ILLINOIS POLLUTION CONTROL BOARD
March 10, 1988

McLEAN COUNTY DISPOSAL COMPANY, INC.,	)	
Petitioner,	)	
v.	)	PCB 87-133
THE COUNTY OF McLEAN,	)	
Respondent.	)	

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on two motions. The first is a motion filed by respondent County of McLean on February 24, 1988, seeking reconsideration of the Board's January 21, 1988 Opinion and Order. That decision held that local siting approval of a landfill proposed by petitioner McLean County Disposal Company, Inc. was deemed granted by operation of law because the McLean County Board failed to take final action on the application within the statutorily mandated 180-day time period. In the alternative, the County seeks a stay of the Board decision pending an appeal to be filed with the appellate court. On March 1, 1988, petitioner filed its objections to the County's motion. The second pending motion is a February 25, 1988 motion by Citizens Against the Randolph Landfill (CARL) seeking leave to intervene in this matter. Petitioner filed its objection to CARL's request on February 29, 1988.

Initially, petitioner asks that the County's motion to reconsider be stricken. Petitioner argues that because the Board is under a statutory deadline to decide landfill siting appeals and because the Board made its January 21 decision on the final day of that statutory period, the Board now has no jurisdiction to take any further action on this matter and thus may not consider a motion for reconsideration. The Board is not persuaded by petitioner's claim. In Modine Manufacturing Co. v. Pollution Control Board, 40 Ill. App. 3d 498, 351 N.E.2d 875 (2d Dist. 1976), the appellate court rejected the claim that the Environmental Protection Act (Act), Ill. Rev. Stat. 1985, ch. 111½, par. 1001 et seq., does not empower the Board to allow rehearing after entering a final order in a variance case, which also has a statutory deadline on the Board's decision. The Modine court found that the Act does indeed provide the necessary authority for the Board to allow rehearings as a procedure to correct any error, omission, or oversight in its initial consideration. Modine, 351 N.E.2d at 877-78. The Board sees no difference between the terms "rehearing" and "reconsideration"

(in fact, the Board's procedural rules refer to "rehearing"), and no substantive difference between the facts of Modine and the facts of this case. See also Mathers v. Pollution Control Board, 107 Ill. App. 3d 729, 438 N.E.2d 213, 221 (3d Dist. 1982) (affirming the Board's power to allow rehearing after entering a final order in an appeal of Agency denial of a landfill permit, although the rehearing was allowed after the statutory deadline on the Board's decision). Thus, the Board will consider the County's motion.

The second issue for the Board's decision is CARL's motion to intervene. CARL is an organization which represents owners of property near the site of the proposed landfill, and was a participant, by counsel, in the local hearings held by the McLean County Board. As CARL correctly notes, it previously had no standing before the Board by virtue of the decision in McHenry County Landfill v. Illinois Environmental Protection Agency, 154 Ill. App. 3d 89, 506 N.E 2d 372 (2d Dist. 1987). Both CARL, in support of its motion to intervene, and petitioner, in objecting to the motion, cite McHenry County Landfill as support for their positions. However, McHenry County Landfill is not applicable to the issue of intervention on a motion to reconsider. The Board will deny the motion to intervene. As noted above, CARL did not previously have standing before the Board, and the Board believes that standing as intervenor may not be granted on a motion for reconsideration where that party did not have standing at time of the Board's decision. As Modine points out, reconsideration is a procedure to correct any error, omission, or oversight found in the Board's decision. The Board must reconsider its decision based upon the information in the record at the time of that decision. CARL participated at the county level, and information presented by it is in the record. Anything new which CARL would now seek to present to the Board could not properly be considered on a motion for reconsideration. Thus, CARL's motion to intervene is denied.

The third issue for the Board's decision is the merits of the County's argument that the Board erred in vacating the County Board's decision and deeming site approval granted by operation of law. After a review of the County's argument, the Board finds that the County raises nothing new that would persuade it to vacate its prior holdings set forth in the January 21, 1988 Opinion and Order. Contrary to the County's implication, the Board's January 21 decision did not hold that a county may not establish rules by which to conduct public hearings pursuant to Section 39.2 of the Act. Ill. Rev. Stat. 1985, ch. 111½, par. 1039.2. The Board held, and reaffirms here, that a county is not authorized to use local procedures to extend the statutory 180-day deadline. Section 39.2 has repeatedly been construed very strictly by the appellate courts, and there is no authority in that section for anyone other than the applicant to extend the time for final action. In establishing the procedures of Section 39.2, the legislature not only provided for local review of the siting of new regional pollution control facilities, but also

established strict deadlines for decisions by units of local government and this Board. The legislative intent is two-fold: allow local review of the siting of new regional pollution control facilities, but provide for decisions within a statutory time certain. Thus, a unit of local government has no authority to use local procedures to extend the statutory 180-day deadline for decision. The Board reaffirms its January 21, 1988 Opinion and Order. The motion to reconsider is denied on its merits.

Finally, the County seeks a stay of the Board's January 21 Order pending an appeal to the appellate court. In accord with the Board's previous practice, the motion for stay is denied.[1] The County may seek a stay from the appellate court. ARF Landfill Corp. v. Village of Round Lake Park, PCB 87-34, September 17, 1987.

IT IS SO ORDERED.

J. D. Dumelle, R. Flemal, and B. Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 10th day of March, 1988, by a vote of 4-3.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

[1]The Board notes that the record contains a copy of a February 23, 1988 letter from the County's attorney to the Illinois Environmental Protection Agency. The letter sets forth the County's claim that as a result of the filing of the motion to reconsider, the Agency is prohibited from granting any permit to petitioner for the development or operation of the proposed landfill. Regardless of the merits of the County's position, it is clear that there is no stay in effect after today's denial of the motion to reconsider.