

ILLINOIS POLLUTION CONTROL BOARD

March 7, 1996

KEAN OIL COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 96-88
	)	(UST Fund - 90 Day Extension)
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by J. Yi):

This matter is before the Board pursuant to a motion for reconsideration filed by Kean Oil Company (Kean) on January 19, 1996 requesting the Board to reconsider our order of December 20, 1995, which dismissed this matter and closed the docket. The Illinois Environmental Protection Agency (Agency) filed a response to the motion for reconsideration on February 15, 1996 requesting the Board to deny Kean's motion for reconsideration.

On October 23, 1995, the Agency and Kean filed a notice of extension of the 35-day appeal period pursuant to Section 40(c) of the Act, relating to a September 11, 1995, Agency final reimbursement decision. The Agency requested the extension "to December 10, 1995, or any other date not more than a total of 90 days from the date of the Agency's final determination". As the Board explained in our November 2, 1995 order, P.A. 88-690 (SB1724) effective January 24, 1995, amends Section 40(c), which governs the underground storage tank appeal process, to provide:

the 35-day period for petitioning for a hearing may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period.

The Board granted the extension of time and reserved this docket and stated "[i]n the event that Kean fails to file an appeal on or before December 11, 1995 (the 90th day after September 10, 1995), the Board will dismiss the docket as unnecessary". On December 20, 1995 the Board having received no appeal dismissed the docket.

Kean in its motion for reconsideration acknowledged that it received the Board's order of November 2, 1995 which granted the extension of time but failed to read such

order due to employee illness. Kean argues that it misunderstood that the length of the extension pursuant to Section 40(c) of the Act was for only a total of 90 days. Kean states that it was operating with the understanding that the extension was for 35 days plus 90 days which would have expired on January 14, 1996. Additionally Kean argues that the Agency requested a waiver of the statutory decision deadline in this matter which added to the confusion as to the length of the extension. Kean requests the Board to vacate the December 20, 1995 order.

The Agency in its response, citing to Citizens Against Regional Landfill v. County Board of Whiteside County, (March 11, 1993), PCB 93-156, argues that Kean has not raised newly discovered evidence, changes in law or errors in the application of law which would allow the Board to reconsider or vacate the order of December 20, 1995. Additionally, the Agency argues that the Board is a creature of statute and must find its authority within the statute by which it was created for any claimed authority. The Agency argues that the Board has no statutory authority to extend the appeal period beyond any extension given pursuant to Section 40(c) of the Act. Therefore the Agency concludes that the Board cannot grant the request of Kean as stated in the motion for reconsideration because it would be extending the appeal period for Kean beyond the statutorily-constructed appeal period which the Board has no authority to do.

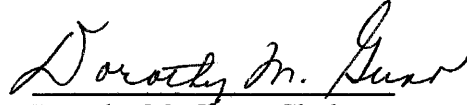
In ruling on a motion for reconsideration the Board is to consider, but is not limited to, error in the decision and facts in the record which may have been overlooked. (35 Ill. Adm. Code 101.246(d).) In Citizens Against Regional Landfill v. County of Board of Whiteside, (March 11, 1993), PCB 93-156, we 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. (Korogluyan v. Chicago Title & Trust Co., (1st Dist. 1992), 213 Ill.App.3d 622, 572 N.E.2d 1154, 1158.)"

We find that Kean presents the Board with no new evidence, change in the law, or any other reason to conclude that the Board's December 20, 1995 decision was in error. Therefore we deny Kean's motion for reconsideration.

IT IS SO ORDERED.

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. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 14 day of March, 1996, by a vote of 7-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board