

ILLINOIS POLLUTION CONTROL BOARD
December 16, 1993

LEONARD CARMICHAEL,)
)
 Petitioner,)
)
 v.) PCB 93-114
) (Landfill Siting Review)
 BROWNING-FERRIS INDUSTRIES)
 OF ILLINOIS, INC. AND OGLE)
 COUNTY BOARD, FOR AND ON)
 BEHALF OF THE COUNTY OF OGLE,)
 STATE OF ILLINOIS,)
)
 Respondents.)

ORDER OF THE BOARD (by C. A. Manning):

This matter is before the Board on a Joint Motion to Reconsider the Board's order of October 7, 1993.¹ The instant Motion was filed by Browning-Ferris Industries (BFI) and the County of Ogle (County) on November 10, 1993 pursuant to 35 Ill. Adm. Code §§ 101.246 and 101.300. The matter was originally before the Board on a petition for review filed on June 16, 1993, by Leonard Carmichael, pursuant to Section 40.1(b) of the landfill siting section of the Environmental Protection Act (Act). (415 ILCS 5/40.1(b) (1992).) The petition for review sought the Board's review of the County's May 10, 1993 siting approval of the expansion of BFI's regional pollution control facility. The Board's order of October 7, 1993, vacated the County's decision granting siting approval due to the County's lack of jurisdiction to hear the matter.

On November 23, 1993, Leonard Carmichael filed a response to the motion for reconsideration pursuant to 35 Ill. Adm Code §§ 101.246 and 101.300. BFI and the County jointly filed a reply to Leonard Carmichael's response. While the Board's procedural rules at 35 Ill. Adm Code §§ 101.246 and 101.300 concerning the motion for reconsideration do not provide for BFI's and the County's joint reply to Leonard Carmichael's response, the reply was received within the proper timeframe for our decision-making, and therefore it will be allowed and has been considered.

In ruling upon a motion for reconsideration the Board is to consider, but is not limited to, error in the previous decision and facts in the record which may have been overlooked. (35 Ill. Adm. Code §101.246(d).) In Citizens Against Regional Landfill v. The

¹ The Motion for Reconsideration will be referenced as "Mot."

County Board of Whiteside County (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 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, 1158)." While Respondents filed a 49 page motion for reconsideration, such motion presents the Board with no new evidence, no argued change in law, and no reason to conclude that the Board's decision made on October 7, 1993, was in error. Nonetheless, the Board will briefly address certain arguments made by Respondents in their motion.

Respondents argue that the Board denied them fundamental fairness by not giving them an opportunity to respond to the jurisdictional question and then applying retroactively "a new rule of law." (Mot. at 5.) As the Board noted in its October 7, 1993 order (Order), an objection to jurisdiction may be raised at any time, even by a court on its own motion. (See Concerned Boone Citizens v. M.I.G. Investment, Inc. (2nd Dist. 1986), 144 Ill. App.3d. 334, 98 Ill.Dec. 253, 494 N.E.2d 180.) The Respondents had an opportunity at the hearing and in the post-hearing briefs filed in this matter, and in the instant motion, to present evidence and arguments on the jurisdictional issue. No new arguments or evidence have been presented which persuade the Board that its original decision was in error. In addition, the Board notes that its decision in this matter was not an announcement of a "new rule of law" as argued by Respondents but rather, as stated in the Board Order, the decision is based upon a clear reading of the 14-day limitation provision in Section 39.2(b) of the Act.

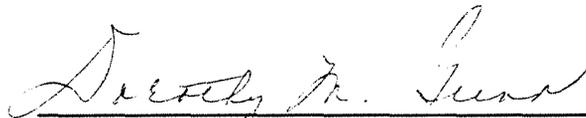
Respondents also state that the burden of proving that the notice was insufficient is on petitioner and that the proper standard of review is whether the County of Ogle's determination on the jurisdictional question is against the manifest weight of the evidence. (Mot. at 9.) Respondents clearly confuse the issue of jurisdiction, which vests the County with the power to hear the siting approval, with the County's decision-making process concerning the nine criteria that must be met pursuant to 39.2(a) of the Act in order for the County grant such siting approval. It is inappropriate to apply the manifest weight standard to the question of jurisdiction especially where the issue of jurisdiction had not been previously presented by petitioner before the County Board, but has been squarely raised for the first time before the Board.

Respondents also argue that the decision is contrary to the plain meaning of the statutory language, previous Board precedent, and precedent of various other jurisdictions which Respondents generally refer to as "common jurisprudence of the United States." (Mot. at 19.) To the contrary, the Board's decision appropriately applies and considers the statute, and Board and court precedent.

Accordingly, for the reasons stated above and in the Board's October 7, 1993 order, the Board denies the motion for reconsideration and affirms its previous decision.

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 16th day of December, 1993, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board