

ILLINOIS POLLUTION CONTROL BOARD

April 3, 2008

WASTE MANAGEMENT OF ILLINOIS, INC.,)	
)	
)	
Petitioner,)	
)	
v.)	PCB 04-186
)	(Pollution Control Facility
COUNTY BOARD OF KANKAKEE COUNTY,)	Siting Appeal)
)	
)	
Respondent.)	

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

On March 5, 2008, Waste Management of Illinois, Inc. (Waste Management) filed a motion to reconsider (Mot.) the Board's January 24, 2008, opinion and order. On March 19, 2008 the County Board of Kankakee County (County) filed a response (Resp.) to the motion and on March 20, 2008, a supplemental response (Supp. Resp.).

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).

Waste Management argues that the Board applied the wrong standard of review in considering the decision by the County denying siting for expansion of a pollution control facility, known as the Kankakee Landfill. Mot. at 2. Waste Management relies on Town & Country Utilities, Inc. v. PCB, 225 Ill. 2d 103, 866 N.E.2d 227 (2007) to support its argument. The County responds by noting that Waste Management argued the manifest weight of the evidence standard in the briefs filed with the Board. Resp. at 2. The County further asserts that Town & Country did not disturb the well-established standard of review to be applied by the Board to the County's decision. *Id.* The County also notes that the Board has already addressed this argument and found that Town & Country did not alter the well-established precedent concerning the standard of review to be applied by the Board. Supp. Resp. at 1-2, citing Peoria Disposal Co. v. Peoria County Board, PCB 06-184, slip op. at 26 (June 21, 2007).

The Board stated in Peoria Disposal:

The Board disagrees with PDC's interpretation that the Illinois Supreme Court's recent decision in Town & Country changed the standard of review applicable to siting review proceedings before the Board. Town & Country by no means changed the standard the Board must apply in reviewing local siting decisions, which is whether the local siting authority's decision was against the manifest weight of the evidence. Rather, the Illinois Supreme Court clarified that the Board's role is to apply "technical expertise in examining the record to determine whether the record supported the local siting authority's conclusions." Town & Country, Nos. 101619, 101652 (cons.) at 14 [Town & Country, 225 Ill. 2d at 123]. Accordingly, below the Board considers whether the County Board's decision was against the manifest weight of the evidence with respect to criteria i, ii, iii, and vi. Peoria Disposal, PCB 06-184, slip op. at 26.

The Board reviewed the arguments of Waste Management and again reviewed the Illinois Supreme Court's decision in Town & Country. The Board reiterates the finding in Peoria Disposal that Town & Country did not change the standard of review the Board employs when reviewing a local siting appeal. Therefore, the Board denies Waste Management's motion to reconsider.

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 5/41(a) (2006); *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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 3, 2008, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board