

RECEIVED
CLERK'S OFFICE

NOV 10 2004

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

**STATE OF ILLINOIS
Pollution Control Board**

VILLAGE OF ROBBINS and)	
ALLIED WASTE)	
TRANSPORTATION, INC.,)	
Petitioner,)	PCB No. 04-48
v.)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Charles F. Helsten
Hinshaw & Culbertson
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389

William Mansker
Village of Robbins
3327 West 137th Street
Robbins, IL 60472

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a MOTION FOR LEAVE TO FILE INSTANTER and RESPONSE TO MOTION TO RECONSIDER, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: November 8, 2004

RECEIVED
CLERK'S OFFICE

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

NOV 10 2004

**STATE OF ILLINOIS
Pollution Control Board**

VILLAGE OF ROBBINS and)	
ALLIED WASTE)	
TRANSPORTATION, INC.,)	
Petitioner,)	PCB No. 04-48
v.)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

MOTION FOR LEAVE TO FILE INSTANTER
A RESPONSE TO PETITIONER'S MOTION TO RECONSIDER

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, John J. Kim, Assistant Counsel and Special Assistant Attorney General, and, pursuant to 35 Ill. Adm. Code 101.500, hereby requests that the Illinois Pollution Control Board ("Board") grant the Illinois EPA leave to file instanter a Response to Petitioner's Motion to Reconsider. In support of this motion, the Illinois EPA states as follows:

1. The Petitioner, Village of Robbins, filed a motion to reconsider with the Board on October 19, 2004. Pursuant to 35 Ill. Adm. Code 101.520(b), a response to the motion to reconsider is to be filed with the Board within fourteen (14) days after the filing of the motion. Accordingly, the response was due on or before November 3, 2004. The 14th day after the filing was November 2, 2004, a State holiday. Pursuant to 35 Ill. Adm. Code 101.300(a), the next business day (November 3, 2004) would then be the due date for the response.

2. On November 3, 2004, the Illinois EPA filed a motion for extension of time by which to file the Response to the Petitioner's Motion to Reconsider. The Illinois EPA sought a limited extension of time of no more than two business days, or until November 5, 2004.

3. Unfortunately, counsel for the Illinois EPA was unable to complete the Response prior to the end of business on November 5, 2004.

4. The Response that accompanies this motion is being mailed for filing on November 8, 2004, which is less than one week after the original due date for the Response. The Illinois EPA regrets any delay this filing may cause, but given the short time periods following the due date it is likely that the delay will be slight, if any.

5. The Illinois EPA is sending a courtesy facsimile copy of the pleadings filed on this date to opposing counsel.

WHEREFORE, for the reasons stated above, the Illinois EPA hereby respectfully requests that the Board grant the Illinois EPA leave to file instanter the Response to Petitioner's Motion to Reconsider.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: November 8, 2004

This filing submitted on recycled paper.

RECEIVED
CLERK'S OFFICE

NOV 10 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

VILLAGE OF ROBBINS and)	
ALLIED WASTE)	
TRANSPORTATION, INC.,)	
Petitioner,)	PCB No. 04-48
v.)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

RESPONSE TO PETITIONERS' MOTION TO RECONSIDER

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, John J. Kim, Assistant Counsel and Special Assistant Attorney General, and, pursuant to 35 Ill. Adm. Code 101.500 and 101.520, hereby responds to the Motion to Reconsider ("Petitioner's motion" or "motion") filed by the Petitioner, Village of Robbins ("Village"). In response to the Petitioner's motion, the Illinois EPA states as follows:

I. STANDARD OF REVIEW

In ruling on a motion for reconsideration, the Illinois Pollution Control Board ("Board") will consider factors including new evidence or a change in the law, to conclude the Board's decision was in error. 35 Ill. Adm. Code 101.902. In the case of Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (March 11, 1993), the Board noted 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 the 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).

Thus, in order to prevail on a motion to reconsider, the movant must demonstrate that one of the three criteria has been met to justify reconsideration of an order. Here, the movant fails to

raise any meritorious argument that would warrant the Board's reconsideration of its September 16, 2004 final order ("Board's final order" or "final order").

II. THE PETITIONER RAISES NO NEW FACTS OR EVIDENCE

Several of the arguments posited by the Petitioner relate to its belief that the Board failed to properly consider information that was before the Board as of the date of the final order. For example, the Petitioner argues that the Board should have given greater deference to the Village of Robbins' conclusion regarding the scope of the siting approval. Petitioner's motion, p. 2. This argument is essentially a claim that the Board should have given more weight to the Certification of Siting Approval ("Certification") issued by the Village. However, the Board did acknowledge and address the Certification referred to by the Petitioner. That the Board's conclusion following its assessment of the weight, if any, due the Certification was contrary to the Village's is not sufficient grounds for reconsidering the final order.

Another argument raised by the Petitioner is that the Petitioners provided adequate proof of local siting approval to the Illinois EPA and the Board in the form of permits issued to the facility, the Certification and the Siting Authority Agreement ("Agreement"). Petitioner's motion, pp. 3, 5, 7. Again, the Petitioner is not arguing that the Board failed to consider those documents and the facts related thereto. Rather, the Petitioner is simply not happy with the conclusion that the Board reached following any appropriate consideration of those permits, the Certification, and the Agreement. The Board's final order summarizes the Petitioners' arguments, including those based on the permits, Certification and Agreement, thus demonstrating that that information was clearly before the Board at the time of its decision.

Similarly, the Petitioner argues that the Ordinance passed by the Village in 1993 supports the Petitioner's conclusion that the Board incorrectly interpreted the Ordinance. Petitioner's

motion, p. 9. This is another example of the Petitioner attempting to re-argue issues that were already raised and briefed prior to the Board reaching its decision on September 16th. The Ordinance was before the Board at the time of their decision, and therefore is not newly discovered evidence.

III. THE PETITIONER RAISES NO CHANGES IN LAW

The Petitioner's motion is not premised on any changes in applicable law since the date of the Board's decision.

IV. THE PETITIONER DOES NOT RAISE ANY SUCCESSFUL ARGUMENT THAT THE BOARD MISAPPLIED THE RELEVANT LAW

The Petitioner attempts to make two arguments that the Board misapplied the relevant law. An examination of each such argument, however, makes clear that there is no justification for granting the Petitioner's motion.

First, the Petitioner argues that the Board has not given sufficient deference to the Village's conclusion (as set forth in the Certification) regarding the scope of the siting approval. Petitioner's motion, p. 2. In support of that argument, the Petitioner cites to several well-known cases for the proposition that the Board must accept a local siting authority's determination regarding matters related to siting approval unless the opposite conclusion is clearly evident, plain or indisputable.

What the Petitioner does not make reference to is the fact that all the cases cited to involve a review of a decision to issue local siting approval, not the review of a Certification or other advisory opinion-type document issued by the local unit of government after the siting decision itself has been issued. The cases are thus clearly distinguishable and inapplicable since the 1993 siting decision is not under appeal. The Board's review of the present post-siting decision facts is likewise not similar to the fact patterns of the cases cited by the Petitioner. No

case law cited to by the Petitioner stands for the proposition that the Board must give great (or any) deference to a certification issued by a local unit of government well after the underlying siting approval has been granted.

The second legal argument advanced by the Petitioner is that the Board misapplied Section 39.2(e-5) of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/39.2(e-5)). Petitioner's motion, pp. 8, 11. The Petitioner's argument is that Section 39.2(e-5) of the Act specifically allows for the type of modification that was put into place here, and thus the Board should not read the Agreement for anything other than the prospect that there are no siting problems with the proposed transfer station.

But that argument does not raise any sufficient grounds for reconsideration of the Board's decision. The Board's decision took into account the very arguments raised in the Petitioner's motion to reconsider, since they were also raised in the Petitioners' pleadings prior to the issuance of the final order. In other words, there are no reasons given as to why the Board misapplied Section 39.2(e-5), other than the Board's interpretation did not meld with that of the Petitioners. The Board very clearly stated that the proposed change sought by the Petitioners was not a mere change in condition, but rather a wholesale change in the very type of facility contemplated. Final order, pp. 8-9. The Board correctly determined that Section 39.2(e-5) could not be used in the manner espoused by the Petitioners, since to do so would involve much more than a mere change in conditions and would deprive members of the public an opportunity to participate in the local siting process. Final order, p. 9.

V. CONCLUSION

The Petitioner's arguments in its motion to reconsider are without merit and thus the motion should be denied. There are no arguments presented in the motion that meet the criteria that would warrant the Board's reconsideration of its final order.

WHEREFORE, for the reasons stated above, the Illinois EPA hereby respectfully requests that the Board deny the Petitioner's motion.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: November 8, 2004

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on November 8, 2004, I served true and correct copies of a MOTION FOR LEAVE TO FILE INSTANTER and RESPONSE TO MOTION TO RECONSIDER, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Springfield, Illinois, with sufficient First Class Mail postage affixed thereto, upon the following named persons:


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Charles F. Helsten
Hinshaw & Culbertson
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389

William Mansker
Village of Robbins
3327 West 137th Street
Robbins, IL 60472

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)