

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the Matter of:)	
)	
DPL Energy,)	
Montpelier Electric Generating)	
Station)	
)	PSD Appeal No. 01-02
Permit No. 179-12321-00026)	
)	

ORDER DENYING RECONSIDERATION

On March 28, 2001, Petitioner, Stephen A. Loeschner filed a motion requesting the Environmental Appeals Board (the "Board") to reconsider its March 13, 2001 Order Granting Summary Disposition and Denying Review (the "Order") in the above-captioned matter. The principal basis for the ruling in the Order was the Board's lack of jurisdiction to entertain Petitioner's appeal.

In Petitioner's motion, he raises several issues that, Petitioner believes, require the Board to reconsider its Order. Among other things, Petitioner complains of an alleged lack of diligence on the part of the EPA's Air & Radiation Law Office in serving Petitioner; Petitioner notes that in a motion referenced in the Board's Order, the Board incorrectly attributes a spelling

error to Petitioner;¹ Petitioner objects to the Board's denial of his request to rebut EPA's amicus brief; and Petitioner asserts that the Board's identification of other possible avenues of relief he might pursue were "specious."

Under 40 C.F.R. § 124.19(g), a motion for reconsideration must be filed - that is received² - within ten (10) days after service of a final order. In addition, where a document is served by mail, "three (3) days shall be added to the prescribed time." 40 C.F.R. § 124.20(d). The Board's Final Order in this case was served by mail upon Petitioner on March 13, 2001. The deadline for filing a motion for reconsideration, therefore, was March 26, 2001 (10 days + 3 days). Since the motion for reconsideration was not received until March 28, 2001, it was not timely filed and must be denied for that reason alone.

In addition, even if Petitioner had filed his motion in a timely manner, motions for reconsideration "must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors." 40 C.F.R. § 124.19(g). Such a motion will not be granted absent a showing that the Board has made a

¹The Board thanks Petitioner for his detection of this typographical error in the Order and will correct it prior to publication in the Environmental Administrative Decisions volume.

²See *In re Beckman Production Services*, 5 E.A.D. 10, 15 (EAB 1994).

demonstrable error, such as a mistake of law or fact. See *In re Arizona Municipal Storm Water NPDES Permits*, NPDES Appeal NO. 97-3, at 2 (EAB, Aug. 17, 1998) (Order Denying Motion for Reconsideration); *In re Mayaguez Regional Sewage Treatment Plant, Puerto Rico Aqueduct and Sewer Authority*, NPDES Appeal No. 92-23 (EAB, Dec. 20, 1993) (Order Denying Reconsideration and Stay Pending Reconsideration or Appeal). The filing of a motion for reconsideration "should only be used to bring to the attention of [the Board] clearly erroneous factual or legal conclusions." *Arizona Municipal Storm Water NPDES Permits*, at 2. In addition, to warrant reconsideration of the underlying ruling (in this case, dismissal on jurisdictional grounds), the alleged error must be material to the ruling, such that correcting the error will likely affect the outcome of the ruling in some significant manner. Cf. *In re Chempace Corp.*, FIFRA Appeal Nos. 99-2 & 99-3, slip op. at 15-16 (EAB, May 18, 2000) 9 E.A.D. ____ (agreeing with Presiding Officer's analysis to deny motion for reconsideration because of the motion's unlikelihood of success). None of the matters alleged by Petitioner are likely to succeed in that regard.

Upon consideration of the motion for reconsideration, we conclude that Petitioner has failed to demonstrate that reconsideration of the Order is warranted. The matters asserted in the motion, even if accepted as true, would not affect the

Board's conclusion that it is without jurisdiction to entertain
Petitioner's appeal. Accordingly, the motion is denied.

ENVIRONMENTAL APPEALS BOARD

03/29/01

By: _____/s/_____

Ronald L. McCallum
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Denying Petitioner's Motion for Reconsideration In the Matter of DPL Energy, Montpelier Electric Generating Station, PSD Appeal No. 01-02, were sent to the following persons in the manner indicated:

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Dated: 03/30/01

_____/s/_____
Annette Duncan
Secretary