ILLINOIS POLLUTION CONTROL BOARD
November 16, 1995

COMMUNITY LANDFILL CORPORATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 95-137
	)	(Variance-Land)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (G. T. Girard):

On October 19, 1995 Community Landfill Corporation (CLC) filed a motion to reconsider the Board's September 21, 1995 opinion and order in this matter. On November 2, 1995, the Board received a response from the Illinois Environmental Protection Agency (Agency). CLC, in its motion, argues that "based on newly discovered evidence the Board should reverse its September 21, 1995 Opinion and Order". (Mot. at 1.) The "newly discovered evidence" which CLC is asking the Board to consider is information obtained from the Agency through a Freedom of Information Act request. The "evidence" relates to two other facilities that have been granted variance relief by the Board from the same regulations at issue in CLC's instant petition.

In a variance proceeding the petitioner must present adequate proof that immediate compliance with the Board regulations at issue would impose an arbitrary or unreasonable hardship. (415 ILCS 5/35(a).) The Board's decision of September 21, 1995, found that CLC had failed to establish that a hardship existed which would warrant variance relief. Further, the Board found that any hardship which may exist was self-imposed. The petitioner was given the opportunity in its petition, at hearing, and in its briefs to submit information to the Board to demonstrate that a hardship existed which warranted variance relief. The "newly discovered evidence" which CLC is now presenting to the Board for the first time was available to CLC during the pendency of CLC's variance petition.

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 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.) The Board finds that the information which CLC now submits in its motion to reconsider was "available" at the time of the hearing upon request. CLC is responsible for demonstrating a hardship exists and nothing in the motion to reconsider convinces the Board that an "error in the decision" was made. Further, the Board finds that the motion to reconsider does not point to any "facts in the record which are overlooked", or any other reason to conclude that the Board's decision was in error. Therefore, the motion to reconsider is denied.

IT IS SO ORDERED.

Board Member J. Theodore Meyer dissents.

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 of this order. The Rule of the Supreme Court of Illinois establish filing requirements. (*See also* 35 Ill. Adm. Code 101.246, Motions for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above order was adopted on the _____ day of _____, 1995, by a vote of _____.

_____
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board