

ILLINOIS POLLUTION CONTROL BOARD  
May 15, 1997

|                        |   |                  |
|------------------------|---|------------------|
| W.R. MEADOWS, INC.,    | ) |                  |
|                        | ) |                  |
| Petitioner,            | ) |                  |
|                        | ) | PCB 97-58        |
| v.                     | ) | (Variance - Air) |
|                        | ) |                  |
| ILLINOIS ENVIRONMENTAL | ) |                  |
| PROTECTION AGENCY,     | ) |                  |
|                        | ) |                  |
| Respondent.            | ) |                  |

ORDER OF THE BOARD (by M. McFawn):

On March 14, 1997, Petitioner moved for the Board to reconsider its opinion and order of February 6, 1997. On March 26, the Illinois Environmental Protection Agency (Agency) filed its response objecting to the motion. On March 31, 1997, the Agency denied an air operating permit to petitioner. On April 3, 1997, petitioner moved to supplement this record with that information and argument concerning the same. On April 10, 1997, the Agency objected to petitioner's motion to supplement.<sup>1</sup> Both motions filed by petitioner are denied for the following reasons. We will address first the factors considered when ruling upon a motion for reconsideration, then the motion to supplement, and lastly the motion for reconsideration.

In ruling upon a motion for reconsideration, the Board is to consider factors including, but not limited to, error in the previous decision and facts in the record which are overlooked. (35 Ill. Adm. Code 101.246(d).) In Citizens Against Regional Landfill v. County Board of Whiteside County, (March 11, 1993, PCB 93-156, the Board 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.", citing Korogluyan v. Chicago Title & Trust Co., 213 Ill. App.3d 622, 572 N.E. 2d 1154 (1<sup>st</sup> Dist. 1992).

In its motion to supplement, petitioner informs the Board that the Agency denied a joint construction and operating air permit application on March 31, 1997. While this is new information obviously was not available at the time of the Board's decision on the variance petition, it is not relevant. Petitioner offers it as support of the argument petitioner made in the variance proceeding, *i.e.*, that the Agency would misinterpret the air regulations as applied to its facility. The Board rejected that argument when it denied the variance petition, *noting* that such an argument is properly made in a permit appeal. (We note that such a permit appeal was filed on May 5, 1997 as W.R. Meadows v. IEPA, PCB 97-95 concerning the March 31, 1997 permit

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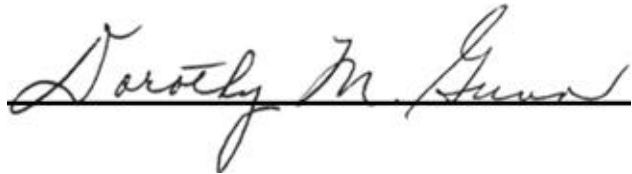
<sup>1</sup> On April 3, 1997, Petitioner also filed a motion to strike the Agency's response of March 26, 1997, but that same day petitioner withdrew the same by a facsimile filing.

denial.) The variance petition was denied because petitioner sought relief from permit conditions, not Board regulations. The Board may not grant that type of relief in a variance proceeding. (See page 5 of the February 6, 1997 opinion and order.) The motion to supplement is denied because the subsequent permit denial is not relevant to the Board's decision in this variance proceeding.

In its motion for reconsideration, Petitioner makes no new arguments, and offers no newly discovered evidence, or change in the law or error in the Board's previous application of the existing law. Petitioner simply repeats the arguments made during the variance proceeding. The motion is denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 15<sup>th</sup> day of May, 1997, by a vote of 6-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board