

ILLINOIS POLLUTION CONTROL BOARD
July 20, 1995

MEDICAL DISPOSAL SERVICES, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 95-75
)	PCB 95-76
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	(Permit Appeals - Air, Land)
)	(Consolidated)
)	
Respondent.)	

ORDER OF THE BOARD (by M. McFawn):

This matter is before the Board on a motion for reconsideration filed by petitioner Medical Disposal Services, Inc. (MDS) on June 7, 1995, seeking reconsideration of the Board's May 4, 1995 opinion and order in this case. That order granted summary judgment in favor of respondent, the Illinois Environmental Protection Agency (Agency). The Agency filed a response to the motion for reconsideration on June 19, 1995. Industrial Fuels and Resources/Illinois Inc. (Industrial Fuels) filed a petition for intervention and memorandum of law in support of MDS's motion for reconsideration on June 8, 1995, and a motion to strike portions of the Agency's response on June 29, 1995. Industrial Fuels also asks that its memorandum of law be accepted as an *amicus curiae* brief if intervention is not allowed. On June 30, 1995, the Agency filed a response to Industrial Fuels' motion to strike. On June 9, 1995 the Illinois Chapter of the National Solid Wastes Management Association (NSWMA) also filed an *amicus curiae* brief.

As an initial matter, we deny Industrial Fuels' petition for intervention since it is not timely. The Board will not allow intervention into this proceeding after it has issued a final order. (See Aden v. City of Freeport, (September 8 1988) PCB 86-193, 92 PCB 07, disallowing intervention after hearing.) Industrial Fuels' June 29, 1995 motion and the Agency's June 30, 1995 response thereto are therefore moot. However, we will accept Industrial Fuels' memorandum of law as an *amicus* brief, and will also accept the *amicus* brief filed by NSWMA.

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 of 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.)"

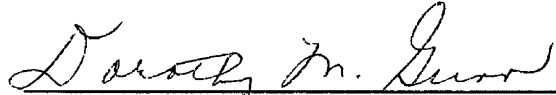
We find that petitioner and *amici curiae* present the Board with no new evidence, change in the law, or any other reason to conclude that the Board's May 4, 1995 decision was in error. We therefore affirm our holding granting summary judgment in favor of the Illinois Environmental Protection Agency.

IT IS SO ORDERED.

Board members J. Theodore Meyer and Emmett Dunham dissented.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 20th day of July 1995, by a vote of 4-2.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board