

ILLINOIS POLLUTION CONTROL BOARD

October 3, 1996

INTERNATIONAL UNION, UNITED)	
AUTOMOBILE, AEROSPACE AND)	
AGRICULTURAL IMPLEMENT WORKERS)	
OF AMERICA AND UAW LOCAL 974;)	
AND CITIZENS FOR A BETTER)	
ENVIRONMENT,)	
)	
Complainants,)	
)	
v.)	
)	
CATERPILLAR INC.,)	PCB 94-240
)	(Enforcement-Land, Water
Respondent,)	Citizens)

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Party-in-Interest.)	

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

This matter is before the Board on complainants' September 4, 1996 motion for reconsideration and amendment of the Board's order dated August 1, 1996. On September 16, 1996 complainants filed a further motion to amend their motion for reconsideration which, over respondent's objection, we accept. On September 18, 1996 respondent filed its memorandum in opposition to complainants' motion for reconsideration. On September 30, 1996 the party-in-interest, the Illinois Environmental Protection Agency (Agency) as represented by the Illinois Attorney General on behalf of the People of the State of Illinois, filed a response to complainants' motion for reconsideration which, over complainants' objection, we accept. Respondent filed a motion to strike the Agency's response on October 2, 1996, which we deny.

In ruling upon a motion for reconsideration the Board is to consider factors including, but not limited to, error in the previous decision and facts in the record which are overlooked. (35 Ill. Adm. Code 101.246(d).) In Citizens Against Regional Landfill v. The County Board of Whiteside County (March 11, 1993), PCB 93-156, the Board 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.)

The Board finds that the arguments presented in complainants’ motion for reconsideration do not present the Board with any new evidence, a change in the law, or any other reason to conclude that the Board’s decision was in error. Therefore, we deny complainants’ motion for reconsideration and amendment of order. We do, however, make the following clarification.

In an effort to clarify the Board’s August 1, 1996 order, we recognize the distinction between the Pre-Notice program and RCRA closure plans. In our order we state that respondent was fully in compliance with the RCRA requirements applicable to the East Peoria facility for almost one year prior to the filing of this citizens enforcement suit. (Order at 38.) Respondent had thus voluntarily committed to an appropriate RCRA closure plan separate and distinct from the Pre-Notice program. Although respondent was participating in the Pre-Notice program while concurrently remediating RCRA closure of the waste pile, RCRA closure was not being conducted pursuant to the Pre-Notice program. The Board never intended to equate the Pre-Notice program with RCRA closure plans.

IT IS SO ORDERED.

Board Member M. McFawn abstained.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1994)) provides for the appeal of final Board orders within 35 days of the date of service to the Illinois Court of Appeals.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the ____ day of _____, 1996, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board