

ILLINOIS POLLUTION CONTROL BOARD
October 16, 1997

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
)	
Complainant,)	PCB 97-64
)	(Enforcement - EPCRA)
v.)	
)	
UNIQUE MARBLE PRODUCTS, INC.,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on a September 16, 1997 motion for reconsideration of a final Board order, dated August 7, 1997, filed on behalf of complainant, the Attorney General's Office on behalf of the People of the State of Illinois. On September 25, 1997, respondent, Unique Marble Products, Inc. (Unique Marble), filed a motion to strike the Attorney General's motion for reconsideration or, in the alternative, additional time to file its response to the Attorney General's motion. On September 26, 1997, the Attorney General filed its response to Unique Marble's motion to strike. For the foregoing reasons, the Board denies Unique Marble's motion to strike the Attorney General's motion for reconsideration. The Board grants Unique Marble an additional 14 days to response to the Attorney General's motion for reconsideration. Accordingly, the Board will postpone consideration of the Attorney General's motion for reconsideration.

On September 25, 1997, Unique Marble filed a motion to strike (Mot. to Str.) the Attorney General's motion for reconsideration, arguing that by mailing the motion on September 12, 1997, the Attorney General exceeded the 35-day period within which the Board has jurisdiction to review a motion for reconsideration. Mot. to Str. at 1, citing 35 Ill. Adm. Code 101.300, 101.246(a).

On September 26, 1997, the Attorney General filed a response (Resp.) to Unique Marble's motion to strike. In its response, the Attorney General asserts that pursuant to 35 Ill. Adm. Code 101.246 and 101.300, it may file a motion for reconsideration within 35 days of August 7, 1997. Resp. at 2. The Attorney General also asserts that pursuant to 35 Ill. Adm. Code 101.109, the 35th day from the adoption of the August 7, 1997 Board order was September 12, 1997. By mailing its motion for reconsideration on September 12, 1997, the Attorney General maintains that it complied with 35 Ill. Adm. Code 101.102, regarding timely filing of its motion. Resp. at 2.

REGULATORY AUTHORITY

Section 101.102(d), regarding filing of documents, provides in pertinent part:

- d) If received after any due date, the time of mailing shall be deemed the time of filing.

Section 101.109, regarding computation of time, provides that:

Computation of any period of time prescribed by this Chapter or the Act shall begin with the first calendar day following the day on which the act, event, or development occurs and shall run until the end of the last day, or the next business day if the last day is a Saturday, Sunday, or a national or state holiday.

Section 101.246(a), regarding motions for reconsideration, provides that:

- a) Any motion for reconsideration or modification of a final Board order shall be filed within 35 days of the adoption of the order. 35 Ill. Adm. Code 101.246(a).

DISCUSSION

The Board denies Unique Marble's motion to strike. The Board finds that the Attorney General has timely filed its motion for reconsideration in accordance with 35 Ill. Adm. Code 101.246(a) and 101.300. The Board entered its order dismissing this matter on August 7, 1997. Consistent with recent amendments to the Illinois Environmental Protection Act, the 35-day period, for purposes of computing the timeliness of the Attorney General's motion for reconsideration, did not commence until the Attorney General received the Board order. See 415 ILCS 5/41(a) (1996)¹ and proposed 35 Ill. Adm. Code 101.520 in Revisions of the Board's Procedural Rules: 35 Ill. Adm. Code 101-130 (October 3, 1996), R97-8².

The Board adopted the order on August 7, 1997. Based on usual Board practice in serving its final orders on the Attorney General, the August 7, 1997 order would not have been received until, at the earliest, August 8, 1997. Consequently, in accordance with 35 Ill.

¹ Section 41 of the Illinois Environmental Protection Act provides, in pertinent part, that any person may obtain judicial review "by filing a petition for review within 35 days from the date that a copy of the order or other final action sought to be reviewed was served upon the party affected." 415 ILCS 5/41 (1996).

² Proposed Section 101.520 of the Board's procedural rules provides that "any motion for reconsideration or modification of a final Board opinion and order must be filed within 35 days of the receipt of the opinion and order." Revision of the Board's Procedural Rules: 35 Ill. Adm. Code 101-130 (October 3, 1996), R97-8.

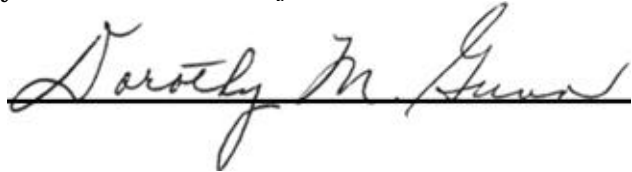
Adm. Code 101.109, the 35-day period could not have commenced until August 9, 1997. The earliest date that the 35-day period for filing a motion for reconsideration could have closed was September 12, 1997. As the Attorney General mailed its motion for reconsideration on September 12, 1997, it timely filed the motion as set forth in 35 Ill. Adm. Code 101.102(d).

In light of this finding, the Board grants Unique Marble's motion for an additional 14 days in which to respond to the Attorney General's motion for reconsideration. Accordingly, Unique Marble's response to the Attorney General's motion for reconsideration is due on or before October 30, 1997.

IT IS SO ORDERED.

Chairman C.A. Manning dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 16th day of October 1997, by a vote of 6-1.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board