

ILLINOIS POLLUTION CONTROL BOARD
May 3, 2007

COUNTY OF MACON,)	
)	
Complainant,)	
)	
v.)	AC 07-21
)	(MCSWMD No. 2006-005-AC)
TIM WALKER,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by A.S. Moore):

On January 26, 2007, the Board issued an opinion and order finding that the respondent Tim Walker, had violated the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2004)) as alleged in an administrative citation filed by the complainant, County of Macon (the County). On March 15, 2007, the Board received the respondent's motion to reconsider, modify, or vacate judgment. The County has filed no response.

For the reasons described below, the Board grants the respondent's motion to reconsider. On reconsideration, the Board upholds its January 26, 2007 opinion and order in its entirety.

PROCEDURAL HISTORY

On October 16, 2006, the County timely filed an administrative citation alleging that the respondent had violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2004)). On November 28, 2006, the Board received a petition to contest the administrative citation accompanied by a certificate of service stating that respondent's attorney placed the petition in the United States mail on November 24, 2006.

In an order dated December 7, 2006, the Board noted that neither party had indicated the date on which the respondent received the administrative citation. That order further stated that the Board could not determine whether the administrative citation or the petition was timely filed so as to give the Board jurisdiction over this matter. Consequently, the December 7, 2006 order directed the County to file, on or before January 4, 2007, proof of service of the administrative citation on the respondent. The same order also directed the respondent to file, on or before January 4, 2007, an amended petition stating the date on which the County served the administrative citation and stating the grounds for appeal.

On January 8, 2007, the Board received from the respondent an amended petition to contest the administrative citation. The amended petition stated that the respondent had no documentation regarding the date on which he had been served and that he believed he had been served with the administrative citation on October 19, 2006. On December 12, 2006, the County

filed a copy of a certified mail return receipt showing service of the administrative citation on the respondent on October 17, 2006.

Because the County served the citation on the respondent within 60 days of the observed violation, the Board found in an order dated January 26, 2007, that service on the respondent was timely. Accordingly, the Board has jurisdiction of the administrative citation.

But, in the same order, the Board found that the respondent failed to file a timely petition on or before November 21, 2006 within 35 days of service of the administrative citation. Because the Act and the Board's regulations require that a timely petition for review must be postmarked within 35 days of the date on which the respondent received service, the Board dismissed the petition and then found that the respondent violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2004)) as alleged in the citation.

On March 15, 2007, the respondent filed a motion to reconsider, modify, or vacate judgment (Resp. Mot.). The County has not filed a response to that motion.

STANDARD FOR RECONSIDERATION

In his motion to reconsider, modify, or vacate judgment, the respondent moves that the Board reconsider its January 26, 2007 order finding that he violated the Act and assessing statutory penalties. In the motion, the respondent suggests that the Board has misapplied legal authorities and has overlooked facts and arguments in the record. *See* Resp. Mot. at 1-2. The respondent's motion also states new facts and arguments. *See id.* at 2 (¶ C).

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) (citation omitted); *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). "Reconsideration is not warranted unless the newly discovered evidence is of such conclusive or decisive character so as to make it probable that a different judgment would be reached." Patrick Media Group, Inc. v. City of Chicago, 255 Ill. App. 3d 1, 8, 626 N.E.2d 1066, 1071 (1st Dist. 1993).

BOARD ANALYSIS

The Board's procedural rules provide that "[a]ny response to a motion for reconsideration or modification must be filed within 14 days after the filing of the motion." 35 Ill. Adm. Code 101.520(b). The Board notes that the County has filed no response to the respondent's motion to reconsider, modify, or vacate judgment. The Board's procedural rules further provide that, "[i]f no response is filed, the party will have been deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion." 35 Ill. Adm. Code 101.500(d).

The respondent asserts numerous grounds on which “there is a reasonable basis to reconsider, modify, or vacate the judgment.” Resp. Mot. at 1. Because the respondent claims that the Board misapplied legal authorities, claims that the Board overlooked facts and arguments in the record, and suggests that there is newly-discovered evidence, the Board grants the respondent’s motion to reconsider. Below the Board reconsiders its January 26, 2007 judgment by analyzing the claims made in the respondents’ motion and also addresses those arguments as grounds to modify or vacate that judgment.

First, the respondent alleges that he was in Florida on October 17, 2007 (Resp. Mot at 1), the date on which the County’s filing shows he was served with the citation. County of Macon v. Tim Walker, AC 07-21 (Dec. 12, 2006). The respondent “contends that he was served on October 19, 2006,” and that his original petition for review filed on November 24, 2006 was therefore timely. Resp. Mot. at 1.

With regard to this claim, the record is clear that the County served the respondent a copy of the administrative citation by certified mail on October 17, 2006. County of Macon v. Tim Walker, AC 07-21 (Dec. 12, 2006). Under the Board’s procedural rules, service by certified mail is deemed complete on the date specified on the certified mail receipt. 35 Ill. Adm. Code 101.300(c); *see* County of Ogle v. George Heal, AC 06-53, slip op. at 2-3 (Oct. 5, 2006) (finding service on person other than respondent adequate). In reconsidering its judgment, the Board is not persuaded that it has misapplied the law in determining the date of service on the respondent and cannot conclude that the respondent’s contention that he was in Florida on October 17, 2006 is newly-discovered evidence. The Board also has not overlooked the respondent’s unsupported belief that he was served on October 19, 2006. The Board finds that this first claim provides no basis to modify or vacate its judgment.

Second, the respondent alleges that neither he nor his counsel were served with the County’s filing addressing the issue of the date of service of the administrative citation. Resp. Mot. at 1. Respondent concludes from this allegation that the filing “should not be considered as a basis for the judgment based on the alleged timing of the service of the Petition for Review.” *Id.*

With regard to this claim, the Board notes that the County’s filing addressing the issue of service does not indicate that it was served on either the respondent or his counsel. *See* County of Macon v. Tim Walker, AC 07-21 (Dec. 12, 2006). As stated above, however, the record clearly shows that the County served the respondent on October 17, 2006, and this service provides the entire basis for concluding that the respondent’s original petition for review was not timely. Even if the County had served the respondent and his counsel with that filing dated December 6, 2006, it would have provided no basis to cure the untimely nature of the original petition for review filed twelve days before on November 24, 2006. In reconsidering its judgment, the Board has not misapplied the law in determining the legal effect of the date of service on the respondent and cannot conclude that the respondent’s contention that he was not served with a December filing is newly-discovered evidence. The Board also finds that this claim provides no basis to modify or vacate its judgment.

Third, the respondent claims that “the information relied on by the State and ultimately the same information which serves as the basis for the Board judgment was obtained illegally in that representatives of the state entered his property without legal authority.” Resp. Mot. at 2.

With regard to this claim, the Board notes that the respondent has supplied no persuasive support for his claim that the County has obtained and the Board has relied upon illegally obtained information. In reconsidering its judgment, the Board cannot conclude that it has misapplied the law in finding that the respondent violated the Act. The Board also finds that this claim provides no basis to modify or vacate its judgment.

Fourth, assuming *arguendo* that his original petition for review was untimely, the respondent argues that untimely filing was attributable to circumstances beyond his control. Resp. Mot. at 2. Specifically, the respondent states that “counsel for Respondent suffered a medical health emergency on November 14, 2006, and was out of the office until November 24, 2006. Therefore, the submission did not occur until November 24, 2006.” *Id.*

With regard to this claim, the Board notes that respondent’s attorney suffered a medical health emergency. However, neither the Act nor the Board’s regulations provide any exception to the requirement that the respondent must file a petition for review within 35 days of service. *See* 415 ILCS 5/31.1(d)(1) (2004); 35 Ill. Adm. Code 108.204(b). In reconsidering its judgment, the Board has not misapplied the law in imposing that 35-day deadline on the respondent. The Board also finds that this claim provides no basis to modify or vacate its judgment.

Fifth, the respondent states that he and the state “are negotiating a resolution to the outstanding issues.” Resp. Mot. at 2. On this basis, the respondent argues that he “believes that the state concurs that any funds available to the Respondent are best used directly on the property rather than paid as a fine.” *Id.* The respondent further argues on this basis that he “believes the state may concur in vacating the judgment.” *Id.*

With regard to this claim, the Board notes that the County has filed no response to the respondent’s motion. Nothing in the record supports the claim that the County may concur in modifying or vacating the judgment or that it may agree with respondent’s claim that his funds are better applied to his property than to a statutory penalty. In reconsidering its judgment, the Board cannot conclude that these claims regarding the County’s position on the motion constitute newly-discovered evidence. The Board also finds that this claim provides no basis to modify or vacate its judgment.

CONCLUSION

The Board grants the respondent, Tim Walker’s, motion to reconsider with respect to the Board’s alleged misapplication of the law, overlooking evidence, and existence of newly-discovered evidence. The Board, however, upholds in its entirety the Board’s January 26, 2007 opinion and order finding that the respondent had violated the Act and assessing the statutory penalties in the amount of \$4,500. Having found no basis to modify or vacate that judgment, the Board denies the respondent’s motion to do so.

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 ICLS 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 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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 3, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board