

ILLINOIS POLLUTION CONTROL BOARD
November 6, 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 Office of the Attorney General (Attorney General) on behalf of the People of the State of Illinois and the Environmental Protection Agency (Agency). 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, for 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. On October 16, 1997, the Board denied Unique Marble's motion to strike the Attorney General's motion for reconsideration and granted Unique Marble an additional 14 days to respond to that latter motion. On November 3, 1997, Unique Marble filed its response. For the foregoing reasons, the Board denies the Attorney General's motion for reconsideration.

The Attorney General seeks reconsideration of the Board's order of August 7, 1997, which dismissed this matter based on the Agency's failure to properly serve Unique Marble because the certified mail return receipt was not signed by the president, clerk, or other authorized agent of Unique Marble. People of the State of Illinois v. Unique Marble Products, Inc. (August 7, 1997), PCB 97-64, slip op. at 5. The Board further found that Section 25b-6 of the Environmental Protection Act (Act) (415 ILCS 5/25b-6 (1996)) requires a party such as the Agency to serve notice upon the person complained against, and in the case of service by certified mail to a corporation, the certified mail receipt must be signed by the president, clerk, or other authorized agent of the corporation. Unique Marble (August 7, 1997), PCB 97-64, slip op. at 5.

In support of its motion for reconsideration (Mot.), the Attorney General argues that the Agency's notice to Unique Marble complied with Section 25b-6 of the Act (415 ILCS 5/25b-6 (1996)). Mot. at 4. The Attorney General argues that the Board's August 7, 1997, order "narrows the statutory definition of 'person' to include only a subset of a corporation's agent, *i.e.*, those authorized to accept service of process, or perhaps, only those authorized to

sign for certified mail.” Mot. at 4. In addition, the Attorney General alleges that in its August 7, 1997, order, the “Board raised the statutory notice requirements of Section 25b-6 to the legal import of a complaint,” and therefore exceeded its authority under the Act. Mot. at 5-6. Moreover, the Attorney General maintains that an agency relationship exists between Unique Marble and Susan E. Wilson, the individual who signed for the certified mailing. Mot. at 7. Finally, the Attorney General contends that Unique Marble failed to sufficiently disprove the existence of an agency relationship between Unique Marble and Ms. Wilson. Mot. at 10.

In response to the Attorney General’s motion for reconsideration (Resp.), Unique Marble alleges that the Board properly dismissed this matter against Unique Marble because the Agency failed to properly serve the notice of noncompliance upon the person complained against. Resp. at 4. Moreover, Unique Marble contends that the Board previously held that service upon a corporation must be made pursuant to the requirements of the Illinois Code of Civil Procedure. Resp. at 4. Further, Unique Marble argues that the Board, as the finder of fact, had the authority to determine whether the signatory was acting within the scope of her authority. Resp. at 7. Finally, Unique Marble argues that the Board properly found that Ms. Wilson was not acting as an agent of Unique Marble when she signed for the certified mailing. Resp. at 12-13.

DISCUSSION

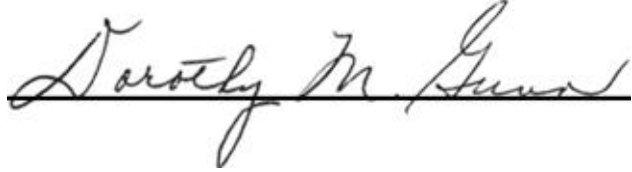
In ruling upon a motion for reconsideration filed pursuant to 35 Ill. Adm. Code 101.246, the Board will to consider “factors including, but not limited to, error in the previous decision and facts in the record which are overlooked.” 35 Ill. Adm. Code 101.246(d). In Citizens Against Regional Landfill v. County Board of Whiteside County (Marcy 11, 1993), PCB 93-156, the Board stated that “[t]he intended purpose of a motion for reconsideration is to bring to the court’s attention newly-discovered evidence which was not available at the time of the hearing, changes in the law, or errors in the court’s previous application of the existing law.” Korogluyan v. Chicago Title & Trust Co., 213 Ill. App.3d 622, 572 N.E.2d 1154 (1st Dist. 1992).

The Board denies the Attorney General’s motion to reconsider the Board’s August 7, 1997, order. The Attorney General has not presented any newly-discovered evidence, a change in the law, or any other reason for the Board to conclude that its decision was in error. Accordingly, the Attorney General’s motion to reconsider is denied.

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 6th day of November 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