

ILLINOIS POLLUTION CONTROL BOARD
December 1, 1994

J. I. CASE COMPANY,)
)
 Petitioner,)
)
 v.) PCB 94-223
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by M. McFawn):

On November 10, 1994, petitioner J. I. Case Company (J. I. Case) filed a motion requesting that the Board reconsider its October 6, 1994 decision dismissing J. I. Case's complaint against the Illinois Environmental Protection Agency (Agency) in this matter. The Agency filed a response to the motion to reconsider on November 21, 1994.

In its motion for reconsideration, J.I. Case asserts that the Board should grant reconsideration on two grounds: first, that the Board improperly assumed that the cleanup objectives had been established under the Pre-Notice Program established pursuant to Section 22.2(m) of the Act; and second, that the Board assumed that J. I. Case had voluntarily entered into the Pre-Notice Program. For the reasons set forth below, the motion for reconsideration is denied.

Concerning petitioner's first argument, it is undisputed that J.I. Case had entered the voluntary Pre-Notice Program by January 1994, and the cleanup objectives for which J. I. Case sought review are the revised objectives issued by the Agency in January, 1994. In fact, J. I. Case's original petition for review concluded as follows:

WHEREFORE, Case requests that the Board reverse the Agency's imposition of new [January 1994] cleanup objectives and the Agency's denial of Cases's request for application of the Agency's 1989 cleanup objectives.

(Pet. at 4.)

Clearly, the January 1994 objectives, not the 1989 objectives, are the objectives for which J. I. Case sought review and which the Board considered when we determined that we have no jurisdiction over the Pre-Notice Program.

Petitioner's second argument in its motion for reconsideration restates an argument asserted in its September

12, 1994 response to the Agency's motion to dismiss. In our final order we did not reach this issue, based upon our finding that the Agency decision in establishing revised voluntary cleanup objectives was not a final decision affecting petitioner's legal rights and duties, and was therefore not subject to review.

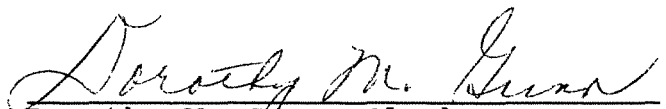
In ruling on a motion for reconsideration the Board is to consider, but is not limited to, error in the decision and facts in the record which may have been overlooked. (35 Ill. Adm. Code 101.246(d).) In Citizens Against Regional Landfill v. County Board of Whiteside (March 11, 1993), PCB 93-156, we 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 hearing, changes in the law or errors in the court's previous application of the existing law. (Korogluyan v. Chicago Title & Trust Co. (1st Dist. 1992), 213 Ill.App.3d 622, 572 N.E.2d 1154, 1158.)"

We find that the motion for reconsideration presents the Board with no new evidence, a change in the law, or any other reason to conclude that the Board's October 6, 1994 decision was in error. Accordingly, the motion for reconsideration is denied.

IT IS SO ORDERED.

Board member J. Yi abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 1st day of December 1994, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board