

ILLINOIS POLLUTION CONTROL BOARD
September 20, 2001

JERSEY SANITATION CORPORATION, an)	
Illinois corporation,)	
)	
Petitioner,)	
)	
v.)	PCB 00-82
)	(Permit Appeal – Land)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On August 14, 2001, the Board received a motion for reconsideration filed by the Illinois Environmental Agency (Agency). On August 20, Jersey Sanitation Corporation (Jersey Sanitation) filed a motion to strike the motion for reconsideration or in the alternative for an evidentiary hearing “to further explore the facts pertinent to whether” the motion for reconsideration was timely filed. On September 7, 2001, the Board received from the Agency a motion to file *instanter* a response to the motion to strike. On September 17, 2001, the Board received Jersey Sanitation’s motion for leave to file a reply to the response to the motion to strike. The Board hereby grants the Agency’s motion to file *instanter* and Jersey Sanitation’s motion for leave to file a reply, along with the reply; but denies Jersey Sanitation’s motion to strike or for an evidentiary hearing.

In the motion to strike the motion to reconsider, Jersey Sanitation argues that the motion to reconsider was not timely filed based on the Board’s procedural rules. The Board’s procedural rules at 35 Ill. Adm. Code 101.300(b)(2) provide that “if a document is filed by U.S. Mail subsequent to a filing deadline, yet the postmark date precedes the filing deadline, the document will be deemed filed on the postmark date” Jersey Sanitation argues that because the filing deadline was August 1, 2001, a filing postmarked August 1, 2001 is not timely filed because the postmark does not “precede” the filing deadline.

According to the motion to reconsider, the Agency received the Board’s opinion and order on June 27, 2001. The envelope containing the motion to reconsider was postmarked August 1, 2001, 35 days after the date the Agency received the Board’s opinion and order. In addition, the certificate of service indicates that the motion to reconsider was served on August 1, 2001, by regular U.S. Mail. The Agency in its response to the motion to strike argues that the motion to reconsider was timely filed. The Agency points to the Board’s second-notice opinion and order in Revision of the Board’s Procedural Rules: 35 Ill. Adm. Code 101-130, R00-20 (November 2, 2000) to support its contention. In that opinion the Board stated that documents sent by U.S. Mail that are received after a filing deadline will be deemed filed on the postmark

date. Revision of the Board's Procedural Rules: 35 Ill. Adm. Code 101-130, R00-20 (November 2, 2000) slip op at 17.

The Board disagrees with the interpretation of our procedural rule urged by Jersey Sanitation. A filing can be received in the Board's office on the 35th day and be timely filed. To rule that a filing cannot be mailed on the 35th day would defeat the purpose of the Board's procedural rule that allows filings to be mailed to the Board. Therefore Jersey Sanitation's motion to strike is denied and the request for evidentiary hearing is also denied.

Jersey Sanitation has also asked for additional time to respond to the Agency's motion to reconsider. However, the Board will deny Jersey Sanitation's request for additional time because, after careful consideration of the Agency's arguments, the Board will today deny the Agency's motion to reconsider the Board's decision on June 21, 2001, for the following reasons.

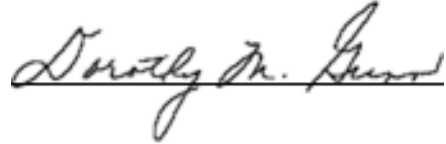
In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law, to conclude that the Board's decision was in error. 35 Ill. Adm. Code 101.902.). In Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (March 11, 1993), we observed that "the 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 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, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992). The Board finds that the Agency's motion to reconsider presents the Board with no new evidence, change in the law, or any other reason to conclude that the Board's June 21, 2001 decision was in error. Therefore the motion to reconsider is denied.

IT IS ORDERED.

Board Member E.Z. Kezelis dissented.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520, *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the above order was adopted on September 20, 2001, by a vote of 5-1.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board