

RECEIVED
CLERK'S OFFICE

STATE OF ILLINOIS
Pollution Control Board

(Enforcement - Air)

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

PEOPLE OF THE STATE OF ILLINOIS)

AUG 28 2003

Complainant,)

STATE OF ILLINOIS

vs-)

PCB No. 01-~~7~~ Pollution Control Board
(Enforcement - Air)

QC FINISHERS, INC., an Illinois
corporation,)

Respondent.)

COMPLAINANT'S RESPONSE TO
RESPONDENT'S MOTION FOR RECONSIDERATION OF THE
BOARD'S ORDER OF JUNE 19, 2003

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA
MADIGAN, Attorney General of the State of Illinois, pursuant to
Sections 101.202 and 101.520 of the Board's Procedural
Regulations, 35 Ill. Adm. Code 101.202 and 101.520, responds to
Respondent's Motion For Reconsideration Of The Board's Order Of
June 19, 2003, as follows:

INTRODUCTION

1. The Board's June 19, 2003, Order ("June Order")
addressed Complainant's Motion to Dismiss Respondent's
Affirmative Defenses.

2. The June Order did not terminate the proceedings in this
case, but rather allowed the proceedings to continue with
discovery and litigation.

THE BOARD'S JUNE 19, 2003, ORDER IS NOT A FINAL ORDER
AND THEREFORE IS NOT RIPE FOR RECONSIDERATION

3. Section 101.202 Definitions for Board's Procedural

Rules, 35 Ill. Adm. Code 101.202, defines "Final Order" as follows:

"Final Order" means an order of the Board that terminates the proceeding leaving nothing further to litigate or decide and that is appealable to an appellate court pursuant to Section 41 of the Act.

4. The June Order is not a final order.

5. The June Order allowed several of Respondent's Affirmative Defenses to stand and granted Complainant's Motion to strike several other affirmative defenses. There were ten specific and four general affirmative defenses filed.

6. The June Order addresses the motion brought up by the parties during litigation of this case related to the ongoing litigation. The motion did not seek to end ". . . the proceeding leaving nothing further to litigate . . ." and the June Order was not meant to, and does not, end the proceedings.

7. Section 101.520(a) of the Board's Procedural Rules and Regulations, 35 Ill. Adm. Code 101.520(a), states as follows:

- a) Any motion for reconsideration or modification of a **final** Board order must be filed within 35 days after the receipt of the order. (emphasis added)

8. Since the June Order is not a final order, it is not ripe for reconsideration.

WHEREFORE, Complainant requests, pursuant to the June 19, 2003, Order of the Board, and sections 101.202 and 101.520 of the Board's Procedural Regulations, 35 Ill. Adm. Code 101.202 and 101.520, that the Board strike Respondent's Motion for

Reconsideration of the Board's Order of June 19, 2003.

COMPLAINANT ADOPTS AND INCORPORATES EARLIER ARGUMENTS

9. Should the June 19, 2003, Order of the Board be construed as a final order, or if the Complainant misinterpreted the Board's Procedural Regulations, then Complainant objects to and contests Respondent's Motion for Reconsideration.

10. Complainant adopts and incorporates the following pleadings, motions and responses previously filed with the Board: Complainant's Complaint and Complainant's Motion to Dismiss Respondent's Affirmative Defenses.

11. Section 101.902 under Subpart I: Review of Final Board Opinions and Orders, 35 Ill. Adm. Code 101.902, states as follows:

Motions for Reconsideration

In ruling upon 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.

12. Respondent, in the Motion for Reconsideration, does not provide any new evidence, or assert a change in the law.

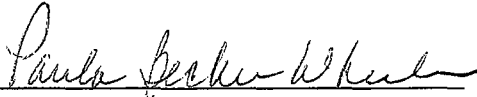
13. Therefore, Respondent's Motion for Reconsideration should be denied.

CONCLUSION

14. The Board's Order of June 19, 2003, is not a final order, and therefore, not ripe for a Motion for Reconsideration; Respondent's Motion for Reconsideration should be stricken.

15. If the June Order can be the subject of a Motion for Reconsideration, it should be denied because Respondents do not present any new evidence or assert a change in the law.

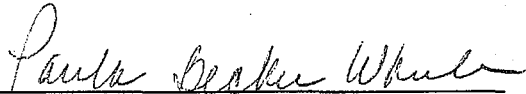
PEOPLE OF THE STATE OF ILLINOIS,
By LISA MADIGAN,
Attorney General of the
State of Illinois,

By: 
PAULA BECKER WHEELER
Assistant Attorney General
Environmental Bureau
188 W. Randolph St. - 20th Fl.
Chicago, IL 60601
(312) 814-1511

H:\common\Environmental\BECKER WHEELER\QCFin\PCB\RespMoRecons.wpd

CERTIFICATE OF SERVICE

I, Paula Becker Wheeler, an Assistant Attorney General in this case, do certify that on this 28th day of August 2003, I caused to be served the foregoing Notice of Filing and Complainant's Response to Respondent's Motion for Reconsideration of the Board's June 19, 2003 Order, to those named within by personal service to Mr. Halloran and by U.S. Mail to Ms. Hanson by depositing same in the U.S. Mail depository located at 188 West Randolph Street, Chicago, Illinois, in an envelope with sufficient postage prepaid



PAULA BECKER WHEELER