ILLINOIS POLLUTION CONTROL BOARD
January 10, 2013

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| PEOPLE OF THE STATE OF ILLINOIS, | ) | |
| | ) | |
| Complainant, | ) | |
| | ) | |
| v. | ) | PCB 07-95 |
| | ) | (Enforcement - Land) |
| AET ENVIRONMENTAL, INC., a Colorado corporation, and E.O.R. ENERGY, LLC, a Colorado limited liability company, | ) | |
| | ) | |
| Respondents. | ) | |

OPINION AND ORDER OF THE BOARD (by D. Glosser):

On June 27, 2012, the People of the State of Illinois (People) filed two separate motions for summary judgment against AET Environmental, Inc. (AET) and E.O.R. Energy, LLC (EOR) (collectively, respondents) regarding alleged violations of the Environmental Protection Act (Act) and the Board's regulations. On September 6, 2012, the Board granted the motion for summary judgment filed by the People against EOR. At that time, the Board reserved ruling on the motion for summary judgment against AET. On October 18, 2012, EOR filed a motion to reconsider the Board's September 6, 2012 Board order, and on November 14, 2012,[1] the People filed a response to EOR's motion to reconsider. On December 3, 2012, EOR filed a motion for leave to reply to the People's response. On December 12, 2012, EOR's reply was filed. After analyzing all filings, the Board grants EOR's motion to reconsider to address the arguments presented relating to jurisdiction. However, after considering the arguments presented, the Board finds that EOR's arguments are without merit and affirms the September 6, 2012 order.

In this order, the Board will first describe the procedural history in this case and set out the applicable legal framework. The Board will then summarize EOR's motion for reconsideration (Mot.), the People's response to the motion to reconsider (Resp.), and EOR's reply (Reply). Finally, the Board will discuss its decision regarding EOR's motion to reconsider.

## PROCEDURAL HISTORY

On March 23, 2007, the People filed a five-count complaint against AET and EOR. On April 19, 2007, the Board accepted the complaint for hearing. On June 19, 2007, respondents each filed an answer to the People's complaint by non-attorneys. On October 18, 2007, respondents each re-filed an answer to the People's complaint through their attorney after a hearing officer required respondents to hire an attorney. *See* Hearing Officer Order 7/16/2007. On January 24, 2008, respondents' attorney withdrew from the case.

[1] The hearing officer granted an extension of time to the People to file its response. *See* Hearing Officer Order October 23, 2012.

On March 24, 2008, the People filed a request to admit facts by AET. On April 22, 2008, Lori M. DeVito, a non-attorney, filed an appearance and a response to the People's request on behalf of AET. On January 18, 2009, an attorney filed an appearance on behalf of AET and on March 17, 2010, AET's attorney withdrew from the case.

On May 27, 2008, the People filed a request to admit facts by EOR. On January 23, 2009, the People again filed their request to admit facts by EOR after a January 20 hearing officer order. *See* Hearing Officer Order 1/20/09. On February 20, 2009, EOR filed an unsigned and unsworn response to the People's request through a new attorney.

On August 17, 2010, the People simultaneously filed motions to deem facts admitted against AET and EOR. The hearing officer gave respondents until September 3, 2010 to file a response. *See* Hearing Officer Order 8/31/10. EOR did not retain attorneys or timely respond to the People's motions. On September 16, 2010, the Board granted that motion.

On June 27, 2012, the People simultaneously filed motions for summary judgment against AET and EOR. EOR did not retain attorneys nor timely respond to the People's motion for summary judgment. On August 6, 2012, an attorney filed an appearance on behalf of AET. On September 6, 2012, the Board granted the People's summary judgment motion against EOR. On September 14, 2012, an attorney filed an appearance on behalf of EOR.

On October 18, 2012, EOR, through its attorney, filed a motion to reconsider the Board's Order. On November 14, 2012, the People filed a response to EOR's motion to reconsider. On December 3, 2012, EOR filed a motion for leave to reply to the People's response. By hearing officer order, EOR was allowed until December 12, 2012 to file a reply (Reply), which was timely filed.

## LEGAL FRAMEWORK

EOR has raised a number of legal issues in its motion for reconsideration including questioning the Board's jurisdiction under the Underground Injection Control (UIC) program. The Board will provide the legal framework for the Board's jurisdiction and the Board procedures. The Board will then provide the UIC program regulations. Finally, the Board will summarize the legal framework for a motion to reconsider.

### Jurisdiction and Procedure

The Environmental Protection Act (Act) addresses the Board's jurisdiction over environmental matters when it states as follows:

> The Board shall have the authority to conduct proceedings upon complaints charging violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order . . . 415 ILCS 5/5(d).

The Board's procedural rules dictate that in ruling on a motion for reconsideration, the Board will consider factors including new evidence, or a change in the law, to conclude that their prior decision was in error. 35 Ill. Adm. Code 101.902. The rules further state:

> On written motion, the Board may relieve a party from a final order entered in a contested proceeding, for the following:
>
> 1) Newly discovered evidence that existed at the time of hearing and that by due diligence could not have been timely discovered;
>
> 2) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or
>
> 3) Void order, such as an order based upon jurisdictional defects. 35 Ill. Adm. Code 101.904(b).

The Board's procedural rules regarding filing deadlines specify that any motion for reconsideration or modification of a final Board order must be filed within 35 days after the receipt of the order. 35 Ill. Adm. Code 101.520. The computation of such time period will begin with the first calendar day following the day on which the act, event or development occurs and will run until the close of business on the last day, or the next business day if the last day is a Saturday, Sunday or national or State legal holiday. 35 Ill. Adm. Code 101.300(a). The procedural rules further state:

> In the case of service by registered or certified mail, or by messenger service, service is deemed complete on the date specified on the registered or certified mail receipt or the messenger service receipt. In the case of service by U.S. Mail, service is presumed complete four days after mailing. The presumption can be rebutted by proper proof. 35 Ill. Adm. Code 101.300(c).

## Underground Injection of Contaminants

The Illinois Underground Injection Control (UIC) program for Class I, III, IV, and V wells was established under 40 CFR § 147.700 and 40 CFR § 147.701. Under this authority, Section 12(g) of the Illinois Environmental Protection Act (Act) was created that states no person shall:

> Cause, threaten or allow the underground injection of contaminants without a UIC permit issued by IEPA under Section 39(d) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any regulations or standards adopted by the Board or of any order adopted by the Board with respect to the UIC program. 415 ILCS 5/12(g) (2010).

Additional UIC regulations were promulgated by the Illinois Environmental Protection Agency (IEPA) and the Board and can be found in Section 702, 704, 705 and 730 of the Board's Waste

Disposal Regulations. 35 Ill. Adm. Code 702, 704, 705 and 730. Section 702.120(a) states as follows:

> Applying for a UIC permit. Any person that is required to have a permit (including new applicants and permittees with expiring permits) must complete, sign, and submit an application to IEPA as described in this Section and in 35 Ill. Adm. Code 704.161 (UIC). Any person that is currently authorized with UIC authorization by rule (Subpart C of 35 Ill. Adm. Code 704) must apply for a permit when required to do so by IEPA. The procedure for application, issuance, and administration of an emergency permit is found exclusively in 35 Ill. Adm. Code 704.163 (UIC).

Section 704.106 describes six well classes, which for purposes of this case are defined as follows:

a) Class I injection wells . . . A well used by a generator of hazardous waste or the owner or operator of a hazardous waste management facility to inject hazardous waste beneath the lowermost formation containing [an underground source of drinking water] within 402 meters (one-quarter mile) of the well bore.

b) Class II injection wells. Any well that injects any of the following fluids is a Class II injection well:

    1) Fluids that are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production, and which may be commingled with waste waters from gas plants that are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

    2) Fluids injected for enhanced recovery of oil or natural gas; and

    3) Fluids injected for storage of hydrocarbons that are liquid at standard temperature and pressure.

c) Class III injection wells. Any well that injects fluids for the extraction of minerals, including the following:

    1) The mining of sulfur by the Frasch process;

    2) The in-situ production of uranium or other metals. This category includes only in-situ production from ore bodies that have not been conventionally mined. Solution mining of conventional mines, such as stopes leaching, is included as a Class V injection well; and

3) Solution mining of salts or potash.

d) Class IV injection wells. Any of the following is a Class IV injection well:

1) A well used by a generator of hazardous waste or of radioactive waste, by the owner or operator of a hazardous waste management facility or by the owner or operator of a radioactive waste disposal site to dispose of hazardous wastes or radioactive wastes into a formation that contains a USDW within 402 meters (one-quarter mile) of the well.

2) A well used by a generator of hazardous waste or of radioactive waste, by the owner or operator of a hazardous waste management facility, or by the owner or operator of a radioactive waste disposal site to dispose of hazardous waste or radioactive waste above a formation that contains a USDW within 402 meters (one-quarter mile) of the well.

3) A well used by a generator of hazardous waste or the owner or operator of a hazardous waste management facility to dispose of hazardous waste that cannot be classified under any of subsections (a)(1), (d)(1), or (d)(2) of this Section (e.g., a well that is used to dispose of hazardous waste into or above a formation that contains an aquifer that has been exempted pursuant to 35 Ill. Adm. Code 730.104).

e) Class V injection wells. Any injection well that is not classified as a Class I, II, III, IV, or VI injection well. Section 704.281 describes specific types of Class V injection wells.

f) Class VI injection wells.

1) An injection well that is not experimental in nature that is used for geologic sequestration of carbon dioxide beneath the lowermost formation containing a USDW;
2) An injection well that is used for geologic sequestration of carbon dioxide which has been granted a permit that includes alternative injection well depth requirements pursuant to Section 730.195; or
3) An injection well that is used for geologic sequestration of carbon dioxide which has received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to Section 704.123(d) and 35 Ill. Adm. Code 730.104.

Class II wells, unlike other classes, are regulated by the Illinois Department of Natural Resources (IDNR).

> Class II wells (Section 704.106(b)) are not subject to the [Underground Injection Control permit program] requirements found in 35 Ill. Adm. Code 702, 704, 705, and 730. The UIC permit program for Class II wells is regulated by the [IDNR] Office of Mines and Minerals, Oil and Gas Division, pursuant to the Illinois Oil and Gas Act [225 ILCS 725] (see 62 Ill. Adm. Code 240)." 35 Ill. Adm. Code 704.102.

IDNR's authority over Class II UIC wells stems from Section 8b of the Oil and Gas Act, which states as follows:

> No person shall drill, convert or deepen a well for the purpose of disposing of oil field brine or for using any enhanced recovery method in any underground formation or strata without first securing a permit therefor [from IDNR]." 225 ILCS 725/8b (2010).

## Motion to Reconsider

In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law, to conclude that the Board's decision was in error. 35 Ill. Adm. Code 101.902. In Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (Mar. 11, 1993), we observed 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 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). However, the law is well settled that a "lack of subject matter jurisdiction may be raised at any time, in any court, either directly or collaterally." Sandholm v. Kuecker 2012 IL 111443 ¶67 (FN 3), citing Fredman Brothers Furniture Co. v. Department of Revenue, 109 Ill.2d 202, 215, 93 Ill. Dec. 360, 486 N.E.2d 893 (1985).

## MOTION FOR RECONSIDERATION

In its motion to reconsider, EOR argues that the Board lacks jurisdiction to impose liability and penalties for Count I and V[2] of the complaint because the Board lacked subject matter jurisdiction. EOR claims that the Board lacks jurisdiction because IDNR regulates Class II injection wells, not the IEPA and the Class II injection wells at issue were properly and legally

[2] In Count I of the complaint, the People allege that EOR violated Section 21(e) of the Act (415 ILCS 21(e) (2010)) by transporting hazardous wastes into Illinois for storage and disposal at a site that does not meet the Act's requirements. In Count V of the complaint, the People allege that EOR violated 35 Ill. Adm. Code 704.121 and 704.203, thereby violating Section 12(g) of the Act (415 ILCS 5/12(g) (2010)), by injecting hazardous waste acid into wells without having an Underground Injection Control (UIC) permit and failing to comply with the listed requirements of Section 704.203.

permitted by IDNR. EOR further claims that oil and gas production wells in Illinois are regulated by IDNR, not IEPA and injections into the wells at issue are determined legal or illegal by IDNR, not IEPA. The Board will summarize each of these arguments below.

## Lack of Jurisdiction

EOR argues that subject matter jurisdiction must clearly be present for a court's action to be valid under the Constitution and binding on the parties. Where a court enters a judgment without subject matter jurisdiction, EOR claims such judgment is "*void ab intitio*" and is of no effect as to the claim against the defendant. Mot. at 3. EOR states that the Board illegitimately bases jurisdiction for Count I and V of the complaint (regarding injection of hazardous waste acid without a Resource Conservation and Recovery Act (RCRA) or Underground Injection Control (UIC) permit into Class II injection wells and oil production wells) on Section 704 of the Board's rules (35 Ill. Adm. Code 704) and Section 12 of the Act (415 ILCS 5/12 (2010)), and therefore the Board order and penalty is void. *Id*. at 1-3. EOR states in a footnote that "[w]hile the regulatory classification of alleged 'hazardous waste acid' is not directly relevant to or determinative of the lack of jurisdiction at issue here, it remains E.O.R.'s position that the material at issue was neither a 'waste', nor a 'hazardous waste', but rather was exempted from regulation by RCRA due to its utility as an acid wash in the oil and gas industry, and due to the RCRA preference and allowances for reuse of such materials as recycled material, rather than blindly requiring or regulating their disposal as a waste." Mot. at 1, note 1. Furthermore, EOR argues that since the $200,000 penalty amount issued by the Board was not itemized according to each count of the complaint (specifically Count I and V), the entire penalty must be vacated and remanded to IEPA for recalculation and reduction of the gravity, harm, and related components before the Board can re-assess a penalty for the remaining allegations. *Id*. at 3-4, 6.

## Wells Regulated by IDNR

EOR argues that the two injection wells at issue in Count I and V are Class II UIC wells, wells specifically not regulated by IEPA, but by IDNR, under 35 Ill. Adm. Code 704. Mot. at 4. EOR argues therefore that IEPA has no jurisdiction over any alleged permitted or illegal injections into Class II wells in Illinois. Rather, any alleged violation must be investigated and enforced by IDNR under the Oil and Gas Act (225 ILCS 725 (2010)) through independent notice and hearing procedures. *Id*. EOR argues that enforcement authority over illegal injections into Class II wells is exclusively provided by Section 8a of the Oil and Gas Act (225 ILCS 725/8a 2010)) and 62 Ill. Adm. Code 240.150(a) that requires issuance of a written Notice of Violation to the alleged violator prior to any enforcement action. *Id*. at 5. EOR contends that the Board order fails to find that the required IDNR Notice of Violation was issued to EOR, and claims that the Board order instead cites the wrong statute and regulation (415 ILCS 5/12 (2010), 35 Ill. Adm. Code 704) to establish IEPA and Board jurisdiction over Count I and V.

## Wells Legally Permitted

EOR argues that the Board lacks jurisdiction over injections into the wells at issue because such wells were properly and legally permitted by IDNR. Mot. at 6. EOR states that the Rink-Truax Lease, Christian County injection well (Rink #1) was issued permit number 201004

(API 1202101869) in 1993, and the Galloway Lease, Sangamon County injection well (Galloway #1) was issued permit number 202036 (API 1216723505) in 1999. *Id*. Therefore, EOR argues that contrary to the complaint, the wells at issue were in fact properly permitted for injection as Class II UIC wells and any allegation of illegal disposal would have had to proceed through an IDNR Notice of Violation. *Id*. at 6-7.

## Oil and Gas Wells Regulated by IDNR

EOR contends that the oil production wells, where the remaining 65 gallons of liquid was allegedly placed, are also regulated by IDNR, not IEPA, under the Oil and Gas Act (225 ILCS 725/1 *et. seq.* (2010)) and 62 Ill. Adm. Code 240. *Id*. at 7. Therefore, EOR argues that IEPA and the Board have no jurisdiction over the production wells under Section 12 of the Act (415 ILCS 5/12 (2010)), 35 Ill. Adm. Code 704 or otherwise. *Id*. Finally, EOR states that in light of the above arguments, IEPA must subtract any penalty assessment that was based upon the alleged illegal injection into unpermitted wells, as IDNR, not IEPA, regulates the wells at issue. *Id*. EOR concludes by stating that "the effect of the State's requests to admit and potential waivers or deemed admissions do not obviate the lack of jurisdiction for Counts I and V, as subject matter jurisdiction may not be created, or penalties assessed, even by agreement of the parties, where jurisdiction does not exist in law and fact." *Id*. at 8. EOR asks the Board to vacate its Board order, remand the matter back to IEPA for amendment and recalculation of penalties, and issue any additional relief the Board deems appropriate. *Id*.

## RESPONSE TO MOTION TO RECONSIDER

In their response to EOR's motion to reconsider, the People argue that EOR has provided no new evidence that was unavailable at the time of the Board order, and the Board correctly applied the law. The People further argue that IDNR's authority has no effect on the Board's decision and EOR's motion is untimely. The Board will summarize each of these arguments below.

## No New Information

The People initially contend that to prevail on a motion to consider, a party must "provide *new information* which was *not available* at the time of a Board decision and which shows that the Board's decision was in error; show that there has been a change in law which puts the Board's decision in error or prove that the Board misapplied the law when making its decision." Resp. at 3-4, (emphasis in original) citing Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (Mar. 11, 1993). The People argue that EOR provided no new evidence that was not available at the time the Board made its decision, nor made a showing that the Board misapplied the law in making its decision. Resp. at 4. While EOR provided permit numbers for two of the wells at issue in this proceeding (Rink #1 and Galloway #1 wells), the People argue that EOR did not add anything to the record because they did not attempt to provide copies of the permits themselves or any affidavit asserting that such permits were issued. *Id*. Furthermore, the People indicate that since the permits were allegedly issued in 1993 and 1999, they were both available to be added to the record prior to the September 6, 2012 Board

order but were absent due to EOR's failure to respond to the People's June 27, 2012 motion for summary judgment. *Id.*

The People contend that since EOR clearly admitted in its answer to the complaint that it was "not authorized by rule to inject hazardous waste into the EOR Wells and did not have any UIC permits granting it authority" to do so, EOR should be estopped from now claiming it had authority to inject such wastes. *Id*. at 5, citing DeWitt County Public Bldg. Com'n v. DeWitt County, 128 Ill. App. 3d 11, 25; 469 N.E.2d 689, 699 (4th.Dist. 1984) ("[O]nce having affirmed under oath that a particular state of facts exists, a party may not later assert that the contrary is true."). The People acknowledge that generally, lack of subject matter jurisdiction cannot be waived and a party cannot be estopped from raising the issue. Resp. at 5. However, the People argue that since EOR's jurisdiction argument is incorrect, it is within the Board's authority to bar EOR's argument. *Id*. Since EOR is barred by the doctrine of estoppel from now arguing that it was granted Class II UIC permits, the People contend that EOR's motion "has provided no new information which can form the basis for a motion to reconsider." Resp. at 5.

**Board Properly Applied the Law**

The People argue that the Board, basing its decision on the record available at the time, ruled correctly in the Board order that the "acid material was a hazardous waste, that it was uncontroverted that EOR directed Wake and Geary to dispose of hazardous waste down EOR's wells and that EOR violated Section 12(g) of the Act and Sections 704.121 and 704.203 of the Board's Waste Disposal Regulations by injecting the hazardous waste acid into its wells." Resp. at 6. The People address EOR's position that the material at issue "was exempted from regulation by RCRA due to its utility as an acid wash in the oil and gas industry…" Mot. at 1-2, Footnote 1. The People state that "[t]he proper time to make such an argument was in [EOR's] answer, in a response to the People's Motion for Summary Judgment or in some other filing, not after the Board has issued a final decision." Resp. at 6, footnote 4. The People argue that the Board in its order made "the only reasonable decision" in light of EOR's admissions and the evidence contained in the record regarding the chemical analysis of the acid material, EOR's lack of a permit, and EOR's instruction of Wake and Geary. Resp. at 6.

In arguing that the Board had authority to make its decision, the People contend that what matters is the type of fluid injected into the wells, not the status of the wells themselves. *Id*. at 7. "IDNR may have the authority to regulate Class II UIC wells, however, they do not have the authority to permit a person to inject hazardous waste into those wells. Such authority rests solely in IEPA and the Board." *Id*. The People allege that under the Act, the Board has authority to "conduct proceedings upon complaints charging violations of [the Act]…" such as the instant case where it is alleged that EOR violated Section 12(g) of the Act which is intended to prohibit the underground injection of contaminants without a UIC permit issued by IEPA. *Id*., citing 415 ILCS 5/5(d) (2010). The People argue that since the Board clearly has authority to determine whether EOR injected contaminants into wells without a permit, EOR's "only chance to prevail would be to successfully show that either the acid material was not a contaminant or that they held a UIC permit issued by IEPA." Resp. at 8. The People contend that EOR has not made a successful challenge of the "contaminant" finding, and its allegation that it was issued a UIC permit is flawed. *Id*. The People also assert that EOR's argument that the Board's authority is

limited by IDNR's regulations is faulty, as "[a]n agency cannot, through its rulemaking, limit the scope of the statute." *Id*., citing Hadley v. Illinois Dept. of Correction, 224 Ill. 2d 365; 864 N.E.2d 162 (2007). Since Section 12(g) of the Act (415 ILCS 5/12(g) (2010)) states that it is a violation to inject contaminants without an IEPA permit, the People argue that the regulations cited by EOR "simply cannot limit the authority which was clearly created by the General Assembly when it enacted Section 12(g) of the Act." Resp. at 8.

The People provide a comprehensive analysis of the UIC program to demonstrate that the Board properly exercised its power when ruling on the motion for summary judgment. The People state that under the Illinois UIC program, IEPA is the only state agency given authority to permit the injection of hazardous wastes into underground wells, and IDNR's permitting authority in no way bars the Board from making the determination at issue in this case. *Id*. at 9. The People agree with EOR that Section 704.102 of the permit program (35 Ill. Adm. Code 704.102) does not regulate underground injection for Class II wells, but rather the wells are regulated by IDNR pursuant to the Illinois Oil and Gas Act (225 ILCS 725 (2010)) (Oil and Gas Act). *Id*. at 11-12. IDNR's authority over Class II UIC wells stems from Section 8b of the Oil and Gas Act (225 ILCS 725/8b (2010)), which requires an entity to secure a permit from IDNR before conducting certain well-related acts. *Id*. at 12. According to Section 240.750(i) (62 Ill. Adm. Code 240.750(i)), only Class II fluids, which the People argue does not include hazardous wastes, can be injected into a Class II well. *Id*. at 13. Class II wells are also limited to wells that inject a specific type of fluid, as defined in 62 Ill. Adm. Code 240.10. *Id*. The People grant that since produced fluids and fluids injected into Class II wells for the purpose of enhanced recovery and the storage of hydrocarbons are not "contaminants" under the law, properly permitted injection of these fluids is not a violation of Section 12(g) of the Act. *Id*. at 15.

**IDNR's Authority**

The People argue that even if EOR was granted Class II UIC permits, such permits would only allow EOR to inject "produced fluids, fluids injected for enhanced recovery and fluids injected for the storage of hydrocarbons." *Id*. Hazardous waste acid, the People contend, is "not one of the fluids allowed to be injected into a Class II well" and therefore "it stands to reason that EOR would need to apply for an IEPA permit to operate the wells under a separate class" since IDNR is not authorized to regulate such injections. *Id*. The People state that "[s]ince EOR's activities were unauthorized, they cannot use their purported Class II UIC permits as a shield from violations of the Act and associated regulations." *Id*. at 16. Because IDNR has no power to authorize the injection of hazardous waste, the People argue that the Board created no conflict of authority when it determined that EOR injected hazardous waste acid into its wells. *Id*.

The People address EOR's argument that IDNR is the only agency capable of bringing an enforcement action in this case, asserting that while the Oil and Gas Act states that only Class II fluids may be injected into Class II wells, "this does not give IDNR authority to bring an enforcement action for the injection of hazardous waste." *Id*. Rather, "IEPA is the only agency that can permit the injection of hazardous waste and therefore, the Act and associated regulations are the only legal means that can be used to enforce the improper injection of hazardous waste." *Id*. The People also broach the concept of conversion, stating that when EOR injected hazardous

waste into Rink #1 and Galloway #1, the wells ceased to meet the definition of Class II wells and were converted into unpermitted Class I, IV, or V injection wells. *Id*. at 17. Relying on USEPA guidance, the People argue that "conversion from a Class II well to a Class I, IV, or V well should be considered a major modification requiring EOR to apply for a new permit under Section 702, 704, 705 and 730 of the Board's regulations." *Id*., citing Permitting Multi-Purpose Wells, USEPA Ground-Water Program Guidance No. 24 (GWPG #24), July 27, 1981. Therefore, the People argue that because EOR converted the wells prior to applying for a proper permit as required under Section 12(g) of the Act, the Board was within its authority when it ruled on the motion for summary judgment. Resp. at 17.

**Motion Untimely**

The People argue that EOR's motion for reconsideration was untimely filed and therefore the Board must deny the motion. The People state that the Board served its September 6, 2012 Board order upon EOR via certified mail, and that the certified mail receipt was returned to the Board on September 18, 2012 with a Denver postmark dated September 13, 2012. Resp. at 18. A representative of EOR signed the receipt, but failed to record the date on which it was received. *Id*. The People argue that since the EOR representative failed to date the receipt, the Board should utilize the mailbox rule found in 35 Ill. Adm. Code 101.300(c) and hold that the Board order is presumed served on September 10, 2012, four days after it was mailed. *Id*. Since EOR's representative did not date the certified mail receipt and EOR did not include an affidavit stating that it received the Board order on a date after September 10, 2012, the People argue that EOR has not rebutted the presumption that it received the Board order on September 10, 2012. *Id*. Therefore, the People argue that EOR was required to file its motion to reconsider within 35 days of September 10, 2012, or by October 15, 2012. *Id*. at 18-19. EOR filed its motion on October 18, 2012, three days after what the People allege was the deadline. *Id*. at 19. Since EOR did not ask for an extension, the People argue that the Board should hold the motion untimely filed and deny it. *Id*.

The People maintain that the Board should not deviate from its rules and strict deadlines in this case. In support of its argument, the People indicate the matter has been on the Board's docket for over five years, the delay caused by EOR's "disregard for the Board's procedural rules" and failure to retain counsel on numerous occasions. *Id*. The People also allege that EOR failed to adequately respond to a Request to Produce Documents, Requests to Admit Facts and a Motion for Summary Judgment. *Id*. The People conclude by stating that the "Board should not allow EOR to flaunt the rules by accepting their untimely Motion to Reconsider after the Board's deadline has passed." *Id*. at 20.

Finally, the People state that even if the Board is swayed by EOR's argument and holds that it lacks jurisdiction over the issues in Count I and V, the remaining violations still justify the award of a substantial penalty. *Id*. The People argue that the violations alleged in Count V, "while serious, were only a small subset of [respondent's] violations . . ." and the remaining counts show "a wealth of evidence that EOR brought hazardous waste to the State of Illinois and handled and stored it in a manner which showed substantial disregard for the people and the environment of the State of Illinois and especially the workers tasked with disposing of the acid." *Id*.

## REPLY

EOR argues that the People raise new arguments in its response to the motion to reconsideration.[3] Reply at 1. Specifically EOR asserts that the People's new arguments include:

1. The Board should adopt a new interpretation of its rules for service.

2. The motion to reconsider is inadequate because it does not provide new information.

3. The motion for summary judgment and jurisdiction are supported by the record.

4. Illinois law requires Class II injection well operators to have dual permits.

5. The high penalty should be assessed even if Count V is dismissed. *Id.*

### New Interpretation of Board Rules

EOR responds to the People's argument that the motion to reconsider was not timely, maintaining that the motion for reconsideration was timely. EOR opines that the date of service is the date that the certified mail receipt has on it. Reply at 3, citing 35 Ill. Adm. Code 101.300(c). In this case, that date on that receipt is "9/13/12". Reply at 3. EOR also attaches a print out of a U.S. Post Office tracking page indicating that the Board's order was delivered to EOR on September 13, 2012. Reply at Attach. B.

EOR opines that any question of the date of service should be viewed in a light most favorable to EOR, "since, under the rules, in this case IEPA was and is responsible for perfecting proof of proper service." Reply at 3[4]. EOR also argues that the People waived an argument based on the timeliness of the motion to reconsider when the People agreed to a briefing schedule and by failing to raise the issue with the hearing officer. Reply at 4.

### New Evidence

EOR argues that the People ignore that a motion to reconsider is proper to address errors in application of existing law. Reply at 6, citing Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992). EOR asserts that on appeal or reconsideration the Board may address an issue if a determination can be made from the record as it stands. *Id*., citing Dubey v. Abam Building Corp., 266 Ill.App.3d 44, 46; 639 N.E.2d 215, 217 (1st Dist. 1994). EOR opines that the record here already included the Safe Drinking Water

[3] The Board notes that EOR asserts that the People's "new" arguments should have been raised in a motion to strike "which would have allowed EOR a response by rule." The Board allowed EOR to file a reply in the time requested, thus even if the arguments by the People were "new" arguments, EOR did get the opportunity to respond to the People's arguments.

[4] The Board notes that it is the Board that serves copies of the final Board orders on parties not the IEPA.

Act (SDWA) permits, which were included in the People's motion for summary judgment, and those permits prove that the Board lacked jurisdiction to hear this case. *Id*. EOR maintains that jurisdiction is "generally . . . not impacted by the" respondent's failure to include certain items in the record. Reply at 6, citing McNames v. Rockford Park District, 185 Ill. App. 3d 291, 293, 540 N.E.2d 1119, 1120 (1989).

EOR maintains that the record clearly establishes that the People were informed that EOR's wells were not regulated by the IEPA and that the wells were not an "unpermitted facility" under the Act. Reply at 7. EOR opines that this information precludes the bringing of allegations in Count V of the complaint. *Id*. Furthermore, EOR argues that because the information was in the record, the jurisdictional sufficiency of the complaint was clear from the record. *Id*. Also, EOR argues that jurisdiction may be raised at any time. *Id*., citing People v. Wade, 116 Ill.2d 1; 506 N.E.2d 954 (1987).

EOR takes issue with the People's arguments regarding admissions by EOR, including alleged admissions that the wells were not permitted for injection of hazardous waste. Reply at 8. EOR challenges the language of the complaint and argues that the complaint was vague. *Id*. EOR further claims the language is confusing due to the complexity of the UIC program and the admission by EOR are less conclusive than the People argue. *Id*. Further, EOR argues that the People must prove jurisdiction, and a challenge to jurisdiction is never waived. Reply at 8-9.

**Lack of Jurisdiction**

EOR maintains that the threshold issue is whether the People have pled sufficient information and provided sufficient supporting evidence to establish jurisdiction. Reply at 12. EOR opines that Count I of the complaint seeks relief under Section 21(e) of the Act (415 ILCS 5/21(e) 2010)). EOR asserts that there is no allegation that the material at issue was a solid waste pursuant to Section 21(e) of the Act (415 ILCS 5/21(e) 2010)) and thus the complaint does not plead sufficient facts to confer jurisdiction. *Id*. EOR maintains that the complaint instead alleges that the material was a hazardous waste under Section 21(f) of the Act (415 ILCS 5/21(f) (2010), but Count I does not seek relief under Section 21(f) and therefore Count I is "fatally jurisdictionally deficient". *Id*.[5]

EOR also maintains that the admissions by EOR do not include an admission that EOR has no permit, only that EOR does not have a hazardous waste injection permit. EOR opines that

[5] In a footnote, EOR argues that "under RCRA, USEPA regulations define 'solid waste' as any discarded material *that has not been excluded under the regulations*. 40 CFR § 261.2(a)(1). (*Emphasis Added*). A 'discarded material' is any material that is abandoned, recycled, or inherently waste-like. 40 CFR § 261.2(a)(2). Consequently, even where a material has been 'discarded', it still may be exempted by other provisions of the Act, and the regulator must make a determination that the material is not excluded from regulation by an exception, prior to perfecting subject matter jurisdiction over the material. 40 CFR 261.2(f). Illinois regulations basically adopt the federal provisions, and thus the 40 CFR 261 solid waste determination is required for initial jurisdiction under state solid waste laws (prior to making the 40 CFR 261.3 hazardous waste determination). *See* 415 ILCS 5/3.470, 5/3.535 and 5.3220."

the request to admit: 1) contains contradictions that do not support an inference that disposal occurred and 2) fails to use the terms "disposal," "waste," and "hazardous waste" and therefore the request to admit does not support a finding of illegal disposal. Reply at 15-16.

EOR asserts that the motion for summary judgment is based on the request to admit, and given the contradictions in the request to admit, summary judgment is not supported. EOR further asserts that the affidavit used to support the motion for summary judgment is based on hearsay and not direct testimony. Reply at 16-19. Therefore, EOR argues that summary judgment is not appropriate. Reply at 16. Furthermore, EOR argues that the inference to be made based on the affidavit is that the actions were routine acid treatment of oil wells regulated by IDNR and not disposal. Reply at 20.

**IEPA Does Not Regulate Class II Wells**

EOR notes that Section 4 of the Act (415 ILCS 5/4 (2010) designates IEPA as the agency for the state for purposes of the Federal Water Pollution Control Act (33 USC § 1251) and the implementing agency for the SDWA (42 USC 300f) except for Section 1425 of SDWA. Reply at 22. Section 1425 of SDWA (42 USC 300h) provides authority for federally-approved UIC programs for oil and gas leases relating to Class II UIC wells in Illinois. EOR argues that by the terms of the Act, IEPA and the Board lack the authority to regulate Class II wells. Reply at 23.

EOR disagrees that the guidance documents relied upon by the People support an argument that EOR should have had dual permits and instead EOR believes that the requirements should be included in a single permit. Reply at 23. EOR argues that conversion does not occur automatically when a waste IEPA considers hazardous is injected, but rather when an owner or operator determines to use an oil and gas well for dual purposes. *Id*. Furthermore, EOR asserts that if a question arises concerning liquids being injected, IEPA should have contacted IDNR to pursue the violations if warranted. Reply at 24. EOR argues that SDWA and other USEPA guidance indicate that IDNR makes fluid determinations for Class II wells and the presence of hazardous constituent does not remove the compounds from SDWA UIC authority. *Id*.

**Penalty Not Warranted**

EOR addresses the People's argument that even if Count V were dismissed the penalty assessed is warranted. Reply at 26. Specifically, EOR states: "if the illegal disposal Count V is dismissed there can be no jurisdiction whatsoever, since in order to be a hazardous waste it has to first be a solid waste, and to be a solid waste the State must show it was "discarded", then "hazardous" , and then stored and disposed of without a UIC permit. 415 ILCS 5/ et seq.; 40 CFR 261." Reply at 26-27. EOR claims that since it has Class II UIC permits for the wells and IDNR has not found illegal disposal, "by definition there was no illegal storage or transport for disposal" of the materials. Reply at 27. EOR further argues that the photos attached to Mr. Johnson's affidavit indicate that the storage facility "did not appear to be in any way haphazard, there is no evidence of spillage, leaking drums, fuming vats, or smoking caldrons of toxic chemicals, or the other usual indicia of improper storage and illegal disposal." *Id*.

EOR argues that only IDNR can regulate the EOR wells and there is no jurisdiction for IEPA to allege violations. Furthermore, EOR asserts that the inference of disposal is not warranted. Reply at 27.

## DISCUSSION

The Board will first address the People's argument that the motion to reconsider was not timely filed. Then the Board will give a brief summary of the Board's September 6, 2012 order granting the motion for summary judgment. The Board will then discuss the merits of the motion to reconsider.

### Timely Filing of Motion to Reconsider

The Board finds that the evidence in the record establishes that the motion for reconsideration was timely filed. The return receipt was mailed from Denver on September 13, 2012, and EOR provided the U. S. Postal Service Tracking printout that shows EOR received the order on September 13, 2012. *See* Reply at Attach B. The Board finds that the evidence in this record that includes the Denver post office stamp, the USPS tracking printout, and EOR's representations supports a finding that the motion for reconsideration was timely. *See* IEPA v. Watson, AC 11-18 (Mar. 17, 2011) Therefore, the Board will review the motion to reconsider.

### Summary of September 6, 2012 Order

The Board found that summary judgment was appropriate as to EOR and granted the People's motion for summary judgment as to EOR. The Board further found that based on the facts admitted, EOR violated Sections 12(g), 21(e) and (f)(1) and (2) of the Act (415 ILCS 5/12(g), 21(e) and (f)(1) and (2) (2010)) and multiple provisions of the Board's hazardous waste regulations and underground injection control (UIC) regulations, as alleged in the complaint. Having found that EOR violated the Act and Board regulations, the Board found that a civil penalty of $200,000 was appropriate and directed EOR to pay that civil penalty.

More specifically, the Board found that EOR violated Section 21(e) of Act (415 ILCS 21(e) (2010)) by transporting hazardous wastes into Illinois for storage and disposal at a site that does not meet the Act's requirements. In addition, EOR violated Sections 21(e) and (f)(1) of the Act (415 ILCS 21(e), (f)(1) (2010)) by storing, disposing, and/or abandoning hazardous wastes at a site that does not meet the Act's requirements, thereby conducting a hazardous-waste storage operation without a RCRA permit. Further, EOR violated 35 Ill. Adm. Code 703.121(a) and (b), 35 Ill. Adm. Code 703.150(a)(2), and Section 21(f)(2) of the Act (415 ILCS 21(f)(2) (2010)) by failing to apply for or acquire a RCRA permit before storing hazardous waste at their site.

The Board also found that EOR violated 35 Ill. Adm. Code 725.111, 725.113, 725.114, 725.115(a), 725.116, 725.117, 725.131, 725.132, 725.137, 725.151(a), 725.155, 725.171(c), 725.173, 725.175, 725.212(a), 725.242(a), 725.243(a), 725.274, and 725.278, thereby violating Section 21(f)(2) of the Act. 415 ILCS 5/21(f)(2) (2010). EOR violated these provisions by failing to follow proper procedures, taking all necessary precautions, and keeping and maintaining all appropriate records regarding the management of the hazardous waste acid. EOR

violated 35 Ill. Adm. Code 704.121 and 704.203, thereby violating Section 12(g) of the Act (415 ILCS 5/12(g) (2010)), by injecting hazardous waste acid into wells without having an UIC permit and failing to comply with the listed requirements of Section 704.203

**Motion to Reconsider**

In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law, to conclude that the Board's decision was in error. 35 Ill. Adm. Code 101.902. In Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (Mar. 11, 1993), we observed 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 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). However, the law is well settled that a "lack of subject matter jurisdiction may be raised at any time, in any court, either directly or collaterally." Sandholm v. Kuecker 2012 IL 111443 ¶67 (FN 3), citing Fredman Brothers Furniture Co. v. Department of Revenue, 109 Ill.2d 202, 215, 93 Ill.Dec. 360, 486 N.E.2d 893 (1985). EOR challenges the Board's authority to rule on the violations alleged in two of the five counts of the complaint. An objection to jurisdiction may be imposed at any time, even by the appellate court on its own motion. Concerned Boone Citizens, Inc. v. M.I.G. Investments, Inc., 144 Ill. App. 3d334, 339, 494 N.E.2d 180, 182 (2nd Dist. 1986). Therefore, the Board will grant the motion to reconsider in order to address whether the Board had jurisdiction to rule on those two counts.

The Board has reviewed the provisions of the Oil and Gas Act as well as IDNR's regulations promulgated under that Act. After reviewing the law, the Board finds that EOR's arguments are without merit. The Oil and Gas Act does not address the injection of hazardous waste into Class II UIC wells. The only references to waste are to waste as it is defined in the Oil and Gas Act at Section 1 (225 ILCS 725/1 (20101)) which states:

> "Waste" means "physical waste" as that term is generally understood in the oil and gas industry, and further includes:
>
> 1) the locating, drilling and producing of any oil or gas well or wells drilled contrary to the valid order, rules and regulations adopted by the Department under the provisions of this Act.
>
> 2) permitting the migration of oil, gas, or water from the stratum in which it is found, into other strata, thereby ultimately resulting in the loss of recoverable oil, gas or both;
>
> 3) the drowning with water of any stratum or part thereof capable of producing oil or gas, except for secondary recovery purposes;
>
> 4) the unreasonable damage to underground, fresh or mineral water supply, workable coal seams, or other mineral deposits in the

operations for the discovery, development, production, or handling of oil and gas;

5) the unnecessary or excessive surface loss or destruction of oil or gas resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the escape of gas into the open air in excessive or unreasonable amounts, provided, however, it shall not be unlawful for the operator or owner of any well producing both oil and gas to burn such gas in flares when such gas is, under the other provisions of this Act, lawfully produced, and where there is no market at the well for such escaping gas; and where the same is used for the extraction of casinghead gas, it shall not be unlawful for the operator of the plant after the process of extraction is completed, to burn such residue in flares when there is no market at such plant for such residue gas;

6) permitting unnecessary fire hazards;

7) permitting unnecessary damage to or destruction of the surface, soil, animal, fish or aquatic life or property from oil or gas operations. 225 ILCS 725/1 (2010).

Clearly, the definition of waste in the Oil and Gas Act does not include hazardous waste. Furthermore, the definition does not encompass the waste disposed of by EOR in the wells at the site.

The Oil and Gas Act addresses disposal of "oil field brine or for using any enhanced recovery method in any underground formation or strata" without a permit. 225 ILCS 725/8b (2010)). The Oil and Gas Act also gives IDNR the authority "to conduct hearings and to make such reasonable rules as may be necessary . . .":

> To require the person desiring or proposing to drill, deepen or convert any well for the exploration or production of oil or gas, for injection or water supply in connection with enhanced recovery projects, for the disposal of salt water, brine, or other oil or gas field wastes, or for input, withdrawal, or observation in connection with the storage of natural gas or other liquid or gaseous hydrocarbons before commencing the drilling, deepening or conversion of any such well, to make application to the Department upon such form as the Department may prescribe and to comply with the provisions of this Section. 225 ILCS 725/6(2) (2010)).

IDNR may also adopt rules to regulate the "disposal of salt or sulphur-bearing water and any oil field waste produced in the operation of any oil or gas well." 225 ILCS 725/6(17) (2010)). The Oil and Gas Act contains no reference to allowing IDNR to regulate the injection of hazardous waste into a Class II UIC well.

EOR, by failing to respond to the complaint, the request to admit, or even the motion for summary judgment, admits that the material being injected in the Class II UIC wells is a hazardous waste. *See generally* People v. AET Environmental, Inc. and E.O.R. Energy, LLC, PCB 07-95 (Sept. 16, 2010). In addition to the admissions by EOR, the record establishes that the material shipped into Illinois and disposed of in UIC wells exhibited traits of hazardous materials. *See generally* People v. AET Environmental, Inc. and E.O.R. Energy, LLC, PCB 07-95 slip op. 3-4 (Sept. 6, 2012). Under the Act, the Board and the IEPA regulate hazardous waste, not IDNR. *See generally* 415 ILCS 5/4, 5, 12, 21 (2010)). Thus, the People properly prosecuted EOR for improper disposal of hazardous waste under the Act and the Board has the authority to make findings of violation. The Board finds that it had jurisdiction over the proceeding.

In its reply, EOR argues that the "facts" do not confer jurisdiction on the Board and goes to great lengths to argue those facts. As one example, EOR argues that Count I of the complaint, alleging a violation of Section 21(e) of the Act, fails to allege that the waste was a "solid" waste and therefore, the Board lacks jurisdiction on that count. However, Section 21(e) of the Act states that no person shall:

> Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage, or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder. 415 ILCS 5/21(e) (2010).

Waste is defined at Section 3.535 of the Act as:

> any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.135, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921) or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto. 415 ILCS 5/3.535 (2010).

Also "Solid Waste" is defined as waste. 415 ILCS 5/3.470 (2010). Based on the plain language of the Act, the complaint need not allege that the waste was a "solid" waste to establish a violation of Section 21(e) of the Act. The Board has reviewed the sections of the federal regulations that EOR also relies on for this argument and the Board is not persuaded that those federal regulations support EOR's arguments. This is one example of many arguments put forth

by EOR that attempt to argue the facts of this case in its reply to the motion for reconsideration. The Board is not persuaded by any of these arguments.

The Board finds that it has subject matter jurisdiction and the Board could properly rule on the motion for summary judgment. Because EOR fails to raise "new evidence or a change in the law, to conclude that the Board's decision was in error", the Board affirms its order of September 6, 2010. The Board will repeat the order in its entirety, adjusting the penalty payment schedule to reflect the filing of the motion for reconsideration.

## ORDER

1. The Board finds that E.O.R. Energy, LLC (EOR) violated Sections 12(g), 21(e) and (f)(1) and (2) of the Act (415 ILCS 5/12(g), 21(e) and (f)(1) and (2) (2010)). The Board further finds that EOR violated the Board rules as alleged in the complaint in 35 Ill. Adm. Code 703.121(a), (b), 703.150(a)(2), 704.121, 704.203, 725.111, 725.113, 725.114, 725.115(a), 725.116, 725.117, 725.131, 725.132, 725.137, 725.151(a), 725.155, 725.171(c), 725.173, 725.175, 725.212(a), 725.242(a), 725.243(a), 725.274, and 725.278.

2. The Board hereby assesses a penalty of two hundred thousand dollars ($200,000) against EOR. EOR must pay this penalty no later than January 22, 2013, which is the first business day following the 30th day after the date of this order. EOR must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case name, and EOR's federal employer identification numbers must be included on the certified check or money order.

3. EOR must send the 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

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2008)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).

5. EOR must cease and desist from the alleged violations.

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) (2008); *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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 10, 2013, by a vote of 5-0.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board