

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

ILLICO INDEPENDENT OIL CO.)	
Petitioner,)	
)	
v.)	PCB 2017-084
)	(UST Appeal - Land)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE

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

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P. O. Box 19274
Springfield, IL 62794-9274

Patrick D. Shaw
Law Office of Patrick D. Shaw
80 Bellerive Road
Springfield, IL 62704

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

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

_____/s/
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 14, 2019

**BEFORE THE POLLUTION CONTROL BOARD
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MOTION TO STRIKE AS UNTIMELY PETITIONER'S 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 ("Petitioners' motion" or "motion") filed by the Petitioners. In response to the Petitioners' motion, the Illinois EPA states as follows:

The Petitioner's Motion for Reconsideration was filed on February 6, 2019, **48 days** after the Illinois Pollution Control Board ("Board") issued its December 20, 2018 order in the above captioned case. Section 101.520 states as follows:

Section 101.520 Motions for Reconsideration

- a) Any motion for reconsideration or modification of a Board order must be filed within 35 days after the receipt of the order. (See Section 101.902.)
- b) Any response to a motion for reconsideration or modification must be filed within 14 days after the filing of the motion.
- c) A timely-filed motion for reconsideration or modification stays the effect of the order until final disposition of the motion in accordance with Section 101.300(d)(2).

The Petitioner's motion being filed 13 days late, is clearly not timely-filed, therefore, the Illinois EPA requests that the motion be struck and not considered by the Board. In the event that the Board

finds that it can consider the Petitioner's motion, the Illinois EPA's response to the merits of the motion is set forth below.

RESPONSE TO PETITIONERS' MOTION TO RECONSIDER

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 have 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 20, 2018 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 failed to meet its burden of proof and failed to show that it complied with the Act and regulations thereunder. 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 Board correctly decided the issue and did not misapply relevant law. The Petitioner alleges that the Illinois EPA did not cite Sections 734.630(o), 734.630(tt) and 734.630(aaa) in its May 17, 2017 decision letter that is the subject of this appeal. That is not a correct statement. The Illinois EPA stated clearly in the May 17, 2017 decision that:

“Pursuant to Subsections 57.7(b)(3) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b), the Corrective Action Plan Budget is modified. Based on the modifications listed in Section 2 of Attachment B of this letter, the Corrective Action Plan Budget is approved for the amounts listed in Section 1 of Attachment B of this letter. However, it should be noted that the amount of payment from the Underground Storage Tank Fund (Fund) may be limited by Subsections 57.7(c), 57.8(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Ill. Adm. Code 734.630 and 734.655.” (Emphasis added)

The Sections of the Board's regulation cited by the Petitioner state as follows.

Section 734.630(o) states as follows:

Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act;

Section 734.630(tt) states as follows:

The treatment or disposal of soil that does not exceed the applicable remediation objectives for the release, unless approved by the Agency in writing prior to the treatment or disposal;

Section 734.630(aaa) states as follows:

Costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742. This subsection (aaa) does not apply if Karst geology prevents the development of Tier 2 remediation objectives for on-site remediation, or if a court of law voids or invalidates a No Further Remediation Letter and orders the owner or operator to achieve Tier 1 remediation objectives on-site in response to the release;

It is clear from the face of the Illinois EPA decision letter that Section 734.630 was cited as a denial point in that letter. Further, Sections of the Act that were cited in the Illinois EPA letter also cover the denial points listed in the regulations cited by the Board in their order. Section 57.7(c)(3) states that corrective action activities cannot be in excess of those required to meet the minimum requirements of the Act. This section of the Act further clarifies that Tier 2 remediation objectives that are no more stringent than Tier 1 shall be used.

Therefore, it is obvious that the Board applied the relevant law and that the law cited by the Board in their decision was cited by the Illinois EPA as a basis for the denial of costs. The Petitioner did not raise any valid argument that the Board misapplied relevant law.

One other statement that the Petitioner makes that is simply not true is on page 6 of its motion. There was definitely a question of fact as to whether or not the tanks had a release or if the release was from overfills and spills. The facts of the case indicate that the tanks did not release product. The tanks had tested tight after the release was reported and there was no sampling that indicated a release around the tank bed. Therefore, the Petitioner's reliance on the *Prime Location Properties, LLC v. IEPA*, PCB 2009-067 (August 20, 2009), *aff'd* 2012 IL App (5th) 100072-U is misplaced and not founded.

VI. CONCLUSION

The Petitioner's motion to reconsider is not timely filed and therefore should be struck. In the alternative, the arguments in Petitioner's 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 strike, or in the alternative, deny the Petitioner's motion.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

_____/s/_____
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 14, 2019

This filing submitted on recycled paper.

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on **February 14, 2019**, I served true and correct copies of **MOTION TO STRIKE AS UNTIMELY PETITIONERS' MOTION TO RECONSIDER** via the Board's COOL system and email, upon the following named persons:

Don Brown, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
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Chicago, IL 60601

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