ILLINOIS POLLUTION CONTROL BOARD
July 11, 2002

| | | |
|---|---|---|
| SALINE COUNTY LANDFILL, INC., | ) | |
| | ) | |
| Petitioner, | ) | |
| | ) | |
| v. | ) | PCB 02-108 |
| | ) | (Permit Appeal - Land) |
| ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, | ) | |
| | ) | |
| Respondent, | ) | |
| | ) | |
| COUNTY OF SALINE, | ) | |
| | ) | |
| Intervenor. | ) | |

ORDER OF THE BOARD (by C.A. Manning):

On June 17, 2002, the County of Saline (County) moved the Board to reconsider its May 16, 2002 opinion in this permit appeal. The Board denies the motion for the reasons below. Before turning to the County's motion, the Board provides background on its May 16, 2002 decision.

The Board, on May 16, 2002, affirmed the Illinois Environmental Protection Agency's (Agency) January 4, 2002 decision denying Saline County Landfill, Inc.'s (SCLI) application for a development permit. SCLI sought the permit to expand the Saline County Landfill. Beginning in October 1999, SCLI submitted permit application materials to the Agency. Before the Agency rendered its decision, SCLI modified its permit application, removing from the design a 50-foot wide interior berm that would have separated the existing landfill from its lateral expansion.

In denying SCLI's permit application, the Agency correctly determined that removing the interior berm was inconsistent with the Saline County Board's November 1996 siting approval, which required an interior berm at least 50 feet wide. SCLI's proposed landfill expansion therefore lacked the local siting approval required before a development permit can issue under Section 39(c) of the Environmental Protection Act (415 ILCS 5/39(c) (2000)). This was the only ground for the Agency's permit denial. The Board allowed the County, which supported the Agency's decision, to intervene in this appeal.

Though the Agency prevailed before the Board, the County moved the Board to reconsider one sentence of the Board's May 16, 2002 opinion. SCLI filed a response on June 20, 2002, opposing the County's motion. The Agency did not respond to the County's motion.

On July 10, 2002, the County, attaching a reply, filed a motion for leave to file the reply, which the Board grants.

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 (when ruling on a motion to reconsider, the Board "will consider factors including new evidence, or a change in the law, to conclude that the Board's decision was in error.").

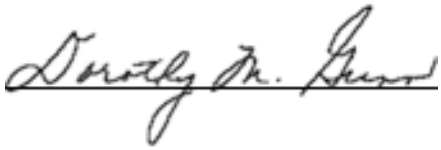
In its motion, the County argues that the Board misrepresented the County's position and misstated the law (County Motion at 2-3) when the Board noted the following in its May 16, 2002 opinion: "Finally, though it has no bearing on the Board's decision today, and the Board makes no ruling on it, the parties do not dispute that SCLI can avoid returning for siting if it submits an amended permit application, proposing a *wider* interior separation berm, 100 feet wide instead of 50." Saline County Landfill, Inc. v. IEPA and County of Saline, PCB 02-108, slip op. at 19 (emphasis in original).

The Board finds that the County's assertions are groundless. In its closing brief, the County conceded the consistency of a 100-foot wide interior berm both with "the landfill design regulations administered by the IEPA and with the Saline County's siting approval." County Closing Brief at 9. Moreover, not only did the sentence at issue expressly provide that the Board was making no statement of the law, but the Board cannot misstate the law by merely observing, as it did, what the parties had not disputed. Finally, nothing in any perceived Board *dicta* here runs afoul of Reichhold Chemicals, Inc. v. PCB and IEPA, 204 Ill. App. 3d 674, 561 N.E.2d 1343 (3d Dist. 1990). The challenged language plainly referred to SCLI submitting a *different* permit application to the Agency, one that for the first time would include a 100-foot wide interior berm. The language nowhere indicated that the Agency could simply reconsider its final decision denying the permit. Indeed, the Board affirmed that decision. The Board therefore denies the County's motion.

IT IS SO ORDERED.

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 Board adopted the above order on July 11, 2002, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board