

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
<i>ex rel.</i> LISA MADIGAN, Attorney	)	
General of the State of Illinois,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13-19
	)	PCB No. 13-20
SHERIDAN-JOLIET LAND	)	
DEVELOPMENT, LLC, an Illinois	)	(Enforcement-Land)
limited liability company, and	)	
SHERIDAN SAND & GRAVEL CO.,	)	
an Illinois corporation,	)	(Consolidated)
	)	
Respondents.	)	

**NOTICE OF FILING**

To:	Kenneth Anspach, Esq.	Bradley P. Halloran
	Anspach Law Office	Hearing Officer
	111 West Washington Street	Illinois Pollution Control Board
	Suite 1625	James R. Thompson Center, Suite 11-500
	Chicago, Illinois 60602	100 W. Randolph Street
		Chicago, Illinois 60601
		Brad.Halloran@illinois.gov

PLEASE TAKE NOTICE that on the 25th day of September, 2013, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, filed the attached Response to Respondents' Motion for Reconsideration and Supporting Memorandum, a true and correct copy of which is attached hereto and is hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN, Attorney General  
of the State of Illinois

By: 

Kathryn A. Pamerter  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., 18<sup>th</sup> Floor  
Chicago, IL 60602  
(312) 814-0608

DATE: September 25, 2013

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS	)	
by LISA MADIGAN, Attorney General	)	
of the State of Illinois,	)	
	)	
Complainant,	)	
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v.	)	PCB No. 13-19
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SHERIDAN-JOLIET LAND	)	
DEVELOPMENT, LLC, an Illinois	)	(Enforcement - Land)
limited-liability company, and SHERIDAN	)	
SAND & GRAVEL CO., an Illinois	)	(Consolidated)
corporation,	)	
	)	
Respondents.	)	

**COMPLAINANT’S RESPONSE TO  
RESPONDENTS’ MOTION FOR RECONSIDERATION  
AND SUPPORTING MEMORANDUM**

Complainant, People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, for its Response to SHERIDAN-JOLIET LAND DEVELOPMENT, LLC’s and SHERIDAN SAND & GRAVEL CO.’s (“Respondents”) Motion for Reconsideration and Supporting Memorandum (the “Reconsideration Motion”), hereby states as follows:

On August 8, 2013, following extensive briefing by the parties, the Illinois Pollution Control Board (the “Board”) issued its twenty-eight page Order which, in relevant part, denied the Respondents’ motions to strike or dismiss the Complainant’s complaints, denied the Respondents’ motions to strike the Complainant’s amended notices of filing of the complaints and ordered the Respondents to answer the Complainant’s complaints by October 7, 2013. *People v. Sheridan-Joliet Land Development, LLC et al.*, PCB 13-19, 13-20, 2013 WL 4396978, at \*28 (Aug. 8, 2013). On September 12, 2013, the Respondents filed their Reconsideration Motion, contending that the Board erred in determining that the requirement under Section

31(c)(1) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31(c)(1) (2010), to accompany an enforcement action complaint with a notification that financing may be available under the Illinois Environmental Facilities Financing Act, was not jurisdictional. (Reconsideration Motion at pp. 1-5.) In addition, the Respondents assert that the doctrine of *stare decisis* required the Board’s application of *Illinois Env’tl Protection Agency v. Production Finishers and Fabricators, Inc.*, PCB 85-31, 1986 WL 26688 (Jan. 9, 1986), not the Board’s more recent decision, *People v. City of Herrin*, PCB 95-158, 1995 WL 415802 (July 7, 1995). (*Id.* at pp. 5-7.)

Section 101.902 of the Board’s General Rules provides that, “[i]n ruling upon 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; *see also Phillips Co. v. Illinois Env’tl Protection Agency*, PCB 12-101, 2013 WL 2395870, at \*2 (May 16, 2013) (stating “[t]he Board finds that Phillips provided no new evidence or a change in the law that would indicate the Board’s March 21, 2013 decision affirming IEPA’s imposition of conditions was in error”); *People v. AET Env’tl, Inc. et al.*, PCB 07-95, 2013 WL 1776521, at \*3 (April 18, 2013) (finding the respondents “fail[ed] to raise ‘new evidence or a change in the law, to conclude that the Board’s decisions were in error’”) (quoting 35 Ill. Adm. Code 101.902). In their Reconsideration Motion, the Respondents do not provide new evidence or a change in the law to support reversal of the Board’s August 8, 2013 Order.

First, the Respondents reargue the applicability of the two-paragraph *Production Finishers* decision. (Reconsideration Motion at pp. 1-5.) In its August 8, 2013 Order, the Board acknowledged that prior ruling by stating, “[t]he Board reached a different result in Production Finishers & Fabricators. . . . Finding the financing notification requirement jurisdictional, the

Board dismissed the case, but the Board did so without prejudice.” *Sheridan-Joliet*, 2013 WL 4396978, at \*16 (citing *Production Finishers*, 1986 WL 26688). However, the Board concluded that its more recent decision, *City of Herrin*, controls. *Id.* at \*16-\*17. The Board recognized, contrary to the Respondents’ assertion (Reconsideration Motion at p. 4), that the *City of Herrin* decision arose from a Motion Attacking Jurisdiction which was premised on the complainant’s failure to accompany its complaint with a financing notification, the identical issue that the Respondents presented in these cases. *Sheridan-Joliet*, 2013 WL 4396978, at \*16-\*17. As in *City of Herrin*, the Complainant filed and served an amended notice of filing that included the financing notification. Accordingly, consistent with *City of Herrin*, the Board determined that the financing notification was not a jurisdictional requirement, and that the Complainant had cured any deficiency by filing and serving such amended notice of filing. *Id.* at \*16-\*17, \*27. The Respondents have not presented any new argument regarding *Production Finishers* or *City of Herrin* to satisfy the standard set forth in 35 Ill. Adm. Code 101.902.

Second, the Respondents selectively quote *M.I.G. Investments, Inc. et al. v. Illinois Env’t Protection Agency*, PCB 85-60, 1985 WL 21468 (Aug. 15, 1985), to argue that the doctrine of *stare decisis* required that the Board follow *Production Finishers* and dismiss the above-captioned cases pending against the Respondents.<sup>1</sup> (Reconsideration Motion at p. 5.) Yet, *M.I.G. Investments* supports the Board’s reliance on *City of Herrin* in its August 8, 2013 Order:

Stated in its general and simplest terms, the doctrine of stare decisis expresses the policy of the courts to stand by precedents and not to disturb settled points. \* \* \* [But] where it is clear that the court has made a mistake, it will not decline to correct it, although it may have been reasserted and acquiesced in for a long number of years. . . .

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<sup>1</sup> As the Board recognized, even if it applied *Production Finishers* as the Respondents request, dismissal of the above-captioned cases would be “without prejudice,” and the Complainant would be permitted to re-file the complaints against the Respondents. *Production Finishers*, 1986 WL 26688; *Sheridan-Joliet*, 2013 WL 4396978 at \*27.

\* \* \*

It is well settled Illinois law that each trial court is bound by decisions of all Illinois Appellate Courts . . . and that Appellate Courts are bound by decisions of the Supreme Court; . . . However, as M.I.G. points out, courts are not bound to follow decisions of equal or inferior courts. . . .

*M.I.G. Investments*, 1985 WL 21468 at \*5 (citations omitted). The Respondents do not argue that the Board failed to adhere to a decision of the Illinois Supreme Court or the Illinois Appellate Court. Rather, they contend that the Board was required to ignore its more recent decision, *City of Herrin*, and apply *Production Finishers*. In doing so, the Respondents misapprehend the doctrine of *stare decisis*. As recognized in *M.I.G. Investments*, the Board may reconsider and correct its own prior decisions. *M.I.G. Investments*, 1985 WL 21468 at \*5.

Similarly, citing *Hunt Super Service, Inc. v. Edgar*, 172 Ill. App. 3d 512 (4th Dist. 1988), the Respondents state that “the Board made absolutely no adjustment to *Production Finishers and Fabricators, Inc.* In that respect, it did not overrule *Production Finishers and Fabricators, Inc.* either in whole or in part. It simply ruled directly opposite to that decision.” (Reconsideration Motion at p. 6.) A complete reading of the August 8, 2013 Order reveals that the Board had made an “adjustment” to *Production Finishers*:

Although City of Herrin did not explicitly hold the financing notification requirement non-jurisdictional, that is implicit in the Board’s ruling that the amended notice cured the notification deficiency. And in City of Herrin, as much as in this case, the respondent put squarely before the Board the question whether the financing notification requirement is jurisdictional.

*Sheridan-Joliet*, 2013 WL 4396978 at \*17.

Further, unlike in *Hoffman v. Nustra*, 143 Ill. App. 3d 259 (2nd Dist. 1986) on which the Respondents seek to rely, *Production Finishers* had not “deliberately examined and decided” the question of whether the financing statement notification was jurisdictional. *Hoffman*, 143 Ill. App. 3d at 273. *Production Finishers* was a two-paragraph order with no analysis of the issue;

rather, it contained only a one-sentence conclusion. *Production Finishers*, 1986 WL 26688. In the August 8, 2013 Order, the Board “deliberately examined and decided” the issue, recognizing the distinction between the Board’s jurisdiction and statutory authority:

Consistent with City of Herrin – the most recent relevant decision – the Board finds that the requirement to file a financing notification with the complaint does not affect the Board’s subject matter jurisdiction over an enforcement proceeding. As the People state, the Board has statutory authority, and thus jurisdiction, to entertain complaints alleging violations of the Act, the Board’s regulations, a permit, or a Board order. *See* 415 ILCS 5/5(d) (2010). The Act does not make compliance with Section 31(c)(1) . . . a prerequisite to the Board’s exercise of this jurisdiction. In instances where a statutory requirement is jurisdictional, the Act spells that out.

*Sheridan-Joliet*, 2013 WL 4396978 at \*16. Applying *M.I.G. Investments, Hunt and Hoffmann*, the Board’s reliance upon *City of Herrin* in its August 8, 2013 Order was appropriate under the doctrine of *stare decisis*.

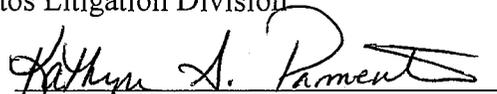
**CONCLUSION**

In their Reconsideration Motion, the Respondents failed to present any new evidence or change in the law to warrant reversal of the August 8, 2013 Order. 35 Ill. Adm. Code 101.902. Accordingly, the Respondents’ Reconsideration Motion should be denied.

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN, Attorney  
General of the State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement /  
Asbestos Litigation Division

By:



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**CERTIFICATE OF SERVICE**

I, KATHRYN A. PAMENTER, an Assistant Attorney General, do certify that I caused to be served this 25th day of September, 2013, the attached Notice of Filing and Complainant's Response to Respondents' Motion for Reconsideration and Supporting Memorandum upon (a) Kenneth Anspach, Esq. by placing a true and correct copy in an envelope addressed as set forth on said Notice of Filing, first class postage prepaid, and depositing same with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m. and (b) Bradley Halloran *via email*.

  
KATHRYN A. PAMENTER