

ILLINOIS POLLUTION CONTROL BOARD
December 21, 2006

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 06-50
) (IEPA No. 98-06-AC)
MARLA LEWIS GATES, MARK GATES and) (Administrative Citation)
MARK KINGSLEY LEWIS,)
)
Respondents.)

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

This matter is before the Board on a November 21, 2006 motion to reconsider filed by Mark Gates (Gates). In this order the Board will provide background on the proceeding and then address the motion.

BACKGROUND

On June 2, 2006, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Marla Lewis Gates, Mark Gates (Gates), and Mark Kingsley Lewis (respondents) (415 ILCS 5/31.1(c) (2004)); 35 Ill. Adm. Code 108.202(c). On July 25, 2006, respondent Mark Gates filed a petition to review the administrative citation.

On August 4, 2006, the Board issued an order directing respondent Gates to amend his petition to contest the administrative citation or face dismissal of his appeal, and directing the Agency to file sufficient proof of service as to Marla Lewis Gates and Mark Kingsley Lewis. See *IEPA v. Gates*, AC 06-50 (Aug. 4, 2006), slip op. at 2. The parties were both given until September 5, 2006 to correct their respective filing deficiencies. *Id.*

On October 19, 2006, the Board issued an order dismissing Gates' petition to contest the administrative citation, as well as the administrative citations against Marla Lewis Gates and Mark Kingsley Lewis, finding that neither Gates nor the Agency has submitted any pleadings to correct the deficiencies. In that order, the Board also directed Gates to pay a civil penalty of \$3,000 no later than November 20, 2006

MOTION TO RECONSIDER

On November 21, 2006, Gates filed a hand-written motion to reconsider the Board's October 19, 2006 decision. In that motion, Gates asserts that he is not an attorney, nor does he want to be, and that he was represented by an attorney who did not give him a copy of Gate's

response. Mot. at 1-2. Gates contends that his former attorney did not enter an appearance in the matter because his wife works for the Agency. Mot. at 2.

Gates contends that he is unaware of any order issued on August 4, 2006, and only become aware that there was an order once he received the ruling of October 19, 2006. Mot. at 2. Gates asserts that he does not have an Agency handbook or rulebook that would allow him to look up or review the alleged charges against him. *Id.* Gates further contends that he does not have a computer, email, or any way to this cause of action without books, acts or code books. Mot. at 2-3. Gates requests that the parties involved provide him with the violations in question along with materials so that he can properly represent himself since his former attorney failed to do so. Mot. at 3.

To date, the Agency has not filed a response to the motion for reconsideration.

DISCUSSION

A motion for reconsideration or modification of a final Board order must be filed within 35 days after the receipt of the order. Any response to a motion for reconsideration must be filed within 14 days after the filing of the motion. 35 Ill. Adm. Code 101.520. Further, in ruling upon 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.

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. A motion to reconsider may specify “facts in the record which were overlooked.” Wei Enterprises v. IEPA, PCB 04-23, slip op. at 5 (Feb. 19, 2004).

As previously noted, the Agency has not responded to the motion. If a party files no response to a motion within 14 days, the party will be deemed to have waived objection to the granting of the motion. *See* 35 Ill. Adm. Code 101.500(d).

Initially, the Board notes that Gates’ motion was timely filed. In the motion, Gates has identified facts in the record that were unavailable at the time of the Board’s decision. Although the Board’s docket sheet does not indicate that service of the Board’s August 4, 2006 order was ineffective, Gates asserts that due to the situation with the attorney who was assisting him, he was not aware of the order directing him to amend his petition. Accordingly, the Board grants Gates’ motion for reconsideration.

In reconsidering the October 19, 2006 order, the Board finds that fairness dictates Gates should be given additional time to correct the deficiencies in his petition to review. Gates is hereby given until January 22, 2007, to amend his petition to contest the administrative citation

as directed in the August 4, 2006 order. Specifically, that order found that Gates' petition for review is deficient because it does not state a basis for the appeal, and therefore fails to meet the content requirements found at Section 108.206 of the Board regulations. *See IEPA v. Gates*, AC 06-50 (Aug. 4, 2006), slip op. at 2; 35 Ill. Adm. Code 108.206. However, the Board cautions that it is Gates who chooses to represent himself in this matter, and he bears the responsibility for that decision. Although the Agency may be inclined to offer assistance in regards to copies of violations and regulations, it is by no means incumbent on the Agency to assist Gates in the preparation of his case.

Finally, the Board notes that the portion of the August 4, 2006 order that dismissed the administrative citations against Marla Lewis Gates and Mark Kingsley Lewis was not a part of the motion to reconsider, and that portion of the August 4, 2006 order remains in effect.

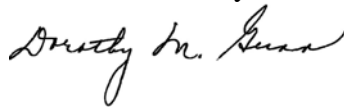
CONCLUSION

The Board grants Gates' motion for reconsideration. Gates must amend his original petition for review as directed on or before January 22, 2007.

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) (2004); *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 opinion and order on December 21, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board