

ILLINOIS POLLUTION CONTROL BOARD
April 3, 2003

MINERAL SOLUTIONS, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 03-39
)	(Permit Appeal – Land)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On March 6, 2003, the Illinois Environmental Protection Agency (Agency) filed a motion (Mot.) asking the Board to reconsider a January 23, 2003 opinion and order striking a contested condition from a permit. On March 20, 2003, Mineral Solutions, Inc. (Mineral Solutions) filed a response to the motion (Resp.). For the reasons discussed below, the Board denies the motion to reconsider.

The Board will briefly summarize the arguments put forth by the Agency and Mineral Solutions. The Board will then delineate the standard used by the Board in ruling on motions to reconsider and the Board's reasons for denial.

MOTION FOR RECONSIDERATION

The Agency asks the Board to reconsider because the Board "erred in failing to acknowledge, consider and discuss all arguments raised" by the Agency. Mot. at 2. The Agency maintains that the Board "neglected to consider an argument in" the Agency's post-hearing response brief. *Id.* Specifically, the Agency maintains that the Board did not discuss the Agency's argument which addressed the possibility that the Board might find that the fly ash received at the Indian Creek Landfill was not a waste. *Id.* The Agency's argument was that if the Board found that the fly ash received in 1996 was not waste then Mineral Solutions was an on-site manufacturing process generating waste. Mot. at 3. The Agency asserts that such activity is exempt from the permitting process under Section 21(d) of the Environmental Protection Act (Act) (415 ILCS 5/21(d) (2002)). *Id.*

The Agency argues that since the Board's finding was that the material accepted in 1996 was not waste, failing to address the Agency's argument "was tantamount to conceding the appeal to Mineral Solutions without having heard" the Agency's argument on that key point. Mot at 2. The Agency argues that if the case is appealed to the appellate court it would be advantageous to all parties if a "complete discussion and analysis of the parties' arguments were present for review." Mot. at 4. The Agency submits that failure to "consider" the Agency's argument was error. Therefore the Agency argues that the Board should reconsider the January

23, 2003 opinion and order to either reverse the Board's decision or at a minimum discuss the Agency's argument. *Id.*

RESPONSE TO THE MOTION TO RECONSIDER

Mineral Solutions argues that the Agency's motion is based on a "mistaken belief" that the Board failed to consider an Agency argument because the argument was not mentioned in the Board's opinion. Resp. at 1. Mineral Solutions states that this "fallacy is made even the more egregious when one considers that the location of [the argument on] this allegedly 'key point'." *Id.* Mineral Solutions states that the "key point" was "buried" in the middle of arguments in the response brief and was not raised in the letter or the Agency's original brief. *Id.* Mineral Solutions asserts that the argument "should have remained buried since it is inconsistent with positions already taken" by the Agency in this "permit review and in previous permit reviews regarding this facility." *Id.*

Mineral Solutions also argues that the Board did not "neglect any duty" in issuing the opinion. Resp. at 2. Mineral Solutions asserts that the Agency has not identified any legal obligation or requirement that the Board failed to apply. Conversely, Mineral Solutions maintains that the Agency did neglect to act in that the Agency's failure to include in the letter the "perceived applicability of Section 21(d) of the Act" was a failure to meet a legal requirement. Resp. at 2. Mineral Solutions argues that the Board must confine the Board's considerations to the decision of the Agency (Resp. at 2, citing Illinois Environmental Protection Agency v. Illinois Pollution Control Board 86 Ill. 2d 390, 405 (1981)) and the Agency's failure to include Section 21(d) of the Act as a reason for the condition on the permit means the Board need not consider the argument. Resp. at 2-3.

DISCUSSION

In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law, to conclude that the Board's decision was in error. 35 Ill. Adm. Code 101.902. In Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (Mar. 11, 1993), we observed that "the 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., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992). For the following reasons, the Board finds that the Agency's motion to reconsider presents the Board with no new evidence, change in the law, or other reason to conclude that the Board's January 23, 2003 decision was in error. Therefore the motion to reconsider is denied.

The law is clear that the Agency's letter frames the issues on appeal. ESG Watts, Inc. v. PCB, 286 Ill. App. 3d 325, 676 N.E.2d 299 (3rd Dist. 1997). In this case the Agency issued a permit that was conditioned on Mineral Solutions receiving siting approval and a new operating permit because "the last time Indian Creek Landfill 'accepted waste disposal' was more than five years prior" to the receipt of the application for temporary suspension of waste acceptance. R. at 0003. This was the only condition challenged and the issue as framed by the Agency's letter was what constitutes "accepted waste disposal" under the facts of this case. The Board's January 23,

2003 opinion analyzed the arguments regarding what constitutes “accepted waste disposal” and found that the Agency’s condition was not necessary to meet the purposes of the Act.

The Board did review, but did not and will not discuss, the Agency’s hypothetical argument that is unrelated to the issue as framed by the Agency’s letter. The law requires the Board to review the Agency’s decision to determine if conditions imposed by the Agency are necessary to meet the purposes of the Act. *See* 415 ILCS 5/40 (a)(1) (2002); 35 Ill. Adm. Code Section 105.204(a); Browning-Ferris Industries of Illinois, Inc. v. PCB, 179 Ill. App. 3d 598, 534 N.E. 2d 616, (2nd Dist. 1989) and John Sexton Contractors Company v. Illinois (Sexton), PCB 88-139 (Feb. 23, 1989). Further, the Act requires that the Board make final decisions on permit appeals in 120 days (*See* 415 ILCS 5/40(a)(3) (2002)) and at most that final decision need only be a written decision stating the facts and reasons leading to the decision (415 ILCS 5/33(a) (2002) and 5 ILCS 100/10-50(a) (2002)). Neither the Act nor case law requires that the Board discuss *every* argument raised before the Board and the Board sees no reason here to do so.

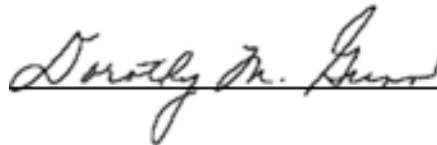
CONCLUSION

The Board finds that the Agency’s motion to reconsider presents the Board with no new evidence, change in the law, or other reason to conclude that the Board’s January 23, 2003 decision was in error. Therefore the motion to reconsider is denied.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/31(a) (2002)); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board’s procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 3, 2003, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board