

ILLINOIS POLLUTION CONTROL BOARD  
July 8, 2004

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB 02-177  
) (Enforcement – Land, Water)  
JOHN PRIOR d/b/a PRIOR OIL COMPANY )  
and JAMES MEZO d/b/a MEZO OIL )  
COMPANY, )  
)  
Respondents. )

ORDER OF THE BOARD (by A.S. Moore):

Respondents in this enforcement action have separately moved the Board to reconsider its final decision issued on May 6, 2004. Respondents want the Board to reduce the penalties and attorney fees imposed. For the reasons below, the Board denies the motions to reconsider. In this order, the Board first provides background on its final decision. Then the Board discusses the pleadings before ruling on the motions.

**BACKGROUND ON THE BOARD’S FINAL DECISION**

On May 6, 2004, the Board issued its final decision, an opinion and order ruling on a sixteen-count complaint filed by the Office of the Attorney General, on behalf of the People of the State of Illinois (People). The People filed the complaint against respondent John Prior d/b/a Prior Oil Company (Prior) and respondent James Mezo d/b/a Mezo Oil Company (Mezo). Prior and Mezo are oil producers and distributors. The complaint alleged oil pollution of land and water at four sites in Washington County.

In its final decision, the Board found that Prior committed 26 violations of the Environmental Protection Act (Act) (415 ILCS 5 (2002)) and Board regulations at four sites and ordered him to pay a civil penalty of \$300,000. These violations included intentionally dumping oil field wastes at a site without a permit, as well as causing or allowing the release of crude oil at three other sites, each time resulting in water pollution. The Board also found that Prior violated the Act willfully, knowingly, and repeatedly, and therefore ordered him to pay the People’s requested attorney fees in the amount of \$6,600. As for Mezo, the Board found that he committed three violations of the Act and Board regulations at one site, including allowing the release of crude oil, causing water pollution. The Board ordered Mezo to pay a civil penalty of \$3,500.

**RESPONDENTS’ MOTIONS TO RECONSIDER AND THE PEOPLE’S RESPONSE**

Prior filed a motion to reconsider on June 4, 2004. Mezo filed a motion to reconsider on

June 7, 2004. Neither Prior nor Mezo asks the Board to reconsider its findings of violations. Rather, Prior asks the Board to reconsider the amounts of the civil penalty and attorney fees awarded, and Mezo asks the Board to reconsider the civil penalty amount imposed. Both respondents claim the respective dollar amounts are too high and seek to have them reduced.

Prior states that he lacks the assets to pay the amounts imposed. Prior Motion at 1. He reiterates his claim that pollution resulted from his equipment being subjected to “considerable sabotage.” *Id.* Prior asserts that because he could not afford an attorney, he was unable to effectively get evidence of sabotage admitted. *Id.* According to Prior, “during better times,” he “personally donated the land for the Wamac City Park.” *Id.* Prior also claims that he “did not and would not intentionally damage the environment in and around Wamac.” *Id.*

Mezo argues that his \$3,500 penalty is “rather harsh, considering the circumstances.” Mezo Motion at 1. Mezo states that at the time he transferred the Mezo Oestreich tank battery and well to Prior, Mezo believed that the Illinois Department of Natural Resources would timely transfer his permit to Prior. However, Mezo acknowledges that this did not happen. *Id.* Mezo further claims that he is convinced that the well was never operated after his assignment to Prior. *Id.* He explains that he was going to plug and abandon the well because a tool was “lost in the hole,” but instead he assigned the well to Prior who wanted to try to salvage the well. Mezo admits “I was lax in that I did not follow up as closely as I should have to get the Permit transferred,” but maintains that this was “partly because I knew the well was not being operated.” *Id.*

The People filed a response to the motions to reconsider, stating that parties may 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).” Response at 1. The People argue that reconsideration is not justified here because respondents’ motions do not describe newly discovered evidence or Board error in applying the law. *Id.* at 2. Moreover, the People maintain, “none of the information warrants reduction of the penalties.” *Id.*

## **DISCUSSION**

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. A motion to reconsider may specify “facts in the record which were overlooked.” Wei Enterprises v. IEPA, PCB 04-23, slip op. at 5 (Feb. 19, 2004).

The Board finds that respondents have not identified newly discovered evidence that was unavailable at the time of hearing, changes in the law, errors in how the Board applied the law, or facts in the record that the Board overlooked. The Board therefore denies both motions to reconsider.

A timely-filed motion to reconsider “stays the effect of the final order until final disposition of the motion.” 35 Ill. Adm. Code 101.520(c). Accordingly, respondents’ motions to reconsider stayed the Board’s May 6, 2004 order. The Board’s ruling today on the motions lifts the stay. The Board incorporates by reference its findings of fact and conclusions of law from its May 6, 2004 decision. The time period for appealing the Board’s decision runs anew. The Board sets forth below its entire order of May 6, 2004, with the due dates for paying penalties and attorney fees amended to reflect the now-terminated stay.

### **ORDER**

1. The Board finds that John Prior d/b/a Prior Oil Company (Prior) violated the following provisions of the Environmental Protection Act (Act) and Board regulations:
  - a. At the Gompers site: Sections 21(a), (d)(1), (d)(2), (e), (p)(1), and (p)(6) of the Act (415 ILCS 5/21(a), (d)(1), (d)(2), (e), (p)(1), (p)(6) (2002)); Board regulations at 35 Ill. Adm. Code 722.111, 739.122(c), (d), 808.121, 812.101(a);
  - b. At the Wamac City Park tank battery: Sections 12(a) and (d) of the Act (415 ILCS 5/12(a), (d) (2002)); Board regulations at 35 Ill. Adm. Code 302.203;
  - c. At the Mezo Oestreich tank battery: Sections 12(a) and (d) of the Act (415 ILCS 5/12(a), (d) (2002)); Board regulations at 35 Ill. Adm. Code 302.203); and
  - d. At the Morgan Kalberkamp tank battery: Section 12(a) of the Act (415 ILCS 5/12(a) (2002)); Board regulations at 35 Ill. Adm. Code 302.203.
2. The Board finds that James Mezo d/b/a Mezo Oil Company (Mezo) violated the following provisions of the Act and Board regulations at the Mezo Oestreich tank battery: Section 12(a) of the Act (415 ILCS 5/12(a) (2002)); Board regulations at 35 Ill. Adm. Code 302.203.
3. No later than September 7, 2004, which is the first business day following the 60th day after the date of this order, Prior must pay \$300,000 in civil penalties and \$6,600 in attorney fees of the People of the State of Illinois. Prior must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. Prior must pay the attorney fees by certified check or money order, payable to the Hazardous Waste Fund. The case number, case name, and Prior’s social security number or federal employer identification number must be included on each certified check or money order.
4. No later than September 7, 2004, which is the first business day following the 60th day after the date of this order, Mezo must pay \$3,500 in civil penalties.

Mezo must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case name, and Mezo's social security number or federal employer identification number must be included on each certified check or money order.

5. Prior and Mezo must send each certified check or money order to:

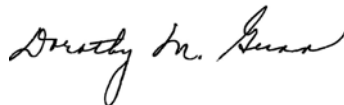
Illinois Environmental Protection Agency  
Fiscal Services Division  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

6. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).

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) (2002); *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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 8, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board