

In conclusion I would like to apologize for these violation's, I had talked to Ryan Rudich several times with the Attorney General I sent him information on all the cleanup and that DEG was in compliance . . . I did not realize I needed to respond to anyone else. Mot. at 2.

RESPONSE TO THE MOTION

The People argue the purpose of a motion for reconsideration is to bring before the Board newly discovered evidence not available at the time of the Board's decision that demonstrates that the decision was made in error. Resp. at 1. The People assert the Fishers' motion does not accomplish this as none of the facts alleged by the Fishers were unavailable to them at any point during the litigation of this case. *Id.*

The People recite the Board's rules noting that Section 101.902 provides that, "[i]n 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." Resp. at 2, quoting 35 Ill. Adm. Code 101.902; *see also Broderick Teaming Co. v. Illinois Env't'l Protection Agency*, PCB 00-187, slip op. at 2 (April 5, 2001). The People maintain that a motion for reconsideration may be filed "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." Resp. at 2, quoting *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 (1st Dist. 1991)). The People continue that if a movant is seeking reconsideration based on newly discovered evidence, it "must show that the newly discovered evidence existed before the initial hearing but had not yet been discovered or was otherwise unobtainable." Resp. at 2, quoting *Simmons v. Reichardt*, 406 Ill. App. 3d 317, 324 (4th Dist. 2010) (quoting *Stringer v. Packaging Corp. of Am.*, 351 Ill. App. 3d 1135, 1141 (4th Dist. 2004)). The People argue that when a motion for reconsideration contains material that was available prior to the Board's decision but never presented, it is well within the discretion of the Board to deny the motion. Resp. at 2, citing *River Vill. I, LLC v. Cent. Ins. Companies*, 396 Ill. App. 3d 480, 493 (1st Dist. 2009).

The People assert that even to the extent that the motion to reconsider may present facts not a part of the administrative record, those facts are not new evidence. Resp. at 3. The People claim that the facts offered in the motion are facts that the Fishers were aware of, but failed to provide to the Board.

Additionally, the People maintain that the Fishers do not claim an error in the Board's application of the law. Resp. at 3. The People argue that the motion contains no defense to the violations. *Id.*

Finally, the People remind that the Fishers cannot appear for, nor can they argue for DEG. Resp. at 4. DEG is a corporation and can appear before the Board only through an attorney. *Id.*, citing 35 Ill Adm. Cod 101.400(a)(2).

DISCUSSION

The Board has reviewed the Fishers' arguments in its motion to reconsider. However, the Board is unconvinced that it should reconsider the March 19, 2015 opinion and order. In ruling on 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. In Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (Mar. 11, 1993), the Board observed 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 hearing, changes in the law or errors in the court's previous application of the existing law." Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992). The Board finds that the Fishers provided no new evidence or a change in the law that would indicate the Board's March 19, 2015 decision was in error. Therefore, the motion to reconsider is denied.

The Board amends the order to reflect new due dates for the payment of penalties. The amended order is set forth below.

ORDER

1. The Board finds that Demolition Excavating Group, Inc. (DEG) and Rhonda and Edward Fisher (the Fishers) violated Sections 21(a), 21(e), 21(p)(1), 21(p)(4), and 21(p)(7) of the Act (415 ILCS 5/21(a), (e), (p)(1), (p)(4), (p)(7) (2012)).
2. The Board hereby assesses a penalty of seventy five thousand dollars (\$75,000) against respondents. Respondents must pay this penalty no later than July 6, 2015, which is the first business day following the 30th day after the date of this order. Respondents must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case name, and respondents' federal employer identification numbers must be included on the certified check or money order.
3. Respondents must send the certified check or money order to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2012)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2012)).
5. Respondents must cease and desist from the violations.

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) (2012); *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, John Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 4, 2015, by a vote of 5-0.



John Therriault, Clerk
Illinois Pollution Control Board