

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

IN THE MATTER OF: )  
)  
PETITION OF MAXIMUM INVESTMENTS, ) AS 09-2  
LLC FOR AN ADJUSTED STANDARD ) (Adjusted Standard – Land)  
FROM 35 ILL. ADM. CODE 740.210(A)(3) )  
FOR STONEY CREEK LANDFILL IN )  
PALOS HEIGHTS, ILLINOIS )

**NOTICE**

John Therriault, 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

Llewellyn Kennedy  
Weil & Associates  
60 Revere Drive, Suite 888  
Northbrook, IL 60062

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board the RESPONSE TO PETITIONER'S MOTION of ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

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William D. Ingersoll  
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: July 31, 2009

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**RESPONSE TO PETITIONERS' MOTION TO RECONSIDER**

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, William D. Ingersoll, 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, Maximum Investments, LLC. 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 (1<sup>st</sup> 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 June 18, 2009 final order ("Board's final order" or "final order").

## **II. THE PETITIONER RAISES NO NEW FACTS OR EVIDENCE**

The Petitioner is merely attempting to argue issues that it apparently wishes it had made during the briefing opportunities allowed it prior to the Board reaching its decision on June 18, 2009. The Petitioner has not described 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. This was primarily done by Petitioner preferring the dissenting opinion of Board member Johnson over the majority decision. However, Petitioner brings nothing new to the debate. The issues argued in Petitioner's Motion for Reconsideration were clearly considered in the Board's deliberations leading to its final order.

The Petitioner seeks to ignore the very real meaning in the Section 58.2 (415 ILCS 5/58.2) definition of "Remediation Applicant" (RA). The RA must be someone with legal authority to take actions at the site, which may include invasive remediation methods and even future limitations placed on the use of the property. Outside parties have no such authority, and

may be barred from taking the necessary remediation actions. Having a tax lien on a property offers no such authority. The tax lien is not an interest in real property and the holder of that lien would not even have the authority to eject trespassers or build a fence to protect any work done.

The argument over the list of things the Agency **may** require for entry in the program (Section 58.7(b)) still does not change the Board's actual reliance on the definitional requirements in Section 58.2. So, there is really no argument advanced by Petitioner to upset the Board's final order. 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 does not agree with the interpretation the Petitioner makes only after reading the dissenting opinion.

## V. CONCLUSION

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,

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Dated: July 31, 2009

**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on July 31, 2009, I served true and correct copies of the BRIEF OF ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by electronic filing and first-class mail (as indicated below) upon the following named persons:

John Therriault, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601  
(By electronic filing)

Bradley Halloran, Hearing Officer  
Illinois Pollution Control Board  
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