ILLINOIS POLLUTION CONTROL BOARD
June 1, 2006

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 03-191
	)	(Enforcement – Land)
COMMUNITY LANDFILL COMPANY, INC., an Illinois corporation, and the CITY OF MORRIS, an Illinois municipal corporation,	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by N.J. Melas):

On April 17, 2003, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a one-count complaint against alleging failure to provide adequate financial assurance for closure and post-closure operations. Community Landfill Company, Inc. (CLC) is the operator, and the City of Morris (Morris) the owner, of the Morris Community Landfill, a special waste and municipal solid waste landfill located at 1501 Ashley Road, Morris, Grundy County. The Board accepted the complaint for hearing on May 1, 2003.

On March 31, 2006, both CLC and Morris (respondents) filed motions to reconsider the Board's February 16, 2006 interim opinion and order granting summary judgment in favor of the People. As discussed below, the Board grants both parties' motions for reconsideration. Upon reconsideration, however, the Board upholds the Board's February 16, 2006 interim opinion and order and directs the hearing officer to proceed to hearing on the issue of remedy.

PROCEDURAL BACKGROUND

On July 21, 2005, the People moved the Board to grant summary judgment in its favor. On October 3, 2005, CLC responded and moved to strike portions of the People's motion for summary judgment. On October 4, 2005, Morris responded to the People's motion and filed a counter-motion for summary judgment. On October 18, 2005, the People made several filings, including a response to CLC's motion to strike and a response to the counter-motion for summary judgment. On that same day, the People moved the Board for leave to file a reply in support of the People's motion for summary judgment *instanter*. The People claimed that CLC misrepresented the issue of relief and stated that the misrepresentation could result in material prejudice if the People were not allowed to reply. The Board granted the motion and accepted the People's reply.

On February 16, 2006, the Board granted CLC's motion and struck the People's request for an interim remedy from the motion for summary judgment. The Board then granted the

People's motion and denied Morris' counter- motion. Finally, the Board ordered the hearing officer to proceed expeditiously to hearing on the issue of remedy.

STANDARD FOR RECONSIDERATION

A motion to reconsider may be brought "to bring to the [Board's] attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the [Board's] previous application of existing law." Citizens Against Regional Landfill v. County Board of Whiteside County, PCB 92-156, slip op. at 2 (Mar. 11, 1993), citing Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1991); *see also* 35 Ill. Adm. Code 101.902. A motion to reconsider may specify "facts in the record which were overlooked." Wei Enterprises v. IEPA, PCB 04-23, slip op. at 5 (Feb. 19, 2004). "Reconsideration is not warranted unless the newly discovered evidence is of such conclusive or decisive character so as to make it probably that a different judgment would be reached." Patrick Media Group, Inc. v. City of Chicago, 255 Ill. App. 3d 1, 8, 626 N.E.2d 1066, 1071 (1st Dist. 1993).

CLC'S MOTION FOR RECONSIDERATION

In its motion for reconsideration, CLC has presented no newly discovered evidence or changes in the law. Accordingly, the following paragraphs discuss only CLC's arguments as to how the Board allegedly misapplied the law. CLC seeks clarification from the Board's "finding of violations." Mot. at 2. CLC contends that a finding that CLC disposed waste is a prerequisite to a violation of Section 811.700(f) of the Board's rules, which prohibits the operation of a waste disposal facility without proper financial assurance. Mot. at 4.

CLC requests that the Board order the parties to hearing on the matter of the respondents' liability in regard to allegations of "improper waste disposal" prior to any hearing on remedy. Further, CLC asks the Board to clarify its findings and to reconsider the grant of summary judgment in favor of complainant.

MORRIS' MOTION FOR RECONSIDERATION

As in CLC's motion for summary judgment, Morris has also presented no newly discovered evidence or changes in the law. Morris has set forth many of the same arguments as in its response to the People's motion for summary judgment opposing any finding of violation. The Board will not reanalyze these arguments, but will discuss only Morris' arguments as to how the Board allegedly misapplied the law. Though Morris continually refers to assertions made by the *State* and the *State's arguments*, the Board assumes Morris is alleging that the *Board* misapplied the law. Morris' primary argument is that the Board is mistaken in interpreting Section 21(d)(2) liberally, when Morris argues Section 21(d)(2) should be interpreted narrowly.

THE THE PEOPLE'S RESPONSES

Response to CLC

The People claim that CLC has failed to articulate any newly discovered evidence, changes in the law or errors in the Board's application of existing law. The People argue, therefore, that CLC's motion for reconsideration must fail. The People contend that if the Board should find sufficient reasons for reconsideration, the motion should fail and the Board should reaffirm its February 16, 2006 interim opinion and order in its entirety.

The People assert that the Board's order "clearly articulates that both Respondents conducted a waste disposal operation." Resp. to CLC at 4; citing Board order at 14. Further, the People argue that there is no requirement to prove that the respondents' waste disposal was improper, only that it occurred at the time the respondents failed to have proper financial assurance. Because there are no genuine issues of material fact that would preclude summary judgment, the People urge the Board to deny CLC's motion for reconsideration and uphold the February 16, 2006 interim opinion and order. Resp. to CLC at 8

Response to Morris

The People assert that Morris does not offer any new evidence or allege a change in the Act or Board regulations. Rather, Morris is challenging the Board's interpretation of the record. In doing so, the People claim Morris merely repeats many of the arguments already rejected by the Board in the Board's February 16, 2006 order granting summary judgment.

The People state that in accordance with Section 2 of the Act, the Board must liberally construe the Act to effectuate its purposes. Resp. to Morris at 2; citing State Oil Co. v. People, 352 Ill. App. 3d 813, 822 N.E.2d 876, at 822 (2d Dist. 2004); 415 ILCS 5/2 (2004). The People also restate many of the arguments presented in the motion for summary judgment. The THE People maintain that the behavior of a party determines whether it is an "operator," and the City's actions demonstrate continuous involvement in waste disposal-related decisions at the Site. Resp. to Morris at 4. The People conclude that the Board has correctly applied the relevant provisions of the Act and Subtitle G regulations and that Morris' motion to reconsider should be denied.

BOARD DISCUSSION

The Board grants both parties' motions for reconsideration, finding that the Board did not misapply the law on either of the two points that the parties raised. Despite granting the respondents' motion for reconsideration, the Board finds no errors in how it applied the law in the February 16, 2006 order and upholds the opinion and order granting summary judgment in favor of the People.

The Board first seeks to clarify CLC's confusion about the Board's finding of violations in the February 16, 2006 interim opinion and order. The Board's February 16, 2006 order the Board struck allegations that continued disposal at the site qualified as a newly pled cause of action on which relief could be requested. This is evidenced by the Board's statement "the Board grants CLC's motion and strikes references to the People's *requests for relief* from the summary judgment pleading." *See* People v. Community Landfill Co., Inc. and City of Morris, PCB 03-191, slip op. at 13 (Feb. 16, 2006) (emphasis added). The Board order *did* find that the

respondents operated a waste disposal site without having adequate financial assurance. These findings are what are required to have a cause of action under Section 811.700(f) of the Board's rules. 35 Ill. Adm. Code 811.700(f). The alleged fact that waste disposal continued at CLC has not been struck from the record, as there is no reason to do so. In fact, the February 16, 2006 Board order explicitly stated that "[t]he parties may address . . . the duration of the violations . . . at hearing and in final briefs on the issue of remedy."

Improper waste disposal is not a prerequisite to a finding of violation under Section 811.700(f). The Board will not, therefore, grant CLC's request to hold a hearing on the "Respondents' liability in regard to Complainant's allegations of improper waste disposal."

Next, the Board addresses Morris' arguments in support of reconsideration. The Board finds it correctly interpreted Section 21(d)(2) of the Act and Sections 811.700(f) and 811.712(b) of the Board's regulations. According to Section 2 of the Act, "[t]he terms and provisions of the Act shall be liberally construed so as to effectuate the purposes of this Act." 415 ILCS 5/2 (2004). Rowe Foundry & Machine Co., v. IEPA, PCB 88-21, slip op. at 9 (Feb. 23, 1989); citing Reynolds Metals Co. v. PCB and IEPA, 108, Ill. App. 3d 161, 438 N.E.2d 1267, 63 Ill. Dec. 904 (1982) (holding that it is generally unnecessary to look beyond the language of the statute. Where different interpretations are urged, however, the court must look to the reasons for enactment of the statute and construe the statute in a way that is consistent with that purpose).

Section 811.700(f) states that "no person . . . shall conduct any waste disposal operation" unless that person complies with the financial assurance regulations. As discussed in the Board's February 16, 2006 order, caselaw specifically provides that the Board takes a broad view of what types of activities constitute "operating" a waste disposal site. *See* People v. Poland, Yoho, and Briggs Ind., Inc., *et al.*, PCB 98-148, slip op. at 18 (Sept. 6, 2001). The purpose of the Act is to ensure that financial assurance obligations are met so that neither human health nor the environment is harmed from the operation of a municipal solid waste landfill. The Board must interpret the Act as it applies in each individual instance. The Board finds that Morris' decision-making authority, financial involvement, history of litigation, and responsibility for at least one aspect of the site operations, the treatment of leachate, collectively qualifies as "conducting a waste disposal operation."

As concerns the Board's finding of violations against both respondents, the Board's procedural rules require the "owner or operator" to provide financial assurance. *See* 35 Ill. Adm. Code 811.700, 706, *et seq*. Under the Illinois codification scheme, the use of "or" allows either or both parties to meet the requirements. The Board is not allowed to use "and/or" in drafting rule language. *See* Safe Drinking Water Act Update, Phase IIB and Lead and Copper Rules (6/1/91-12/31/91), R92-3 (May 5, 1993). The Board finds it properly interpreted the Act and Board regulations broadly in analyzing the specific facts of this case and upholds the February 16, 2006 interim opinion and order granting summary judgment on the alleged financial assurance violations.

REMEDY

The parties have not yet analyzed the 33(c) or 42(h) factors regarding an appropriate remedy, including civil penalty, if any, in this proceeding. If a complainant proves an alleged violation, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act to fashion an appropriate remedy for the violation. *See* 415 ILCS 5/33(c), 42(h) (2004). Specifically, the Board considers the Section 33(c) factors in determining, first, what to order the respondent to do to correct an on-going violation, if any, and, second, whether to order the respondent to pay a civil penalty. The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation, such as the character and degree of any resulting interference with protecting public health, the technical practicability and economic reasonableness of compliance, and whether the respondent has subsequently eliminated the violation.

If, after considering the Section 33(c) factors, the Board decides to impose a civil penalty on the respondent, only then does the Board consider the Act's Section 42(h) factors in determining the appropriate amount of the civil penalty. Section 42(h) sets forth factors that may mitigate or aggravate the civil penalty amount, such as the duration and gravity of the violation, whether the respondent showed due diligence in attempting to comply, any economic benefit that the respondent accrued from delaying compliance, and the need to deter further violations by the respondent and others similarly situated.

Accordingly, the Board further directs the hearing officer to advise the parties that at hearing, each party should: (1) discuss whether to impose a remedy, if any, including a civil penalty, for the violations and support its position with facts and arguments that address any or all of the Section 33(c) factors; and (2) propose a civil penalty, if any, including a specific dollar amount, and support its position with facts and arguments that address any or all of the Section 42(h) factors.

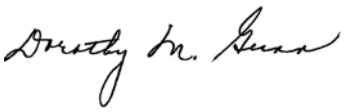
In the motion for summary judgment, the People also request attorney fees pursuant to Section 42(f) of the Act. 415 ILCS 5/42(f) (2004). Therefore, at hearing the parties must also address whether the respondents committed any "willful, knowing, or repeated violation of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order." *Id*.

CONCLUSION

The Board grants both CLC's and Morris' motions to reconsider with respect to the Board's alleged misapplication of the law. The Board, however, denies the respondents' requests and upholds the Board's February 16, 2006 ruling granting summary judgment in favor of the People on the violations alleged in the complaint and directs the hearing officer to proceed to hearing on the issue of remedy.

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 1, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board