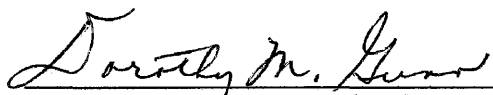
The Board denies complainant's motion to vacate its order of September 7, 1995 order since Clark's motion was timely filed. However, the Board will allow the complainant additional time to respond to Clark's motion to dismiss or strike based on complainant's assertion that it did not receive a copy of the motion and was therefore unable to respond to the motion. While Clark contends that complainant could have learned of the pending motion through the Board's agenda, such notice cannot replace receipt of the motion. Complainant would be unable to respond to Clark's motion to strike and dismiss if it did not receive the motion.

The Board finds complainant's request for an additional 14 days from the date of this order to respond unreasonable. The Board's procedural rules allow only 7 days for the filing of response to a motion. (35 Ill. Adm. Code 103.140.) Upon receipt of the Board's order, complainant could have received a copy of the motion either from the Board or the respondent the same day via fax or within a few days through the postal system. In addition, the Board agrees with respondent that the issues were clearly presented in the Board's order and are not complex issues.

The Board will allow complainant until October 12, 1995 to file its response to Clark's motion to strike and dismiss. After reviewing complainant's response, the Board will determine if it is necessary to modify its September 7, 1995 order.

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 5th day of October, 1995, by a vote of 7-6.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board