

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

FEB 13 2007

STATE OF ILLINOIS
Pollution Control Board

BROADUS OIL,)	
)	
Petitioner,)	
v.)	PCB No. 04-31
)	05-43
ILLINOIS ENVIRONMENTAL)	(UST Fund)
PROTECTION AGENCY,)	
Respondent.)	

NOTICE

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

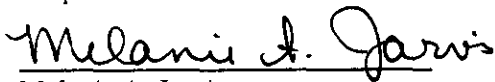
Bradley Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

Stephen F. Hedinger
Hedinger Law Officer
2601 South Fifth Street
Springfield, IL 62703

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board, **RESPONSE TO PETITIONERS' MOTION TO RECONSIDER**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



Melanie A. Jarvis
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: February 6, 2007

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

RECEIVED
CLERK'S OFFICE

FEB 13 2007

STATE OF ILLINOIS
Pollution Control Board

BROADUS OIL,)	
)	
Petitioner,)	
v.)	PCB No. 04-31
)	05-43
ILLINOIS ENVIRONMENTAL)	(UST Fund)
PROTECTION AGENCY,)	
Respondent.)	

RESPONSE TO PETITIONERS' MOTION TO RECONSIDER

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, and, pursuant to 35 Ill. Adm. Code 101.500 and 101.520, hereby responds to the Motion for Reconsideration ("Petitioner's motion" or "motion") filed by the Petitioner, Broadus Oil ("Broadus"). In response to the Petitioner's motion, the Illinois EPA states as follows:

I. STANDARD OF REVIEW

In ruling on a motion for reconsideration, the Illinois Pollution Control Board ("Board") will consider factors including new evidence or a change in the law, to conclude the Board's decision was in error. 35 Ill. Adm. Code 101.902. In the case of Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (March 11, 1993), the Board noted 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 the hearing, changes in the law or errors in the court's previous application of the existing law." Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992).

Thus, in order to prevail on a motion to reconsider, the movant must demonstrate that one of the three criteria has been met to justify reconsideration of an order. Here, the movant fails to raise any

meritorious argument that would warrant the Board's reconsideration of its December 21, 2006 final order ("Board's final order" or "final order").

II. THE PETITIONER RAISES NO NEW FACTS OR EVIDENCE

Several of the arguments posited by the Petitioner relate to its belief that the Board failed to properly consider information that was before the Board as of the date of the final order. The Board was completely briefed on the relevant issues of the case and the Petitioner does not present sufficient grounds for reconsidering the final order. The Petitioner is simply not happy with the conclusion that the Board reached following consideration of those issues.

The Petitioner is merely attempting to re-argue issues that were already raised and briefed prior to the Board reaching its decision on December 21, 2006. The Petitioner has not detailed any newly discovered evidence.

III. THE PETITIONER RAISES NO CHANGES IN LAW

The Petitioner's motion is not premised on any changes in applicable law since the date of the Board's decision.

IV. THE PETITIONER DOES NOT RAISE ANY SUCCESSFUL ARGUMENT THAT THE BOARD MISAPPLIED THE RELEVANT LAW

The Petitioner attempts to make arguments that the Board misapplied the relevant law. An examination of each such argument, however, makes clear that there is no justification for granting the Petitioner's motion.

The Petitioner argues that the Board did not address its statutory argument concerning Section 57.7 of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/57.7). Petitioner's motion, p. 2. The Petitioner's argument is that Section 57.7 of the Act allows for budget amendments to be submitted at any time.

But that argument does not raise any sufficient grounds for reconsideration of the Board's decision. The Board's decision took into account the very arguments raised in the Petitioner's motion to reconsider, since they were also raised in the Petitioners' pleadings prior to the issuance of the final order. In addition, the Board cites to Section 57.7 in its order. Board's order p. 3. In other words, there are no reasons given as to why the Board's decision should be reconsidered in the Petitioner's favor, other than the Board's interpretation did not agree with that of the Petitioner. The Board correctly determined that plans and budget must be submitted prior to the issuance of a No Further Remediation letter. Board's order p. 10.

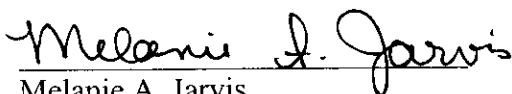
V. CONCLUSION

The Petitioner's arguments in its motion to reconsider are without merit and thus the motion should be denied. There are no arguments presented in the motion that meet the criteria that would warrant the Board's reconsideration of its final order.

WHEREFORE, for the reasons stated above, the Illinois EPA hereby respectfully requests that the Board deny the Petitioner's motion.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



Melanie A. Jarvis
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: February 7, 2007

This filing submitted on recycled paper.

CERTIFICATE OF SERVICE

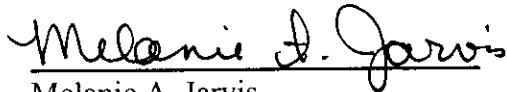
I, the undersigned attorney at law, hereby certify that on February 7, 2007, I served true and correct copies of **RESPONSE TO PETITIONERS' MOTION TO RECONSIDER**, by placing true and correct copies thereof in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. Mail drop box located within Springfield, Illinois, with sufficient First Class postage affixed thereto, upon the following named persons:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

Bradley Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

Stephen F. Hedinger
Hedinger Law Officer
2601 South Fifth Street
Springfield, IL 62703

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



Melanie A. Jarvis
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)