

ILLINOIS POLLUTION CONTROL BOARD  
September 17, 1987

WILLIAM AND DELORES CARTER,            )  
  )  
                  Complainants,         )  
  )  
                  and                     )  
  )  
LEROY AND MARGUERITE STANLEY,         )  
  )  
                  Intervenors.         )  
  )  
                  v.                     )                    PCB 83-132  
  )  
DUNN COMPANY,                            )  
  )  
                  Respondent,            )

ORDER OF THE BOARD (by B. Forcade):

On September 14, 1982, the Respondent, Dunn Company, filed a motion to reconsider the Board's decision of August 6, 1987, in the above-captioned matter. The Dunn Company provided proof of service on the Complainants, Carter and the Intervenors, Stanley, which indicates that service was effected by U.S. Mail (class unspecified) on September 11, 1987. The motion for reconsideration is untimely as the 35-day period specified in 35 Ill. Adm. Code 103.240 ended on September 10, 1987. The motion for reconsideration is therefore denied.

Dunn Company had filed an earlier document entitled "Motion to Reconsider" on August 20, 1987. This document contained no proof of service on the Complainants and Intervenors, in violation of 35 Ill. Adm. Code 103.123. The Board, by Order dated September 4, 1987, noted the lack of proof of service and indicated that the document would not be deemed filed until adequate proof of service was filed with the Board. Dunn Company subsequently effected service and filed proof of same on September 14, 1987. However, neither the service nor the filing of the motion for reconsideration were timely.

In addition, even if Dunn Company's motion to reconsider had been timely filed, the Board would not reconsider or modify its decision. First, the Dunn Company's motion is unverified. As such, it presents no new facts with which this Board can reconsider its August 6, 1987, decision. Second, even if the assertions in the Dunn Company's motion were verified, they do not support reconsideration and modification of the August 6, 1987, Order.

Dunn asserts that it no longer operates a small batch mixing asphalt plant but has operated a drum mix plant since 1985. While this assertion conflicts with the evidence Dunn Company introduced at hearing, Dunn Company presents no information or argument as to how this change in operation impacts odor and particulate emissions. It is quite possible that such a process change from a small plant to a larger operation results in increased emissions. The Board is at a loss as to how this justifies reconsideration.


Dunn Company further alleges that it has priority of location over the neighboring resident-complainants as it has conducted some form of business at this site for thirty years. While this allegation is similarly unverified and unsupported, it also seems to conflict with Dunn Company's first allegation that its facility substantially changed and expanded in 1985. Consequently, even if Dunn Company's motion was timely and verified, reconsideration is not justified.

In summary, Dunn Company's Motion to Reconsider is denied as untimely and because the motion presents no facts or rationale that would justify reconsideration or modification of the Board's August 6, 1987, Order. Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985, ch. 111-1/2, par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED

Board Members Joan Anderson and J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 17<sup>th</sup> day of September, 1987, by a vote of 4-2.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board