

ILLINOIS POLLUTION CONTROL BOARD
April 3, 1997

SENATOR WILLIAM SHAW, RONNIE)	
LEWIS and JUDITH EVANS,)	
)	
Petitioners,)	PCB 97-68
)	(Pollution Control Facility
v.)	Siting Appeal)
)	
BOARD of TRUSTEES of the VILLAGE of)	
DOLTON, MAYOR DONALD HART and)	
LAND AND LAKES COMPANY,)	
)	
Respondents.)	

ORDER OF THE BOARD (by J. Yi):

This matter is before the Illinois Pollution Control Board (Board) pursuant to a motion for reconsideration filed by Senator William Shaw, Ronnie Lewis, and Judith Evans (petitioners) on February 28, 1997.¹ This matter was originally before the Board on an appeal filed by petitioners pursuant to paragraph (b) of Section 40.1 of the Environmental Protection Act (Act) (415 ILCS 5/40.1(b) (1994)) on October 8, 1996. Petitioners sought appeal of the September 3, 1996 decision of the Village of Dolton, Illinois (Village) which granted local siting approval to Land and Lakes Company (Land and Lakes) for an expansion of its pollution control facility located in the Village. Petitioners requested the Board to reverse the Village's decision on the grounds that the decision of the Village was against the manifest weight of the evidence concerning the challenged criteria of Section 39.2 of the Act. (415 ILCS 5/39.2 (1994).) For the reasons set forth in the Board's January 23, 1997 opinion and order, the Board found that the Village's decision was not against the manifest weight of the evidence concerning the challenged criteria and affirmed the Village's decision.

Petitioners argue in their motion for reconsideration that several procedural decisions of the Board prejudiced them. First, petitioners assert that the Board's decision to allow Land and Lakes to file an additional response brief prejudiced them. (Mot. at 1.) Next, petitioners assert that the Board's decision to allow Land and Lakes to file a response brief without allowing Petitioners to file a reply caused prejudice. (Mot. at 1-2.) Finally, petitioners claim that the Board overlooked evidence in support of their request for a continuance in the matter which caused the Board's decision to be erroneous and prejudicial. (Mot. at 1-2.)

¹ Petitioners' motion for reconsideration will be referenced to as "Mot. at " .

On March 11, 1997 Land and Lakes filed a response to petitioners' motion for reconsideration.² Land and Lakes asserts that petitioners fail to set forth any cognizable reasons for reconsideration and argues that the motion should be denied. (Resp. at 1.) In response to petitioners' arguments that the Board's decisions to allow Land and Lakes to file a reply prejudiced them, Land and Lakes argues that petitioners waived such argument by failing to file a response to Land and Lakes motion for leave to file citing to 35 Ill. Adm. Code 101.241(b). (Resp. at 2.) Land and Lakes also re-argues the issue of whether petitioners can raise new arguments at hearing. (Resp. at 2-3.) Land and Lakes concludes that petitioners have not presented any arguments in support of the motion for reconsideration and have waived any arguments concerning the Board's decision to allow Land and Lakes to file a reply brief. (Resp. at 3.)

In ruling upon a motion for reconsideration, the Board is to consider factors including, but not limited to, errors 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. The County Board of Whiteside County, (March 11, 1993), PCB 93-156, the Board stated 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., (1st Dist. 1992), 213 Ill. App.3d 622, 572 N.E.2d 1154.)

As to affirmance of the hearing officer's decision to deny petitioners' motion for continuance the Board finds that petitioners have not presented the Board with any new evidence, a change in the law, or any other reason to conclude that the Board's decision was in error.

As to petitioners' arguments concerning the Board's decision to allow Land and Lakes to file a reply brief, to raise arguments in a motion for reconsideration for the first time when such arguments could have been raised prior to the Board's original decision is improper. In Illinois the general rule is that failure to raise an issue results in a waiver of that issue. (See 735 ILCS 5/3-110.) Moreover, as noted by Land and Lakes in its response by failing to file a response to the motion petitioners are deemed to have waived objection to Land and Lakes' motion pursuant to 35 Ill. Adm. Code 101.241(b). Finally, the Board finds that petitioners have failed to present the Board with any new evidence, a change in the law, or any other reason to conclude that the Board's decision was in error to allow Land and Lakes leave to file a reply.

In summary the Board denies petitioners' motion for reconsideration.

IT IS SO ORDERD.

² Land and Lakes response to petitioners' motion for reconsideration will be referred to as "Resp. at ".

Section 41 of the Environmental Protection Act (415 ILCS 5/41) provides for the appeal of final Board orders within 35 days of the date of service of this order.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the ____ day of _____, 1997 by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board