

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
)  
PETITION OF WESTWOOD LANDS, INC., ) AS 09-003  
A Michigan Corporation, ) (Adjusted Standard - Land)  
FOR ADJUSTED STANDARD FROM )  
PORTIONS OF 35 Ill. Adm. Code §807 and )  
§810 or, in the alternative, a FINDING OF )  
INAPPLICABILITY. )

**NOTICE OF FILING**

Illinois Pollution Control Board  
Attn: John Therriault, Clerk  
James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

Swanson, Martin & Bell  
Attn: Ms. Elizabeth S. Harvey , Mr. John P. Arranz  
330 North Wabash Avenue  
Suite 3300  
Chicago, IL 60611

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

Respectfully submitted,

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent**



By: 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: April 27, 2010

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
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PETITION OF WESTWOOD LANDS, INC., ) AS 09-003  
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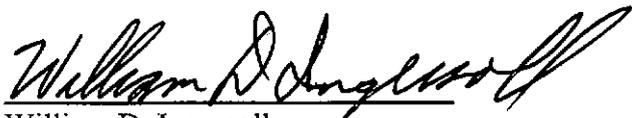
**MOTION FOR LEAVE TO FILE RESPONSE TO MOTION TO RECONSIDER**

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, William D. Ingersoll, and, pursuant to Section 101.500(e) of the Illinois Pollution Control Board’s (“Board”) procedural rules (35 Ill. Adm. Code 101.500(e)), hereby files a motion for leave to file a Response to the Petitioner’s Motion to Reconsider. In support of this motion for leave, the Illinois EPA provides as follows.

1. On February 11, 2010, Petitioner filed a Motion for Extension of Time to file a Motion for Reconsideration.
2. The Board granted the Motion for Extension of Time on March 4, 2010, and Petitioner filed its Motion to Reconsider on April 2, 2010.
3. The Illinois EPA has not, to date, received a copy of this filing. However, on April 26, 2010, the Illinois EPA’s counsel of record was informed that a Motion had indeed been filed. The Illinois EPA has downloaded a copy of the Motion to Reconsider from the Board’s website.
4. The Petitioner’s arguments require a full reply from the Illinois EPA so that the Board can be fully briefed when making its decision on the case.

5. For the reasons stated herein, the Illinois EPA hereby respectfully requests that the Board allow the Illinois EPA to file a Response to the Petitioner's Motion to prevent material prejudice.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent



William D. Ingersoll  
William D. Ingersoll  
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1021 North Grand Avenue, East  
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217/782-5544  
217/782-9143 (TDD)  
Dated: September 26, 2006

This filing submitted on recycled paper.

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
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PETITION OF WESTWOOD LANDS, INC., ) AS 09-003  
A Michigan Corporation, ) (Adjusted Standard - Land)  
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PORTIONS OF 35 Ill. Adm. Code §807 and )  
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INAPPLICABILITY. )

**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 Westwood Lands, Inc. ("Westwood" or "Petitioner"). 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, (March 11, 1993) PCB 93-156, 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., (1<sup>st</sup> Dist. 1992) 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158.

Thus, in order to prevail on a motion to reconsider, the movant (in this matter Westwood) 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 January 7, 2010 final order ("Board's final order" or "final order").

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

In short, Petitioner raises one argument for reconsideration, that it sought to arrange for "...further testing of the fines." This very issue of whether the fines (either owned by Westwood or U.S. Steel) were a hazardous waste, posited by the Petitioner in its reconsideration motion, was an issue from the outset of this proceeding. It would be a great strain on logic to offer that tests which were conducted following the issuance of a final order fall within the category of evidence that is "... newly discovered evidence which was not available at the time of the hearing..." To the contrary, this information was available and even sought during the proceeding. And, most significantly, information on whether the slag fines were a hazardous waste were relevant to the initial filing, sought by the Board in its May 21, 2009, Order requesting additional information, and could have been included within Petitioner's Amended pleading or its lengthy Response to the Illinois EPA's Recommendation. Further, this information would not fall within the category of being "not available to at the time of hearing." This information was available at all times during this proceeding. It was not sought.

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.

In addition, "[r]econsideration is not warranted unless the newly discovered evidence is of such conclusive or decisive character so as to make it probable that a different judgment would be reached." (Patrick Media Group, Inc. v. City of Chicago, (1<sup>st</sup>. Dist 1993) 255 Ill. App. 3d 1, 8, 626 N.E.2d 1066, 1701) In this matter, assuming *arguendo* that the partial information presented is correct (no raw data is included), this information deals merely with whether the slag fines are characteristically hazardous

waste. And, numerous other pleading insufficiencies noted in the Board's final order remain unanswered. As such, this information would hardly be conclusive on the Amended Petition.

In Citizens Against Regional Landfill v. County Board of Whiteside, ("Whiteside") (March 11, 1993) PCB 92-156, the Board noted its rationale for the standard of review when addressing Motions of Reconsideration. The Whiteside decision expressly states: "[t]he intended purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence which was not available at the time of hearing..." (See: Whiteside at 2,) (See Also: Fiatallis North American, Inc. v. IEPA, (January 6, 1994) PCB 93-108; Larry Slates, Lonnie Seymore, James Klaber, Faye Mott, and Hoopston Community Memorial Hospital v. Illinois Landfills, Inc., and Hoopston City Counsel, on behalf of the City of Hoopston, (December 16, 1993) PCB 93-106; Atlanta Meadows, Ltd. And R.O.C.G.P. Corp. General Partner v. IEPA, (March 17, 1994) PCB 93-72; Leonard Carmichael v. Browning-Ferris Industries of Illinois, Inc., and Ogle County Board, for and on Behalf of the County of Ogle, State of Illinois, (December 16, 1993) PCB 93-114; Richard Worthen, Clarence Bohm, Harry Parker, George Arnold, City of Edwardsville, City of Troy, Village of Glen Carbon v. Village of Rozanna and Laidlaw Waste Systems (Madison), Inc., (September 9, 1993) PCB 90-137; Anne Sheppard, James Verhein, Herold Leckman v. Northbrook Sports Club and Village of Hainesville, (June 23, 1994) PCB 94-2; Michael Tirlek, Lillian Smejkal and John Lathrop v. Village of Summit and West Suburban Recycling and Energy Center, Inc., Kay Kulaga and Alice Zeman v. Village of Summit and West Suburban Recycling and Energy Center, Inc, Citizens for a Better Environment, Patricia J. Barleman, Nanci Katz and Michelle Schmits v. Village of Summit and Wester Suburban Recycling and Energy Center, (July 21, 1994) PCB 94-19; PCB 94-12; and PCB 94-22; Rodney B. Nelson, III, M.D. v. Kane County, Kane County Board and Waste Management of Illinois, Inc., (July 21, 1994) PCB 94-51; Concerned Citizens for a Better Environment v. City of Havana and South West Energy Corporation, (July 21, 1994) PCB

94-44; City of Geneva v. Kane County, Kane County, Kane County Board and Waste Management of Illinois, Inc., (October 6, 1994) PCB 94-58; BTL Specialty Resins Corporation v. IEPA, (October 20, 1994) PCB 94-160; J.I. Case Company v. IEPA, (December 1, 1994) PCB 94-223; City of Wheaton v. Office of the Illinois Fire Marshall, (February 16, 1995) PCB 94-18; Marathon Oil Company v. IEPA, (February 16, 1994) PCB 94-237; Clarendon Hills Bridal Center v. IEPA, (May 4, 1994) PCB 93-55; Medical Disposal Services, Inc. v. IEPA, (July 20, 1995) PCB 95-75 and PCB 95-76 and the like line of cases. What has not been acceptable is that the evidence was not made available at the time of hearing. Moreover, it is not significant the information is “newly discovered” by Petitioner. The information Petitioner offers was available at the time of hearing, was requested by the Board itself, and simply does not meet the class of information that may properly be reviewed in the context of a Motion to Reconsider.

Finally, The Petitioner is merely attempting to re-argue issues that were already raised and briefed prior to the Board reaching its decision on January 7, 2010. 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 an argument that the Board should consider testing it commissioned and received after the Board’s final order.

This argument does not raise any sufficient grounds for reconsideration of the Board’s decision. There is no contention made by Petitioner that the Board misapplied the relevant law.

**V. CONCLUSION**

There is no argument presented in the motion that meets the criteria that would warrant the Board's reconsideration of its final order. This matter was strenuously argued by Petitioner and Petitioner makes no claim that it was unaware of the Board's consideration of the issue presented for reconsideration. The facts in the case remain the same as the day the Board issued its January 7, 2010, Final Order.

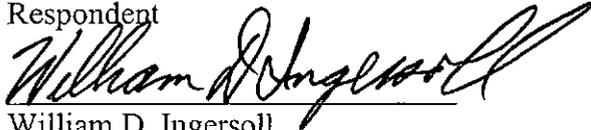
For the above reasons, the Illinois EPA requests the Board find that Petitioner presents the Board with no newly available evidence, change in law, or misapplication of the law, or indeed any other reason to conclude the Final Order in this matter was in error. Further, the Board should note that Petitioner's additional argument in its Motion for Reconsideration is merely reassertion of argument previously offered by Petitioner and considered by the Board in issuing its January 7, 2010, Opinion.

The Petitioner's argument in its Motion to Reconsider is without merit and, thus, the motion should be **DENIED**.

**WHEREFORE**, for the reasons stated above, the Board should affirm the holding in its January 7, 2010, Opinion and DENY Petitioner's Motion to Reconsider.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent



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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, state that I served a copy of the above-described document to counsel of record via U.S. Mail at 1021 North Grand Ave. East, Springfield, IL 62794, at or before 5:00 p.m. on April 27, 2010.

Illinois Pollution Control Board  
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James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601  
(also submitted via e-file)

Swanson, Martin & Bell  
Attn: Ms. Elizabeth S. Harvey, Mr. John P. Arranz  
330 North Wabash Avenue  
Suite 3300  
Chicago, IL 60611

  
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William. D. Ingersoll