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JUN 21 2004

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 16, 2004

Dorothy Gunn, Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601-3286

Re: People v. John Prior, d/b/a Prior Oil Co. & James Mezo
PCB 02-177

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING and COMPLAINANT'S RESPONSE TO MOTION FOR RECONSIDERATION in regard to the above-captioned matter. Please file the originals and return a file-stamped copy to our office in the enclosed self-addressed stamped envelope.

Thank you for your cooperation and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "J. L. Homan", is written over the typed name.

J. L. Homan
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706

JLH/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUN 21 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
JOHN PRIOR, d/b/a PRIOR OIL COMPANY,)
and JAMES MEZO, d/b/a MEZO OIL)
COMPANY,)
)
Respondents.)

PCB NO. 02-177
(Enforcement)

NOTICE OF FILING

To: John Prior
421 North Morrison
Central City, Illinois 62801

James Mezo
418 East Main Street
P.O. Box 220
Benton, Illinois 62812


PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, COMPLAINANT'S RESPONSE TO MOTION FOR RECONSIDERATION, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

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

BY: 

J. L. HOMAN
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: June 16, 2004

CERTIFICATE OF SERVICE

I hereby certify that I did on June 16, 2004, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument entitled NOTICE OF FILING and COMPLAINANT'S RESPONSE TO MOTION FOR RECONSIDERATION

To: John Prior
421 North Morrison
Central City, IL 62801

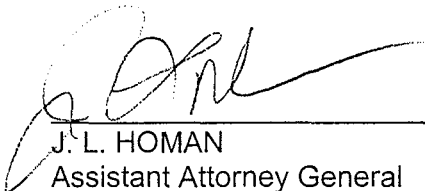
James Mezo
418 East Main Street
P.O. Box 220
Benton, IL 62812

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid

To: Carol Sudman
Hearing Officer
Pollution Control Board
600 South Second Street
Springfield, IL 62706



J. L. HOMAN
Assistant Attorney General

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
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JUN 21 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
 ex rel. LISA MADIGAN,)
 Attorney General)
 of the State of Illinois,)
)
 Complainant,)
)
 vs.)
)
 JOHN PRIOR and JAMES MEZO,)
)
 Respondents.)

PCB No. 02-177
(Enforcement)

COMPLAINANT'S RESPONSE TO MOTION FOR RECONSIDERATION

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, hereby responds to the Motions for Reconsideration of the Board's May 6, 2004, Order filed by Respondents, JOHN PRIOR and JAMES MEZO, and states as follows:

1. Motions for reconsideration are governed by Section 101.902 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.902. These provisions allow a party to seek reconsideration of a final Board order upon the traditional grounds of newly discovered evidence or a change in the law (or misapplication of existing law).

2. John Prior has filed a letter on June 4, 2004, requesting that the Board "reconsider the penalties assessed," and asserting, in pertinent part: "There had been considerable sabotage to my equipment but due to my lack of representation, due to a lack of funds, I was unable to get the information I had admitted for consideration. It is a matter of public record, that during better times for me, I personally donated the land for the Wamac City Park. I did not and would not intentionally damage the environment in and around Wamac."

3. James Mezo has filed a letter on June 7, 2004, requesting that the Board reduce the penalty against him and asserting, in pertinent part: "The Opinion refers to my posing as the operator of the Oestreich tank battery. At the time I made the Assignment and OG26 form to John Prior, we believed The Permit transfer would be made timely. This of course did not happen Until the D.N.R. did an administrative transfer. I am convinced the Oestreich lease was never operated after the Assignment Was made. There was a tool lost in the hole and after I decided to plug and Abandon the well Mr. Prior wanted to purchase the lease and try to salvage The well, thus the assignment. I was lax in that I did not follow up as closely as I should have to get the Permit transferred, partly because I knew the well was not being operated."

4. In *Citizens Against Regional Landfill v. County Board of Whiteside* (March 11, 1993), PCB 93-156, the Board stated 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," citing *Korogluyan v. Chicago Title & Trust Co.*, 213 Ill. App. 3d 622, 572 N.E.2d 1154, 1158 (1st Dist. 1992). The availability of factual information at the time of the hearing must be determined in the context of the case.

5. Complainant believes that the information quoted above is not convincing that reconsideration is justified by newly discovered evidence or errors in the Board's previous application of existing law. However, since each Respondent appeared *pro se*, the Board could appropriately accept the letters as post-hearing exhibits and include such in the record of decision. Complainant would then suggest that none of the information warrants reduction of the penalties imposed in the May 6, 2004, Order.

WHEREFORE, Complainant, People of the State of Illinois, respectfully requests that, if

reconsideration is granted and the information provided by Respondents is made part of the record, the Board affirm its May 6, 2004, Order.

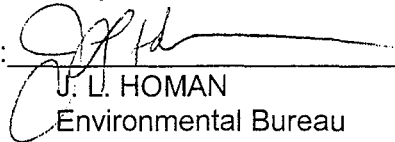
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN,
Attorney General
of the State of Illinois

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

BY:



J. L. HOMAN
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: June 16, 2004