

ILLINOIS POLLUTION CONTROL BOARD
October 6, 1994

CITY OF GENEVA,)
)
 Petitioner,)
)
 v.) PCB 94-58
) (Landfill Siting Review)
 KANE COUNTY, KANE COUNTY)
 BOARD, and WASTE MANAGEMENT)
 OF ILLINOIS, INCORPORATED,)
)
 Respondents.)

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

This matter is before the Board pursuant to a timely-filed motion for reconsideration or clarification of our opinion and order of July 21, 1994. In a motion filed on August 25, 1994, the City of Geneva asks that we reconsider our decision affirming Kane County's local siting approval which granted Waste Management of Illinois (WMII) site location suitability approval for the expansion of the Settler's Hill Recycling and Disposal Facility. The underlying Board decision, made pursuant to Section 40.1 of the Environmental Protection Act (Act) (415 ILCS 5/40.1), additionally found that we had no authority at this stage of the proceedings to require WMII to seek site location suitability approval from Geneva, despite the City's claim that it shares concurrent jurisdiction with Kane County. We found that pursuant to Section 39(c) of the Act, it was within the initial jurisdiction of the Illinois Environmental Protection Agency (Agency) rather than the Board's, to determine whether WMII had obtained all the necessary local siting authority approval prior to submitting an operating permit application.

On September 12, 1994, WMII and Kane County each filed a response to the motion arguing that the City of Geneva had raised no new issues of fact or law that it had not previously raised. We agree and for the following reasons, deny the motion for reconsideration or clarification.

The City of Geneva's motion for reconsideration does not meet the standards which guide our review. Foremost, our procedural rule on motions for reconsideration directs that we consider factors including but not limited to "error in the decision and facts in the record which are overlooked." (35 Ill. Adm. Code 101.246(d).) Our own precedent also provides a standard upon which we decide motions for reconsideration. In Citizens Against Regional Landfill v. The County Board of Whiteside County we held, "[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." (Citizens Against Regional Landfill v. The County Board of Whiteside County (March 11, 1993) PCB 93-156, citing Korogluyan v. Chicago Title & Trust Co. (1st Dist. 1992), 213 Ill. App.3d 622, 572 N.E.2d 1154, 1158; see also, Leonard Carmichael v. Browning-Ferris et al. (December 16, 1993) PCB 93-114.)


Each argument in the motion for reconsideration is rooted in an argument articulated in the City of Geneva's petition and brief supporting a reversal of Kane County's siting decision. We have carefully considered the City's arguments in making our determination to uphold the Kane County's local siting approval. Though the City does argue "errors of law" in our decision, none of the City's arguments as to why they are "errors" are new; they are instead repetitive of the prior arguments which have been duly considered and rejected by this Board.

The City of Geneva asks alternatively that if we do not reconsider our decision, that we at least clarify whether it will have the right to file a third-party appeal should the Agency grant WMII an operating permit regarding Settler's Hill Landfill. The City is essentially asking for an advisory opinion, which would bind the Agency prior to its review, of whether the appropriate siting authorities have been obtained pursuant to Section 39(c). Again, the question is premature; the Board can only decide it when and if it is presented for our review in some other proceeding.

Accordingly, the City of Geneva's motion for reconsideration and clarification is hereby denied.

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 6th day of October, 1994, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board