

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4 PEOPLE OF THE STATE OF ILLINOIS,

5 Petitioner,

6 vs. No. PCB 97-064

7 UNIQUE MARBLE PRODUCTS, INC.,

8 Respondent.

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12 Proceedings held on April 29, 1997 at

13 10:35 a.m., at the Effingham County Office

14 Building, First Floor Conference Room, 101 North

15 Fourth Street, Effingham, Illinois, before the

16 Honorable Michael L. Wallace, Hearing Officer.

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20 Reported by: Darlene M. Niemeyer, CSR, RPR
 CSR License No.: 084-003677

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22 KEEFE REPORTING COMPANY

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A P P E A R A N C E S

STATE OF ILLINOIS, OFFICE OF THE ATTORNEY
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P R O C E E D I N G S

(April 29, 1997; 10:35 a.m.)

HEARING OFFICER WALLACE: Pursuant to the direction of the Illinois Pollution Control Board, I now call Docket PCB 97-64.

This is the matter of The People of the State of Illinois versus Unique Marble Products, Inc.

May I have appearances for the record, please.

MS. GENTILE: Julia Gentile, Assistant Attorney General, on behalf of the People.

With me is John --

MR. WALIGORE: John Waligore, Assistant Counsel for the Environmental Protection Agency.

HEARING OFFICER WALLACE: For the Respondent?

MR. AUSTIN: William W. Austin, on behalf of the Respondent.

HEARING OFFICER WALLACE: Thank you. Let the record reflect there are no other appearances at today's hearing.

Are there any preliminary matters, Ms. Gentile?

1 MS. GENTILE: I think we have addressed
2 them, and I will be referring to them in my opening
3 statement.

4 HEARING OFFICER WALLACE: The same for
5 you, Mr. Austin?

6 MR. AUSTIN: Yes, correct.

7 HEARING OFFICER WALLACE: All right. You
8 may proceed with your opening statement, if you
9 wish.

10 MS. GENTILE: The case before you today
11 involves the failure of the Respondent to file
12 reports as required under Section 313 of the
13 Federal Emergency Planning and Community Right to
14 Know Act of 1986.

15 Section 313 requires annual reports to be
16 filed by certain companies which release any of the
17 listed toxic chemicals or compounds in the
18 environment. This requirement was inspired by the
19 Bhopal, India Disaster of 1984.

20 In 1987 the Illinois General Assembly
21 amended the Illinois Environmental Protection Act
22 to provide for a coordinated state implementation,
23 Section 313. This amendment also established an
24 orderly procedure for the public to access this

1 information.

2 Under the Act the Illinois EPA is charged
3 with the administration of Section 313, which
4 requires industry to report annually to the U.S.
5 EPA and the Illinois EPA via the Toxic Chemical
6 Release Form, known as Form R. The purpose of Form
7 R reporting laws are to give communities in which
8 reportable toxic chemicals are used, manufactured,
9 processed or released, adequate information about
10 what chemicals a company has on its site and the
11 associated risks.

12 This case presents four issues: Whether
13 the Respondent was required to file the U.S. EPA
14 Toxic Chemical Release Inventory Reporting Form,
15 referred to as Form R, for styrene and
16 dichloromethane for calendar year 1994.

17 Subsequent to the filing of the complaint
18 in this case the Respondent admitted in discovery
19 that it was required to file a Form R for
20 dichloromethane for calendar year 1994. In October
21 1996 the Respondent submitted a Form R for
22 dichloromethane for calendar year 1994 to my
23 office.

24 This morning the Respondent presented to

1 Counsel two Forms R for styrene for calendar years
2 1994 and 1995, and thereby admits that the
3 Respondent was required to file a Form R for
4 styrene for calendar year 1994.

5 The second issue was whether the
6 Respondent received adequate notice pursuant to
7 Section 25 B(6) of the Illinois Environmental
8 Protection Act before this action was brought.

9 On September 1, 1995, the Illinois EPA
10 mailed a certified letter to Respondent. In
11 materials provided in discovery the Respondent
12 admitted that one Susan Wilson signed the return
13 receipt for the certified letter on September 5th,
14 1995, and Susan Wilson was an employee of Unique
15 Marble on September 5th, 1995. The State will show
16 this was adequate notice.

17 The third issue is whether Respondent
18 responded to the notice within the grace period
19 allowed. In the materials provided in discovery
20 the Respondent admitted that it did not respond to
21 the notice within the 30 days allowed and further
22 did not file either Form R on or before December
23 31st, 1995.

24 The final issue here is a civil penalty

1 that is due for failure to comply with Form R
2 reporting requirements. Section 42 B(5) of the
3 Illinois Environmental Protection Act requires that
4 a person who fails to file a Form R in a timely
5 manner is liable for a civil penalty of \$100.00 per
6 day for each day the form is late. The period of
7 time upon which the civil penalty is calculated
8 runs from the end of the 30 day grace period
9 through the end of that calendar year.

10 Unique Marble has failed to submit two
11 Forms R, one for dichloromethane and the other for
12 styrene within the 30 day grace period, which ended
13 on October 5th, 1995, and that Unique Marble is
14 liable for a civil penalty of \$100.00 per day for
15 each day from October 6, 1995 through December 31,
16 1995, for a total of 86 days for each Form R that
17 was not filed in a timely manner.

18 The State is, therefore, requiring a
19 civil penalty of \$8,600.00 for each of the two
20 Forms R that were not so filed, for a total of
21 \$17,200.00.

22 That's all I have.

23 HEARING OFFICER WALLACE: All right. Mr.
24 Austin?

1 MR. AUSTIN: Thank you. The State seeks
2 the imposition of a civil penalty for the alleged
3 failure to file the respective Forms R.

4 It is the Respondent's position that the
5 imposition of a penalty is improper for the reason
6 that the grace period never began running. And
7 that reason is that the notice given by the
8 Illinois Environmental Protection Agency was, in
9 fact, defective or reasonably that would be shown
10 in the evidence adduced.

11 HEARING OFFICER WALLACE: Thank you. Do
12 you have witnesses, Ms. Gentile?

13 MS. GENTILE: Yes, we do.

14 (Whereupon the witness was
15 sworn by the Hearing Officer.)

16 HEARING OFFICER WALLACE: You may
17 proceed.

18 MS. GENTILE: Thank you.

19 J O E G O O D N E R,
20 having been first duly sworn by the Hearing
21 Officer, saith as follows:

22 DIRECT EXAMINATION

23 BY MS. GENTILE:

24 Q Please state your name and spell your

1 last name.

2 A Joe Goodner, G-O-O-D-N-E-R.

3 Q And, Mr. Goodner, would you describe your
4 educational background for us?

5 A Sure. I have a Bachelor of Science
6 Degree in Structural Engineering from the
7 University of Illinois in Chicago, and graduate
8 study in Thermal and Environmental Engineering from
9 SIU Carbondale, and in Public Administration from
10 Sangamon State University.

11 Q And do you have any affiliations with
12 professional organizations?

13 A Yes, I am a member of the Illinois and
14 National Societies of Professional Engineers, and I
15 am a Registered Professional Engineer in Illinois.

16 Q By whom are you employed?

17 A The Illinois Environmental Protection
18 Agency.

19 Q When did you begin work at the Agency?

20 A In 1976.

21 Q And what was your initial assignment?

22 A Initially I was assigned to the Permit
23 Section, at that time the Division of Water
24 Pollution Control.

1 Q Okay. Have you been continuously
2 employed by the Illinois EPA since 1976?

3 A Yes, I have.

4 Q What is your present position?

5 A My present position is Manager of the
6 Emergency Planning Unit in the Office of Chemical
7 Safety.

8 Q And how long have you been in that
9 position?

10 A Approximately 12 years. A little over 12
11 years.

12 Q And focusing on your present position,
13 have you had an opportunity to play any policy
14 making roles?

15 A Relative to the Form R program, I have
16 developed and implemented the policies and
17 procedures for carrying out Title 6 B of the
18 Environmental Protection Act.

19 Q When did the Form R program begin?

20 A It was instituted under Federal Emergency
21 Planning and Community Right to Know Act of 1986,
22 and the first reportable calendar year under that
23 law and, of course, the State law was 1987.

24 Q So you have been involved in the Form R

1 program since the beginning of the program; is that
2 correct?

3 A Yes.

4 Q What is a Form R?

5 A A Form R is the federal name for the
6 reporting form to annually report toxic chemical
7 release information under the federal law. EPCRA
8 is the acronym for the Emergency Planning and
9 Community Right to Know Act.

10 Q Who is required to file the Form R?

11 A Facilities having ten or more full-time
12 employees being in the manufacturing category
13 industry, which is standard industrial
14 classification codes 20 through 39, and then
15 surpassing certain thresholds of toxic chemical
16 manufacturer process or otherwise use, which is --
17 there was a reducing threshold for the
18 manufacturing process, but that now since 1989
19 remains at 25,000 pounds a year and otherwise used
20 has always been 10,000 pounds a year or more.

21 Q How does a company know which chemicals
22 are considered toxic and which trigger these Form R
23 requirements?

24 A There is a federally published list

1 which, of course, originated in 1986 and has been
2 modified almost annually since that time, and the
3 modifications are published in the federal
4 register.

5 (Whereupon a document was duly
6 marked for purposes of
7 identification as People's
8 Exhibit 1 as of this date.)

9 Q (By Ms. Gentile) Okay. I am going to
10 hand you what I have marked as People's Exhibit
11 Number 1, and ask if you could look at that?

12 MR. AUSTIN: May I see that?

13 MS. GENTILE: Sure. I am sorry.

14 Q (By Ms. Gentile) Okay. Mr. Goodner, what
15 is that?

16 A These are the federally published
17 reporting instructions and the form for calendar
18 year 1994.

19 Q Okay. Are these publications provided to
20 the public, to the companies?

21 A Yes, they are. The U.S. EPA, each year,
22 sends out the new reporting forms to facilities who
23 have reported to them the prior year, so that's the
24 basis of their list.

1 Q For calendar year 1994 both of the toxic
2 chemicals, dichloromethane and styrene, were on
3 that list?

4 A Yes, they were.

5 Q Okay. Thank you. How do you determine
6 whether companies are in compliance with Form R
7 requirements?

8 A One mechanism is to look at the list of
9 filers for the previous calendar year, and usually
10 during the month of July, when the forms are coming
11 in, we compare that with who we have heard from,
12 who we have received reports from the current
13 calendar year. Those we have not heard from may be
14 in question.

15 Q Okay. Did you have an occasion to review
16 the compliance status of the Respondent in this
17 case with respect to Form R submissions?

18 A Yes, I did.

19 Q Okay. When were the Form Rs due for
20 calendar year 1994?

21 A For calendar year 1994, July 1, 1995.

22 Q Okay. So it was subsequent to July 1,
23 1995 that you reviewed the compliance status for
24 Unique Marble in this case?

1 A Yes, it was.

2 Q Okay. You had just testified that you
3 compared the previous years submittals with the
4 submittals of the current year; is that correct?

5 A That is correct.

6 Q Okay. So did that file review take
7 place? Did you review previous submittals from
8 Unique Marble versus the ones after -- any
9 submittals after July 1995?

10 A Yes, I did.

11 Q Okay. What did your review show?

12 A It showed at the time of that review that
13 we had not received a 1994 Form R for either
14 chemical, which we had previously received.

15 Q And what did you do?

16 A Based on that information, I directed
17 that a compliance inquiry letter be sent to, among
18 others, Unique Marble.

19 Q Okay. I am going to be handing you what
20 I have just marked as People's Exhibit Number 2.

21 (Whereupon said document was
22 duly marked for purposes of
23 identification as People's
24 Exhibit 2 as of this date.

1 Q (By Ms. Gentile) I want you to look at
2 that. I want you to -- do you recognize that?

3 A Yes, I do.

4 Q Okay. Is that the noncompliance letter
5 that you had just talked about?

6 A Yes, it is.

7 Q What is the date?

8 A It is dated September 1st, 1995.

9 Q And who is it directed to?

10 A It is directed to Mr. Guy R. Gilmore,
11 Jr., President, Unique Marble Products,
12 Incorporated, 2600 South Rainy, Effingham,
13 Illinois, 62401.

14 Q Why did you direct a letter to that
15 person at that address?

16 A Because this name, the signature of the
17 name, and this exact address had appeared on the
18 previous Form Rs which we received from Unique
19 Marble.

20 Q Okay. And is that the policy and
21 procedure of your unit to review previous years
22 submittal to determine where you mail any
23 correspondence, if there is a question on the Form
24 R?

1 A Yes, it is.

2 Q Okay. Attached to this letter is --
3 well, what is attached to this letter?

4 A A copy of a receipt for certified mail
5 dated -- the date of delivery is given as 09-05-95.

6 Q Okay. Thank you. I am going to hand you
7 now what has been marked as People's Exhibit Number
8 3.

9 (Whereupon said document was
10 duly marked for purposes of
11 identification as People's
12 Exhibit 3 as of this date.)

13 Q (By Ms. Gentile) I have a copy for
14 Counsel, as well. If you could identify that?

15 A Yes. It is a completed Form R for
16 calendar year 1990.

17 HEARING OFFICER WALLACE: I am sorry.
18 What year?

19 THE WITNESS: 1990.

20 HEARING OFFICER WALLACE: Okay. Thank
21 you.

22 THE WITNESS: It is from Unique Marble.

23 MR. AUSTIN: What is the relevancy of
24 this?

1 MS. GENTILE: The relevancy is that I am
2 going to be moving into evidence previous
3 submittals of Unique Marble showing that on every
4 Form R that has been submitted they have facility
5 identification, they have indicated the same
6 address as the letter was directed to, and the
7 mailing address as the same.

8 MR. AUSTIN: The address is admitted.
9 That's not an issue.

10 HEARING OFFICER WALLACE: Well, we
11 haven't --

12 MS. GENTILE: I think it is. I think
13 that the procedure that the Agency used is at
14 issue.

15 MR. AUSTIN: Well, the procedure
16 definitely is, but the address isn't.

17 HEARING OFFICER WALLACE: Well, I have
18 no --

19 MR. AUSTIN: The address --

20 HEARING OFFICER WALLACE: I am sorry.
21 There is no stipulation in the record that -- to
22 this address.

23 MS. GENTILE: If you want to stipulate
24 that Unique Marble, for all of the -- from 1990

1 through 1993 and, in fact, 1994, when it submitted
2 the Form R for dichloromethane in October of 1996,
3 which is after the filing of this complaint, used
4 the mailing address as the same one that the Agency
5 relied upon.

6 For any questions that the Agency would
7 have on Form Rs, they were directed to write that
8 address, and that person was named as both the
9 technical and public contact. I think that is an
10 issue.

11 MR. AUSTIN: I am not prepared to
12 stipulate to that.

13 MS. GENTILE: All right. Then I think we
14 have to proceed.

15 HEARING OFFICER WALLACE: Yes, you may
16 proceed.

17 MS. GENTILE: Okay.

18 Q (By Ms. Gentile) Mr. Goodner, referring
19 to the Form R for 1990, People's Exhibit Number 3,
20 there is a section on the first page, number three,
21 facility identification, and what information is
22 there? What address is given?

23 A The name of the facility is Unique Marble
24 Products, Incorporated. The street address is 2600

1 South Rainy Road, the City of Effingham, the State
2 of Illinois, the zip code is 62401.

3 Q Okay. And the technical contact name?

4 A Guy R. Gilmore, Jr.

5 Q And what does technical contact mean?

6 A Technical contact is a name and a
7 telephone number given so that any requests can be
8 discussed, technical aspects of the submittal with
9 a facility representative.

10 Q And the public contact, the name given
11 there?

12 A The public contact is likewise a contact
13 person name and telephone number at the facility
14 who can discuss, in general, the less technical or
15 nontechnical issues and perhaps interpret some of
16 the technical issues for the public.

17 Q And that person's name is?

18 A Guy R. Gilmore, Jr.

19 Q Okay. Showing you, again, People's
20 Exhibit Number 2, if you want to keep that, and
21 Exhibit 3, and are the addresses the same and the
22 person's name the same?

23 A Yes, they are.

24 Q Okay. I hand you what has been marked as

1 People's Exhibit Number 4.

2 (Whereupon said document was
3 duly marked for purposes of
4 identification as People's
5 Exhibit 4 as of this date.)

6 Q (By Ms. Gentile) I will ask you to
7 identify that.

8 A This is the reporting Form R for calendar
9 year 1991 for Unique Marble Products, Incorporated.

10 MR. AUSTIN: May the record show a
11 continuing objection by the Respondent to these
12 previous Forms R?

13 HEARING OFFICER WALLACE: So noted.

14 Q (By Ms. Gentile) In section -- Mr.
15 Goodner, in section number four, facility
16 identification, the name and address of the
17 facility, we could make it a little -- well, maybe
18 you should read it.

19 A It is Unique Marble Products,
20 Incorporated, 2600 South Rainy Road, Effingham,
21 Illinois, 62401.

22 Q And there is another block below that
23 that says mailing address.

24 A It says the same as above.

1 Q Okay. And is that -- comparing the
2 letter to the address, is that the same?

3 A Yes, it is.

4 Q All right.

5 (Whereupon a document was duly
6 marked for purposes of
7 identification as People's
8 Exhibit 5 as of this date.)

9 Q (By Ms. Gentile) Okay. I hand you
10 People's Exhibit Number 5, and ask you to identify
11 that?

12 A It is the reporting Form R for calendar
13 year 1992 from Unique Marble Products,
14 Incorporated.

15 Q And section four, facility
16 identification, is the address and name the same as
17 on People's Exhibit Number 2, which is the
18 September 1st, 1995 letter?

19 A Yes, it is.

20 Q And the mailing address on Form R, what
21 does it --

22 A The same as above, meaning, yes,
23 identically the same.

24 Q Okay.

1 (Whereupon a document was duly
2 marked for purposes of
3 identification as People's
4 Exhibit 6 as of this date.)

5 Q (By Ms. Gentile) I am handing you
6 People's Exhibit Number 6, and ask you to identify
7 it?

8 A Okay. This is reporting Form R from
9 Unique Marble Products, Incorporated, for calendar
10 year 1993.

11 Q And in section four, facility
12 identification, is that the same address as on
13 People's Exhibit Number 2?

14 A Yes, it is.

15 Q And the mailing address?

16 A It indicates the same as above, meaning
17 the same address.

18 Q Okay. I hand you People's Exhibit Number
19 7, and ask you to identify that.

20 (Whereupon said document was
21 duly marked for purposes of
22 identification as People's
23 Exhibit 7 as of this date.)

24 A This is a reporting Form R for calendar

1 year 1994 from Unique Marble Products,
2 Incorporated.

3 Q And when was it signed?

4 A The date signed is 10-03-96, meaning
5 October 3rd, 1996.

6 Q And is there any difference between the
7 address and the name from that Form R to People's
8 Exhibit Number 2?

9 A No, there is not.

10 Q Is there a mailing address indicated that
11 is different from that?

12 A No, there is not.

13 MS. GENTILE: Okay. Just one moment,
14 please.

15 I have no further questions of this
16 witness. I would move that People's Exhibits 1
17 through 7 be admitted into evidence.

18 HEARING OFFICER WALLACE: Would you hand
19 the exhibits to me, please?

20 MS. GENTILE: Oh, yes. I am sorry.

21 HEARING OFFICER WALLACE: Any objection,
22 Mr. Austin?

23 MR. AUSTIN: No objection to Exhibit 1.
24 No objection to Exhibit 7. However, we do object

1 to the remaining exhibits on the basis of their
2 relevancy.

3 HEARING OFFICER WALLACE: All right.
4 Thank you. Your objections are noted. I am going
5 to admit all seven exhibits, and that would include
6 2, 3, 4, 5 and 6, over your objection.

7 (Whereupon said documents were
8 admitted into evidence as
9 People's Exhibits 1 through 7
10 as of this date.)

11 HEARING OFFICER WALLACE: All right.

12 Cross-examination?

13 MR. AUSTIN: Yes. Thank you.

14 CROSS EXAMINATION

15 BY MR. AUSTIN:

16 Q Mr. Goodner, you were present in the
17 courtroom, were you not, during Ms. Gentile's
18 opening statement?

19 A Yes, I was.

20 Q Did you hear her reference, by chance, to
21 the Union Carbide incident at Bhopal, India?

22 A Yes, I did.

23 Q Are you familiar with that incident,
24 generally?

1 A Only from the literature. In general
2 terms, yes.

3 Q That involved a chemical release of -- or
4 a release of toxic chemicals, did it not?

5 A Yes, it did.

6 Q There is no suggestion that anything of
7 that nature was true of Unique Marble, was there?

8 MS. GENTILE: I am going to object.

9 Q (By Mr. Austin) Are you aware of any --

10 MS. GENTILE: I am going to object.

11 Q (By Mr. Austin) Are you aware of any
12 unauthorized release of toxic chemicals with
13 respect to Unique Marble for the period of time in
14 question, Mr. Goodner?

15 MS. GENTILE: I am going to object to the
16 relevance of that question.

17 MR. AUSTIN: It was made relevant by Ms.
18 Gentile's own remarks.

19 HEARING OFFICER WALLACE: Overruled.

20 THE WITNESS: Would you please restate
21 your question?

22 Q (By Mr. Austin) Are you aware of any
23 unauthorized release of toxic chemicals by the
24 Respondent in this case?

1 A I am not aware of any unauthorized
2 release.

3 Q And you purport to be the author, do you
4 not, of People's Exhibit 2, Mr. Goodner?

5 A Yes, I do.

6 Q And that letter was sent by certified
7 mail?

8 A Yes, it was.

9 Q Why was it sent by certified mail?

10 A In the case of compliance inquiry
11 letters, that is the standard procedure to assure
12 receipt and documentation of receipt.

13 Q That's a requirement, is it not?

14 A It is a procedure.

15 Q Is it also not a requirement, or do you
16 know?

17 A A requirement in what terms?

18 Q Either a statutory or a regulatory
19 requirement. Is it or do you know?

20 A I know it is a procedure requirement.
21 Whether or not it is a specific requirement, I
22 would have to say that I am not sure.

23 Q And that is sent by certified mail
24 because there is some importance or significance

1 attached to this particular notice; isn't that
2 correct?

3 A That is correct.

4 Q The penalties for noncompliance are
5 somewhat serious, wouldn't you agree?

6 A They are.

7 Q How do you determine to whom this notice
8 is to be sent?

9 A We review previous submissions, we check
10 for the address, especially on the last submission
11 that we have from the facility. And in this case
12 we had also checked the history of addresses and
13 the name of the person who signed the actual form,
14 and then that's who we directed the letter to.

15 Q You would agree, would you not, that it
16 is important that this notice get to the right
17 person at a company?

18 A Yes, I would.

19 Q The addressee of the notice in question,
20 People's Exhibit 2, purports to be the president of
21 the company, does it not?

22 MS. GENTILE: Objection.

23 THE WITNESS: I wouldn't say so.

24 HEARING OFFICER WALLACE: The objection

1 is overruled.

2 Q (By Mr. Austin) Okay. Who is the
3 addressee?

4 A The addressee is Mr. Guy R. Gilmore, Jr.

5 Q And does his title appear on the address
6 box?

7 A Yes, it is.

8 Q What is that title?

9 A President.

10 Q Does Mr. Gilmore's receipt by signature
11 appear on the return receipt?

12 A No, it doesn't appear to.

13 Q Now, there is a block for that purpose,
14 is there not, block five?

15 A Yes, there is.

16 Q Does anything appear in block five?

17 A Actually, the signature is above the line
18 of block five.

19 Q But does anything appear in block five?

20 A No, nothing appears in block five.

21 Q And there is also a block six, isn't
22 there?

23 A Yes, there is.

24 Q What is the purpose of block six?

1 A Block six indicates signature and,
2 parens, agent.

3 Q Okay. Is there a signature of an agent
4 in block six?

5 A No, there isn't.

6 Q Is there any signature on that form --

7 A Yes, there is.

8 Q -- acknowledging release -- or receipt,
9 rather?

10 A There is a signature on the form.

11 Q Can you make out the signature?

12 A It appears the first name is Susan. It
13 looks like the middle initial is E, and it appears
14 the last name is Wilson.

15 Q Now, what, if anything, does Susan E.
16 Wilson have to do with the Respondent, Unique
17 Marble?

18 A I don't know.

19 Q You can't say, then, can you, that this
20 was received by somebody at the company having
21 authority?

22 A I can't say.

23 Q Now, the form also has a block that
24 restricts delivery to the addressee, does it not?

1 I direct your attention to the upper right-hand
2 corner of the form.

3 A Yes, it does.

4 Q But in this particular case, the delivery
5 of your certified letter to Mr. Gilmore at Unique
6 Marble was not restricted to delivery to him, was
7 it?

8 A Neither box is checked in that area.

9 MR. AUSTIN: All right. No further
10 questions.

11 HEARING OFFICER WALLACE: Thank you.

12 Redirect?

13 MS. GENTILE: No.

14 HEARING OFFICER WALLACE: No redirect?

15 MS. GENTILE: No redirect.

16 HEARING OFFICER WALLACE: You may step
17 down, Mr. Goodner.

18 (The witness left the stand.)

19 HEARING OFFICER WALLACE: The next
20 witness.

21 MS. GENTILE: Yes.

22 (Whereupon the witness was
23 sworn by the Hearing Officer.)

24 HEARING OFFICER WALLACE: You may

1 proceed.

2 L E S L I E D A V I D M O R R O W,
3 having been first duly sworn by the Hearing
4 Officer, saith as follows:

5 DIRECT EXAMINATION

6 BY MS. GENTILE:

7 Q Please state your name and spell your
8 last name for the record.

9 A My name is Leslie, L-E-S-L-I-E, David
10 Morrow, M-O-R-R-O-W.

11 Q And, Mr. Morrow --

12 MR. AUSTIN: It would appear -- excuse
13 me.

14 MS. GENTILE: Sure.

15 MR. AUSTIN: It would appear that Mr.
16 Morrow has notes in his possession at the
17 witness --

18 THE WITNESS: Yes, that is correct. I
19 do.

20 MR. AUSTIN: -- stand. Could he identify
21 those?

22 HEARING OFFICER WALLACE: Yes. Identify
23 your notes, please.

24 THE WITNESS: I just took a few notes on

1 what I understand my testimony will cover today,
2 and I am using them as kind of crib sheets or
3 reminders for high points.

4 MR. AUSTIN: I don't believe it is proper
5 that this witness refer to his notes unless done
6 under the auspice of refreshing his recollection or
7 in that manner.

8 MS. GENTILE: That's fine.

9 HEARING OFFICER WALLACE: All right.
10 Would you put your notes away, please.

11 (The witness complied.)

12 THE WITNESS: They are on the floor.

13 Q (By Ms. Gentile) Would you describe your
14 educational background for us?

15 A I have a Bachelor's of Arts Degree in
16 Premedicine from the University -- from Millikin
17 University in Decatur, Illinois. I have a Master's
18 in progress at the University of Illinois in
19 Springfield.

20 Q Okay. By whom are you employed?

21 A The State of Illinois Environmental
22 Protection Agency.

23 Q When did you begin work there?

24 A In February of 1988.

1 Q And you have been continuously employed
2 by the Illinois EPA since that date?

3 A That's correct.

4 Q Okay. What is your present position?

5 A I am an Environmental Protection
6 Specialist, Level III, and my working title is an
7 environmental toxicologist.

8 Q Okay. How long have you been in that
9 position?

10 A Approximately three years.

11 Q Okay. In your present position and in
12 that capacity have you ever testified on the public
13 health impacts of various chemicals?

14 A Yes, I have.

15 Q When was that? Or how many times, I
16 should say?

17 A Five.

18 Q And before the Board and before the
19 Court?

20 A Yes, yes.

21 Q Both?

22 A Before the Board.

23 Q Okay.

24 A Never in a court setting, no.

1 Q Okay. In your position with the Illinois
2 EPA, have you had occasion to review the physical
3 or chemical properties of either or both
4 dichloromethane and styrene?

5 A I have, both of them.

6 Q And can you explain, in as simple terms
7 as possible, the basic properties of these two
8 chemicals?

9 A I can.

10 MR. AUSTIN: I am going to interpose an
11 objection.

12 I certainly have no reason to question
13 Mr. Morrow's expertise in the area that this
14 inquiry seems to be going, but it really doesn't
15 have anything to do with why we are here. By
16 definition, the U.S. EPA, and correspondingly the
17 Illinois EPA, have determined that dichloromethane
18 and styrene are toxic chemicals, and that there are
19 certain reporting requirements.

20 The degree of toxicity and that sort of
21 thing really isn't relevant to why we are here
22 today.

23 MS. GENTILE: I would think it is
24 relevant.

1 The purpose of the Form R program was to
2 inform the public as to what chemicals are used in
3 sites in their areas, and while this case
4 technically deals with a reporting requirement,
5 underneath that reporting requirement is the fact
6 that the public has been denied the right to know
7 about certain chemicals, and that is a very
8 important part of this enforcement action.

9 HEARING OFFICER WALLACE: I am sorry.
10 The enforcement action is limited to the reporting.

11 MS. GENTILE: It is. You are right. No,
12 it is.

13 HEARING OFFICER WALLACE: And I --

14 MS. GENTILE: But the purpose of the Form
15 R has been defeated, and I think it is important
16 for this case, I believe, that the chemicals be
17 looked upon for what they are.

18 HEARING OFFICER WALLACE: All right. I
19 am going to sustain the objection. I don't see the
20 relevance of this line of testimony.

21 MS. GENTILE: Okay. Then I -- that would
22 be it.

23 HEARING OFFICER WALLACE: It is the
24 practice of the Board, since this is a one-shot

1 hearing, if you wish to make an offer of proof, you
2 may do so, to have it in the record.

3 MS. GENTILE: Well, okay, I would. If,
4 you know, Mr. Morrow were to testify, he would
5 testify that --

6 HEARING OFFICER WALLACE: Well, you can
7 ask him.

8 MS. GENTILE: Okay.

9 HEARING OFFICER WALLACE: If you
10 designate it as an offer of proof, you can go ahead
11 and ask him the --

12 MS. GENTILE: Okay.

13 HEARING OFFICER WALLACE: -- questions
14 that you were going to ask him. Then when you
15 conclude your offer of proof, please tell me that
16 that is the end of it.

17 MS. GENTILE: Okay, fine. We will
18 present an offer of proof.

19 Q (By Ms. Gentile) Okay. Continuing, then,
20 can you explain, in basic terms, as basic as
21 possible, what are the properties of these two
22 chemicals?

23 A I can.

24 Q Okay.

1 A Dichloromethane is a -- it is a man-made
2 chemical. It is a liquid at room temperature and
3 pressure.

4 Q Okay.

5 A It has a sweet odor. It is used in many
6 industries. On the consumer level, it is contained
7 in paint strippers and paint removers. It is
8 moderately toxic in the acute phase, which means
9 high doses. About one to two percent will kill
10 rodents. The affects before death are anesthesia,
11 similar to surgical anesthesia.

12 Q Okay. How does it get into the
13 atmosphere?

14 A It is a volatile chemical. It readily
15 evaporates. During chemical processes it can be --
16 its evaporation can be accelerated with heat and
17 pressure.

18 Q Is it carcinogenic?

19 A The U.S. Environmental Protection Agency
20 considers it a probable human carcinogen, which
21 means that it does definitely cause cancer in rats
22 and mice.

23 Q Okay. That was dichloromethane?

24 A Correct.

1 Q Now, styrene, if you can describe what --

2 A Styrene is a liquid at room temperature.

3 Q Synthetic?

4 A Yes, it is a synthetic, a man-made
5 chemical.

6 Q Okay.

7 A It has a definite odor. Its acute
8 toxicity is higher than that of dichloromethane.
9 It causes irritation to eyes and throats, and
10 that's generally the cause of death, in the acute
11 phase where the bronchus close up from the
12 irritation. It is not considered a carcinogen by
13 the U.S. EPA.

14 Q Okay.

15 A It is of interest to the State of
16 Illinois, because it does -- there are some
17 Scandinavian studies that indicate that it can
18 disrupt the menstrual cycle of workers, and has
19 caused some defects on the sperm of male workers.
20 And it is considered now a potential endocrine
21 disrupter for the State of Illinois.

22 Q And how does styrene get into the
23 atmosphere?

24 A Once again, it is a volatile chemical and

1 volatility, once again, is accelerated through
2 chemical processes.

3 MS. GENTILE: I have no further
4 questions.

5 HEARING OFFICER WALLACE: Okay. Does
6 that conclude your offer of proof?

7 MS. GENTILE: Yes.

8 HEARING OFFICER WALLACE: Mr. Austin, do
9 you wish to cross-examine Mr. Morrow on that offer
10 of proof?

11 MR. AUSTIN: No, Your Honor.

12 HEARING OFFICER WALLACE: All right. You
13 may step down, Mr. Morrow.

14 THE WITNESS: All right. Thank you.

15 (The witness left the stand.)

16 MS. GENTILE: I have no further
17 witnesses.

18 HEARING OFFICER WALLACE: No further
19 witnesses?

20 MS. GENTILE: Correct.

21 HEARING OFFICER WALLACE: All right. Mr.
22 Austin, do you have any witnesses you wish to
23 present?

24 MR. AUSTIN: Yes, I do. We first call

1 Bob Gilmore.

2 (Whereupon the witness was
3 sworn by the Hearing Officer.)

4 HEARING OFFICER WALLACE: You may
5 proceed.

6 G U Y R. G I L M O R E, J R.,
7 having been first duly sworn by the Hearing
8 Officer, saith as follows:

9 DIRECT EXAMINATION

10 BY MR. AUSTIN:

11 Q Would you state your name, please.

12 A Guy R. Gilmore, Jr.

13 Q Are you familiar with the Respondent,
14 Unique Marble, Products, Inc.?

15 A Yes, I am.

16 Q And how does that happen?

17 A I am the president.

18 Q And you are presently?

19 A Yes.

20 Q How long have you served in that
21 capacity?

22 A Since late 1988.

23 Q By president you are talking about the
24 corporate office president?

1 A Yes.

2 Q What is the nature of the business of
3 Unique Marble?

4 A The manufacture of cultured marble vanity
5 tops.

6 Q For what use?

7 A For home use.

8 Q Where would it be found?

9 A In the bathrooms for sinks.

10 Q All right.

11 A Sinks in bathrooms.

12 Q Is that the business that Unique Marble
13 is presently engaged in?

14 A No.

15 Q What business is Unique Marble presently
16 engaged in?

17 A None.

18 Q When did it cease to be engaged in the
19 cultured marble business?

20 MS. GENTILE: I would object. There is
21 no relevance.

22 HEARING OFFICER WALLACE: Yes, I believe
23 there is. It goes to the factors that the Board
24 must weigh in assessing any penalty.

1 So you may continue.

2 THE WITNESS: In October of 1995.

3 Q (By Mr. Austin) How does it happen that
4 Unique Marble is no longer in business?

5 A I made the decision to close the
6 business.

7 Q And that was a financial decision, I take
8 it?

9 A Yes.

10 Q Now, directing your attention to
11 September of 1995, who was the president of Unique
12 Marble at that time?

13 A I was.

14 Q And who were the other corporate
15 officers?

16 A My wife Becky was the
17 secretary-treasurer.

18 Q Were there any other corporate officers?

19 A No.

20 Q Were there any other people in the
21 capacity during the month of September of 1995 of
22 having general oversight responsibility in the
23 company?

24 A No.

1 Q Okay. Are you familiar with a Susan E.
2 Wilson?

3 A Yes.

4 Q How does it happen that you are familiar
5 with that name?

6 A She was an employee of Unique Marble
7 Products.

8 Q Was she an employee of Unique Marble in
9 September of 1995?

10 A Yes.

11 Q In what capacity?

12 A She was customer service representative
13 in the office.

14 Q And what did her duties consist of?

15 A Answering the phone, taking orders,
16 answering customers' questions about deliveries or
17 product questions.

18 Q Would you briefly describe the office
19 layout of Unique Marble in September of 1995?

20 A When you came -- when you walked in the
21 front door there was an entryway that you walked
22 through into the front center office. There was an
23 office off to the right of that.

24 Q Was there a receptionist that would greet

1 people?

2 A Yes.

3 Q Where was your mail delivered; to the
4 office or to a post office box?

5 A To the office.

6 Q And that office was at 2600 South Rainy
7 in Effingham?

8 A Yes.

9 Q That's not in dispute, is it?

10 A No.

11 Q What, if any, receptionist duties did
12 Susan Wilson have?

13 A None.

14 Q Where was her work area relative to the
15 reception area?

16 A Actually, two offices removed from the
17 reception area. It would be down a hall to the --
18 what we consider the back office, the farthest
19 removed office from the reception area.

20 Q When mail was delivered to the Unique
21 Marble office, where was the mail deposited or left
22 by the postman?

23 A The mailbox out alongside the parking lot
24 of the facility.

1 Q That's to say it was not brought inside
2 by the postman or the mailman?

3 A That is correct.

4 Q Who had the responsibility of picking up
5 the mail on a daily basis?

6 A On a daily basis it was the office
7 manager's duties.

8 Q And what, if any, office management
9 duties did Susan Wilson have?

10 A None.

11 Q How was certified mail handled at Unique
12 Marble? Was that brought inside?

13 A Yes.

14 Q By the mailman?

15 A Yes.

16 Q And who received that, typically?

17 A Typically it would be me or at times it
18 could be the office manager.

19 Q Who was that at that time? By that time,
20 I am talking about September of 1995.

21 A At that time it would have been my wife
22 Becky.

23 Q Did anybody else have authority to accept
24 and receipt for certified mail?

1 A No.

2 Q Did anybody else do so?

3 A No.

4 Q To your knowledge?

5 A Not that I am aware of.

6 MR. AUSTIN: May I see the exhibits
7 again? Thank you.

8 Q (By Mr. Austin) Now, Mr. Gilmore, I am
9 going to direct your attention to what has already
10 been received in evidence as People's Exhibit 2,
11 and ask you to look at that.

12 I will point out that it consists of a
13 copy of a two-page letter and a copy of a return
14 receipt which is attached as the third sheet of
15 People's Exhibit 2. Do you agree with that?

16 A Yes.

17 Q First, directing your attention to the
18 letter portion, the first two sheets. Have you
19 seen that before today?

20 A Yes.

21 Q Do you recall when you first saw it?

22 A I can't remember the exact date. It was
23 in 1996 when your office made me aware of it, I
24 believe.

1 Q Do you recall what the circumstances were
2 in 1996?

3 A As far as --

4 Q How you -- how that happened to come to
5 your attention, that letter?

6 A I believe I was sent a copy by your
7 office, if I am not mistaken.

8 Q Now, directing your attention to the
9 third sheet of People's Exhibit 2.

10 A Uh-huh, yes.

11 Q Your name appears as the addressee, does
12 it not?

13 A Yes.

14 Q That is your title, as well, the title of
15 president?

16 A Correct.

17 Q That is the name of your company; that is
18 correct, isn't it?

19 A Yes.

20 Q And the address is also correct, isn't
21 it?

22 A Yes.

23 Q Do you recognize the name or signature
24 that appears manually inscribed?

1 A Yes, I do.

2 Q And that name is what?

3 A Susan E. Wilson.

4 Q When did you first see that?

5 A When your office made it available to me.

6 Q And when was that, relative to September
7 5, 1995?

8 A I believe it was sometime in the spring
9 of 1996.

10 Q Do you have any recollection of Ms.
11 Wilson or anyone else presenting this letter dated
12 September 1, 1995, to you prior to 1996?

13 A No, not at all.

14 Q What was the normal method of handling a
15 communication of this type of an official nature
16 received by certified mail in your firm?

17 A Something of that nature --

18 Q And let's limit that to the fall of
19 1995.

20 A I would have expected it to have been
21 brought immediately to my attention. That would
22 have been the normal procedure.

23 Q You had filed Forms R in the past, had
24 you not, Mr. Gilmore?

1 A Yes.

2 Q And you were aware, were you not, of the
3 penalties that were associated with non filing?

4 A Yes.

5 Q You were aware of the -- and were at that
6 time aware of the importance of filing the Form R,
7 were you not?

8 A Yes.

9 Q Now, again, directing your attention to
10 the fall of 1995, were you continuously involved in
11 the day-to-day business operations?

12 A At that time I was having some health
13 problems that I wasn't necessarily there on a daily
14 basis full-time.

15 Q Would you just very briefly and generally
16 tell us what you mean by health problems or what
17 effect that had on your ability to function in the
18 business?

19 A Well, the effect it had was basically I
20 did not have the energy and the stamina to, you
21 know, be there on a daily basis and, you know, on a
22 full-time basis.

23 Q How, then, did you pass your day?

24 A There were some days when I just could

1 not make it in. Typically, I would try to go in
2 and --

3 MS. GENTILE: I would object to the
4 relevance of this, where this is going. I don't
5 see the relevance.

6 MR. AUSTIN: This is the last question I
7 intended to ask along this line.

8 HEARING OFFICER WALLACE: All right. Go
9 ahead.

10 MR. AUSTIN: The witness was already in
11 the process of answering.

12 THE WITNESS: I would go home at noon for
13 lunch and at that time I would not have the energy
14 to return.

15 Q (By Mr. Austin) Was Mrs. Gilmore
16 continuously involved in the day-to-day operations
17 of the business during September of 1995?

18 A Yes.

19 MS. AUSTIN: Okay. That's all I have.

20 HEARING OFFICER WALLACE: All right.
21 Cross-examination?

22 MS. GENTILE: I have a few questions.

23 CROSS EXAMINATION

24 BY MS. GENTILE:

1 Q Did you testify that in October of 1995
2 you ended your business; is that correct?

3 A Yes.

4 MR. AUSTIN: I believe the testimony was
5 October of --

6 MS. GENTILE: Of 1996?

7 THE WITNESS: 1995.

8 Q (By Ms. Gentile) That's right, October of
9 1995?

10 A Yes.

11 Q And so for the year -- for the calendar
12 year 1994 you were in business?

13 A Yes.

14 Q You talked about how mail was brought,
15 how mail was usually left outside, but for
16 certified mail it was brought inside; is that
17 correct, and that you or your --

18 A Well, that was the postal policy, you
19 know, that --

20 Q Okay. Right, because they have that --

21 A -- they required signature.

22 Q That is right, exactly.

23 A They obviously --

24 Q Yes, exactly.

1 A -- required signature.

2 HEARING OFFICER WALLACE: Wait. Wait.
3 Don't talk over each other, please.

4 THE WITNESS: Okay.

5 Q (By Ms. Gentile) That's right, certified
6 mail was brought inside?

7 A That was the post office policy, they
8 required a signature, yes.

9 Q I believe you testified that only certain
10 people were authorized to accept it, you and your
11 wife?

12 A Right.

13 Q Okay.

14 MR. AUSTIN: I believe the testimony was
15 at that particular time those were the two people
16 that were.

17 THE WITNESS: Right.

18 MS. GENTILE: Right, that's right.

19 Q (By Ms. Gentile) But if you weren't
20 around and the office managers were not around, who
21 would accept the certified mail?

22 A I would -- I would expect nobody to at
23 that time.

24 Q You would expect that no one would?

1 A Right.

2 Q But if somebody was, in fact, on the
3 premises and the post office were to walk in with a
4 certified mail, it is very possible that it would
5 have been signed?

6 MR. AUSTIN: Objection. Calls for
7 speculation.

8 HEARING OFFICER WALLACE: Sustained.

9 Q (By Ms. Gentile) Did you ever notify the
10 post office that you only wished -- you only wanted
11 certain people to be authorized to accept certified
12 mail?

13 A No.

14 MS. GENTILE: All right. I have no
15 further questions.

16 HEARING OFFICER WALLACE: Redirect?

17 MR. AUSTIN: None. Thank you.

18 HEARING OFFICER WALLACE: Thank you, Mr.
19 Gilmore. You may step down.

20 (The witness left the stand.)

21 HEARING OFFICER WALLACE: Mr. Austin, do
22 you have any further witnesses?

23 MR. AUSTIN: Yes, Your Honor. I would
24 like to call Becky Monica Gilmore.

1 (Whereupon the witness was
2 sworn by the Hearing Officer.)

3 HEARING OFFICER WALLACE: You may
4 proceed.

5 B E C K Y M O N I C A G I L M O R E,
6 having been first duly sworn by the Hearing
7 Officer, saith as follows:

8 DIRECT EXAMINATION

9 BY MR. AUSTIN:

10 Q Would you state your name, please.

11 A Becky Monica Gilmore, G-I-L-M-O-R-E.

12 Q And what is your association, if any,
13 with the Respondent, Unique Marble Products, Inc.?

14 A It is my husband's and my company.

15 Basically it is my husband's and I am just
16 secretary and treasurer.

17 Q How long have you served in that
18 capacity?

19 A Since 1988.

20 Q Were you present in the courtroom during
21 your husband's testimony in this cause?

22 A Yes.

23 Q If I were to put the same questions to
24 you as I put to him, to the extent of your

1 knowledge of those matters, would your answers be
2 the same or substantially similar?

3 A Yes.

4 Q Mrs. Gilmore, I am going to show you what
5 has been previously marked as People's Exhibit
6 Number 2. Do you recall having seen that document
7 before? First, I am talking about the letter,
8 consisting of the first two pages.

9 A The first time I saw this is when my
10 husband brought it home from your office that you
11 had received it by certified mail.

12 Q Do you recall when that was?

13 A The spring of 1996. I am not for sure
14 what month it was or what date it was at all.

15 Q And the return receipt, which is the
16 third sheet?

17 A Uh-huh.

18 Q Have you seen that before?

19 A Just with the letter that you had gave my
20 husband at that time.

21 Q Now, in September of 1995, what
22 association did you have with the Respondent,
23 Unique Marble Products, Inc., on a day-to-day
24 basis?

1 A I was there every day. I worked as
2 basically the office manager. I was doing some
3 production, the production schedules and things
4 like that, but I was there basically overseeing it,
5 because my husband wasn't -- he was there most of
6 the time, but not all the time. So I made it a
7 point that I was there.

8 Q Did you have a desk that you normally
9 worked at?

10 A I had a couple of desks. I had the -- a
11 Jack of all trades. I had -- the reception area
12 was basically mine, because I wanted to know -- we
13 didn't have that many people come in there,
14 whatsoever, but I was there to greet just in case
15 somebody did come in, a salesman or whatever type
16 thing. Then I did have a desk off to the side just
17 as you come into the reception area to the
18 right-hand side, which is our production office. I
19 was there partly, and moved paperwork back and
20 forth.

21 Q Well, did Unique Marble at that time,
22 September of 1995, receive from time to time
23 certified mail and express mail?

24 A Not very often, whatsoever. Certified

1 mail, I can't even remember the last time we did
2 get a certified mail, whatsoever. If they did,
3 what they did if we weren't there in the past
4 previous times, they just left the little yellow
5 receipt and --

6 Q Who is "they"?

7 A The postman.

8 Q Okay.

9 A Which he came about 10:30 in the morning
10 to noon type thing. He would just leave that there
11 and if somebody wasn't there, you know, one of us,
12 he would just leave it there, and we would have to
13 go up to the post office and pick it up there and
14 sign for the receipt. Federal Express and things
15 like that, we didn't have very often, but usually I
16 was there to sign if that's what it was.

17 Q How would a notice of this type, received
18 by certified mail, have normally been handled in
19 Unique Marble?

20 A With it being signed and with it being
21 Guy R. Gilmore, I mean, we -- well, I didn't feel
22 comfortable signing my name to something that was
23 supposed to be his. So I would have him go up to
24 the post office if he wasn't there. He had to go

1 get it, you know, because that is what the
2 signature said.

3 The postman never had no problems with
4 that at all. I mean, he never said anything
5 before. But it would always be a certified mail.
6 If it was certified to Unique Marble, I would sign
7 it or my husband would sign it at that time.

8 Q Are you familiar with Susan Wilson?

9 A Yes.

10 Q Susan E. Wilson?

11 A Yes.

12 Q Was it within the scope of Ms. Wilson's
13 duties for Unique Marble, on September of 1995, to
14 receipt for certified mail or otherwise receive
15 mail?

16 A No.

17 Q Did Ms. Wilson, to the best of your
18 recollection, ever bring this notice, dated
19 September 1, 1995, to the attention of either you
20 or your husband?

21 A No.

22 MR. AUSTIN: No further questions.

23 HEARING OFFICER WALLACE: All right.

24 Cross-examination?

1 MS. GENTILE: I just have a few
2 questions.

3 CROSS EXAMINATION

4 BY MS. GENTILE:

5 Q If you -- well, when you weren't there,
6 it was possible that other employees could be
7 there, correct, at the office?

8 A Could be what? I am sorry.

9 Q At the office, if you weren't at the
10 office?

11 A Yes, uh-huh.

12 Q Then it is possible -- I mean, when you
13 talked about the postal service leaving a yellow
14 receipt, that is if no one was at the office?

15 A No, no.

16 Q When was that?

17 A It was left if we -- if it was not -- you
18 know, if it was Unique Marble on there, with Guy R.
19 Gilmore on there, or a person type thing, they
20 would leave it, because nobody signed it. I am
21 sorry.

22 Q That's okay. No, I didn't mean that.
23 Obviously, though, an employee did sign it?

24 A Yes.

1 Q Okay. So, obviously, that procedure that
2 you say was in effect was not really in effect, was
3 it?

4 A She did not follow it.

5 MR. AUSTIN: Objection. Argumentative.

6 HEARING OFFICER WALLACE: Overruled.

7 You may answer the question.

8 THE WITNESS: She did not follow it, you
9 know.

10 Q (By Ms. Gentile) But she was an employee
11 of --

12 A She did not follow our policy, I should
13 say.

14 Q But she was an employee of Unique Marble
15 in customer service; is that correct?

16 A Yes.

17 Q She answered the telephone, and I believe
18 it was testified that she also received some mail?

19 A No, she did not.

20 Q Okay.

21 A She answered the telephone for customers
22 calling in asking questions or placing orders.

23 MS. GENTILE: Okay. I have no further
24 comments. No further questions.

1 HEARING OFFICER WALLACE: Redirect?
2 REDIRECT EXAMINATION
3 BY MR. AUSTIN:
4 Q How long after September 5, 1995 did Ms.
5 Wilson's employment by Unique Marble continue?
6 A She was there until the middle of
7 October, about the 20th of October.
8 Q And you did experience some other
9 difficulties with her following internal
10 procedures, did you not?
11 A Yes, we did.
12 MR. AUSTIN: No further questions.
13 HEARING OFFICER WALLACE: Re-cross?
14 MS. GENTILE: I have no questions.
15 HEARING OFFICER WALLACE: Thank you, Ms.
16 Gilmore. You may step down.
17 (The witness left the stand.)
18 HEARING OFFICER WALLACE: Do you have
19 anything further, Mr. Austin?
20 MR. AUSTIN: We have no further
21 witnesses.
22 HEARING OFFICER WALLACE: Any rebuttal,
23 Ms. Gentile?
24 MS. GENTILE: No.

1 HEARING OFFICER WALLACE: Okay. Let's go
2 off the record.

3 (Discussion off the record.)

4 HEARING OFFICER WALLACE: Back on the
5 record.

6 We had an off-the-record discussion
7 discussing briefing schedules.

8 The transcript should be due roughly
9 around May the 9th, and maybe earlier. So our
10 briefing schedule will be -- the People's initial
11 brief is May the 23rd, and the Respondent's brief
12 is due June the 6th.

13 Just for the record, the lady in the
14 back, do you wish to make any kind of statement
15 regarding -- well, are you just a member of the
16 public?

17 MS. GENTILE: She is with the Illinois
18 EPA. I am sorry.

19 HEARING OFFICER WALLACE: Oh, okay.
20 Thank you.

21 Ms. Gentile, do you wish to make a
22 closing statement?

23 MS. GENTILE: Yes. Thank you.

24 The evidence shows that Unique Marble was

1 required to file Form Rs for dichloromethane and
2 styrene for calendar year 1994. That the Illinois
3 EPA provided Unique Marble with adequate notice in
4 accordance with the Environmental Protection Act,
5 and that Unique Marble did not respond to that
6 notice, and did not file a Form R for either toxic
7 chemical on or before December 31st, 1995.

8 The Respondent's argument is that since
9 the person who accepted delivery of the Agency's
10 September 1, 1995 certified letter was not so
11 authorized by that company to sign, that this isn't
12 adequate notice.

13 The EPA sent to the Respondent by
14 certified mail a letter dated September 1, 1995,
15 notifying the Respondent that they were to file two
16 Form Rs. One Susan Wilson, employed by Unique
17 Marble, on September 5th, accepted delivery of that
18 letter, signing the return receipt card on
19 September 5th.

20 There is no statutory or regulatory
21 requirement that in the case of a corporation it be
22 directed to a certain authorized recipient. So,
23 therefore, the Respondent was served with notice by
24 certified mail, as required by the statute.

1 First, Unique Marble was required to file
2 a Form R for both dichloromethane and styrene by
3 July 1st, 1995. There is no requirement that the
4 federal or state authorities must notify the
5 company of this requirement before it is
6 triggered. However, the notice is a prerequisite
7 to the Agency's enforcement authority, and here the
8 notice was adequate in accordance with the
9 Environmental Protection Act.

10 We have here a case where a company has
11 filed Forms R for four years; 1990, 1991, 1992 and
12 1993. Suddenly, the company does not file the
13 required reports for Form R for calendar year 1994,
14 and as its defense claims the Agency delivered
15 notice to an employee who the company did not
16 consider an authorized recipient of that notice.

17 Yet, for years 1990 through 1993 the
18 company provided the IEPA with certain mailing
19 information if we had any questions about Form R.
20 At any time the company could have advised the
21 Illinois EPA where it wished its mail sent and to
22 whose attention, but it did not.

23 As late as October of 1996, after this
24 action was brought, the company submitted its Form

1 R for dichloromethane for calendar year 1994, and
2 again provided the Agency with the same mailing
3 information that it had in years previous.

4 The September 1, 1995 letter was directed
5 to a person and addressed consistent with
6 information the company provided to the Illinois
7 EPA for that purpose. Now the company complains
8 that the Illinois EPA was incorrect in relying on
9 information that the company provided. The company
10 complaint is self-imposed.

11 That's all I have to say. Thank you.

12 HEARING OFFICER WALLACE: Thank you, Ms.
13 Gentile.

14 Mr. Austin?

15 MR. AUSTIN: We will waive closing
16 argument being that we will be given an opportunity
17 to argue in a post-trial brief.

18 HEARING OFFICER WALLACE: All right.
19 Thank you, sir.

20 Okay. That's all from the People, Ms.
21 Gentile?

22 MS. GENTILE: Yes, that concludes our
23 case.

24 HEARING OFFICER WALLACE: And that is all

1 from the Respondent?

2 MR. AUSTIN: That is correct.

3 HEARING OFFICER WALLACE: Pursuant to the
4 Board's rules of practice, I will note for the
5 record that there are no members of the public
6 present, and that I find no credibility issues with
7 the witnesses presented.

8 There being nothing further, this hearing
9 is adjourned. Thank you.

10 MS. GENTILE: Thank you.

11 MR. AUSTIN: Thank you.

12 (People's Exhibits 1 through 7
13 were retained by Hearing
14 Officer Wallace.)

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF MONTGOMERY)

3 C E R T I F I C A T E

4 I, DARLENE M. NIEMEYER, a Notary Public
5 in and for the County of Montgomery, State of
6 Illinois, DO HEREBY CERTIFY that the foregoing 67
7 pages comprise a true, complete and correct
8 transcript of the proceedings held on the 29th of
9 April A.D., 1997, at Effingham County Office
10 Building, First Floor Conference Room, 101 North
11 Fourth Street, Effingham, Illinois, in the case of
12 The People of the State of Illinois v. Unique
13 Marble Products, Inc., in proceedings held before
14 the Honorable Michael L. Wallace, Hearing Officer,
15 and recorded in machine shorthand by me.

16 IN WITNESS WHEREOF I have hereunto set my
17 hand and affixed my Notarial Seal this 6th day of
18 May A.D., 1997.

19

20

21 Notary Public and
22 Certified Shorthand Reporter and
Registered Professional Reporter

23 CSR License No. 084-003677
My Commission Expires: 03-02-99

24