

violations. Economy did not respond to the People's motion to deem facts admitted, but did file a motion for leave to file an answer, attaching an answer, on June 3, 2003.

THE BOARD'S PROCEDURAL RULES

Section 103.204(d) of the Board's procedural rules for enforcement actions provides in part:

Except as provided in subsection (e) of this Section, the respondent may file an answer within 60 days after receipt of the complaint if respondent wants to deny any allegations in the complaint. All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer, unless respondent asserts a lack of knowledge sufficient to form a belief. 35 Ill. Adm. Code 103.204(d).

Subsection (e) of Section 103.204 states that the 60-day period to file an answer will be stayed if a respondent timely files a motion attacking the sufficiency of the complaint under Section 101.506 of the Board rules. 35 Ill. Adm. Code 103.202(e); *see also* 35 Ill. Adm. Code 101.506

Section 103.204(f) provides:

Any party serving a complaint upon another party must include the following language in the notice: "Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney." 35 Ill. Adm. Code 103.204(f).

MOTION TO DEEM FACTS ADMITTED

The People contend that the Board must deem factual allegations in the second amended complaint admitted for two reasons: (1) Economy did not file an answer to the second amended complaint until well after the 60-day deadline; and (2) Economy has not filed a motion staying the 60-day period. Mot. at 4. The People ask the Board to find that Economy has admitted all material allegations asserted in the second amended complaint.

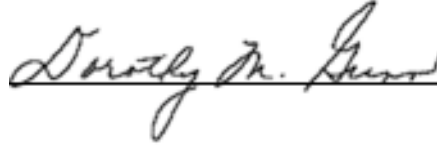
In its June 3, 2003 motion for leave to file an answer, Economy admits that it did receive the People's second amended complaint filed November 14, 2002. Economy claims that it prepared an answer to the complaint but failed to file it. Economy argues the Board should accept the answer because no prejudice will occur to the People.

Both the second amended complaint and the Board's order accepting it for hearing explained the consequences of failing to answer the complaint. 35 Ill. Adm. Code 103.204(f).

Economy received the second amended complaint but never filed a motion challenging the complaint, which may have stayed the 60-day period for filing an answer. Economy is more than five months late in filing an answer. The Board therefore grants the People's motion to deem facts admitted. Accordingly, the Board deems admitted the material allegations alleged in the second amended complaint and directs the parties to hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 19, 2003, 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