

ILLINOIS POLLUTION CONTROL BOARD
April 7, 2011

JON CHVALOVSKY,)
)
Complainant,)
)
v.) PCB 10-13
) (Citizens Enforcement - Noise)
COMMONWEALTH EDISON,)
FRANK CLARK, and TIM JOHNSON,)
)
Respondents.)

ORDER OF THE BOARD (by T.E. Johnson):

On January 20, 2011, the Board issued an order dismissing this citizen's noise complaint as frivolous. Jon Chvalovsky, the *pro se* complainant, received the order on January 24, 2011. Any motion for Board reconsideration of an order must be filed within 35 days after receipt of the order, and any response to such a motion is due within 14 days after the filing of the motion. See 35 Ill. Adm. Code 101.520(a), (b). On February 25, 2011, Mr. Chvalovsky filed a letter, to which the respondents have not responded. The Board construes Mr. Chvalovsky's letter as a timely motion for reconsideration (Mot.) and, for the reasons below, denies the motion.

A motion to reconsider may be brought "to bring to the [Board's] attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the [Board's] previous application of existing law." Citizens Against Regional Landfill v. County Board of Whiteside County, PCB 92-156, slip op. at 2 (Mar. 11, 1993), citing Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1991); see also 35 Ill. Adm. Code 101.902. In addition, a motion to reconsider may specify "facts in the record which were overlooked." Wei Enterprises v. IEPA, PCB 04-23, slip op. at 3 (Feb. 19, 2004).

The claims made in Mr. Chvalovsky's motion to reconsider were already made in his earlier filings and taken into account by the Board. Mr. Chvalovsky again asserts, for example, that (1) he began residing at his home in the 1950s, (2) he collected decibel level readings, and (3) the Board is just listening to respondents' "high price lawyers." Mot. at 1-2. As emphasized in the January 20, 2011 order and reemphasized now, the dismissal of this action was based solely upon the failure of Mr. Chvalovsky's pleadings to state a cause of action, not upon any allegations made by respondents. See Chvalovsky v. Commonwealth Edison, PCB 10-13, slip op. at 2 (Jan. 20, 2011). The Board finds that Mr. Chvalovsky's motion does not identify any newly discovered evidence, changes in the law, errors in the Board's application of existing law, or facts in the record overlooked by the Board. The Board therefore denies Mr. Chvalovsky's motion for reconsideration.

The Board notes that Mr. Chvalovsky's motion includes multiple requests that an investigation of the alleged noise be carried out at his house. Mot. at 2. The motion seems to pose these requests alternately to the Board and the Illinois Environmental Protection Agency (Agency). *Id.* The motion generally appears to refer to the Board and the Agency interchangeably. Mot. at 1-2. To clarify in the event of any misunderstanding, the Board and the Agency have independent functions under the Act. *See, e.g.*, 415 ILCS 5/4, 5 (2008). The General Assembly has given the Board quasi-legislative power for adopting Illinois' environmental regulations, as well as quasi-judicial power for deciding contested environmental cases filed with the Board. The Board is not authorized to investigate a site for the purposes of gathering evidence to help a party establish or defend against alleged violations. The burden of proof in any enforcement action brought before the Board is upon the complainant, whether the complainant is a citizen or the State of Illinois. *See* 415 ILCS 5/31(c)-(e) (2008). While the Agency is authorized to and does investigate alleged violations, it is the Board's understanding that the Agency does not presently have the resources to operate a noise program.

Finally, Mr. Chvalovsky's motion states that he "wants to appeal this decision." Mot. at 2. It is unclear whether by "appeal," Mr. Chvalovsky is seeking Board reconsideration of, or Illinois Appellate Court review of, the January 20, 2011 dismissal order. Today's order denies reconsideration for the reasons provided above. Should Mr. Chvalovsky wish to seek Appellate Court review, the Board notes that the filing of Mr. Chvalovsky's motion to reconsider with the Board automatically stayed the 35-day period within which he could file a petition for review with the Appellate Court. That stay is lifted by this order's ruling on the motion to reconsider. *See* 35 Ill. Adm. Code 101.300(d)(2), 101.520(c), 101.906.

IT IS SO ORDERED.

Member C.K. Zalewski abstained.

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) (2008); *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 7, 2011, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board