

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF
ILLINOIS,

Complainant,

v.

AET ENVIRONMENTAL, INC., a
Colorado corporation, E.O.R. ENERGY,
LLC, a Colorado limited liability
company,

Respondent.

PCB No. 07-95
(Enforcement)

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on February 26, 2013, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, PEOPLE'S MOTION TO STRIKE RESPONDENT E.O.R. ENERGY, LLC'S MOTION FOR RECONSIDERATION PURSUANT TO BOARD RULE 101.520 AND SUPREME COURT RULE 274, copies of which are attached hereto and herewith served upon you.

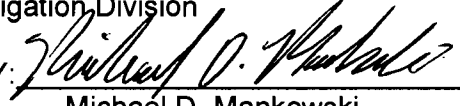
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY:


Michael D. Mankowski
Assistant Attorney General
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500 South Second Street
Springfield, Illinois 62706
217/782-9031

CERTIFICATE OF SERVICE

I hereby certify that I did on February 26, 2013, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING and PEOPLE'S MOTION TO STRIKE RESPONDENT E.O.R. ENERGY, LLC'S MOTION FOR RECONSIDERATION PURSUANT TO BOARD RULE 101.420 AND SUPREME COURT RULE 274 upon the persons listed on the Service List.

A handwritten signature in black ink, appearing to read "Michael D. Mankowski", is written over a horizontal line.

Michael D. Mankowski
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Felipe Gomez
Law Office of Felipe N. Gomez
116 S. Western Ave. #12319
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Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN, Attorney General
of the State of Illinois,

Complainant,

v.

AET ENVIRONMENTAL, INC., a Colorado
corporation, E.O.R. ENERGY, LLC, a
Colorado limited liability company,

Respondents.

PCB No. 07-95
(Enforcement)

PEOPLE'S MOTION TO STRIKE RESPONDENT
E.O.R. ENERGY, LLC'S MOTION FOR RECONSIDERATION
PURSUANT TO BOARD RULE 101.520 AND SUPREME COURT RULE 274

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, LISA MADIGAN, Attorney General of the State of Illinois, ("People"), and moves the Board, pursuant to Section 101.520 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.520 and Illinois Supreme Court Rule 274, to strike Respondent E.O.R. ENERGY, LLC's Motion for Reconsideration and in support thereof state:

I. INTRODUCTION

1. On March 20, 2007, the People filed a five-count Complaint against Respondents, AET ENVIRONMENTAL, INC. ("AET") and E.O.R. ENERGY, LLC ("EOR").
2. On June 27, 2012, the People filed a Motion for Summary Judgment Against EOR. EOR did not respond to the People's Motion for Summary Judgment.
3. On September 6, 2012, the Board granted the People's unopposed Motion for Summary Judgment finding that EOR violated Sections 12(g), 21(e) and 21(f) (1) and (2) of the Act, 415 ILCS 5/12(g), 21(e) and 21(f) (1) and (2) (2010), and numerous provisions of the Board's regulations as alleged in the People's Complaint. Having found that EOR violated the Act and

Board regulations, the Board also found that a civil penalty of \$200,000 was appropriate and directed EOR to pay that civil penalty. *People v. AET Environmental, Inc. and E.O.R. Energy LLC.*, PCB 07-95 (September 6, 2012).

4. On October 18, 2012, EOR filed a Motion to Reconsider requesting that the Board reconsider its findings in the Final Order on part of Count I and all of Count V and vacate the \$200,000 penalty.

5. On November 14, 2012, the People filed their Response to Respondent E.O.R. Energy LLC's Motion to Reconsider.

6. On December 12, 2012, EOR filed a Reply to the People's Response.

7. On January 10, 2013, the Board held that it had jurisdiction to rule on the People's Motion for Summary Judgment and issued an order affirming its September 6, 2012 Order. *People v. AET Environmental, Inc. and E.O.R. Energy LLC.*, PCB 07-95 (January 10, 2013). The Board repeated the language of the September 6, 2012 Order "in its entirety, adjusting the penalty payment schedule to reflect the filing of the motion for reconsideration." *Id.* at 19.

8. On February 19, 2013, EOR filed a second Motion for Reconsideration requesting that the Board vacate its January 10, 2013 Order and deny the People's Motion for Summary Judgment.

9. EOR's February 19, 2013 Motion for Reconsideration is a second postjudgment motion. It is improper and must be stricken.

10. Pursuant to Section 101.100(b) of the Board's Procedural Rules, 35 Ill. Adm. Code 101.100, the provisions of the Code of Civil Procedure [735 ILCS 5] and the Supreme Court Rules [Ill. S. Ct. Rules] do not expressly apply to proceedings before the Board. However, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent.

11. Supreme Court Rule 274 states as follows:

A party may make only one postjudgment motion directed at a judgment order that is otherwise final. If a final judgment order is modified pursuant to a postjudgment motion, or if a different final judgment or order is subsequently entered, any party affected by the order may make one postjudgment motion directed at the superseding judgment or order. Until disposed, each timely postjudgment motion shall toll the finality and appealability of the judgment or order at which it is directed. The pendency of a Rule 137 claim does not affect the time in which postjudgment motions directed at final underlying judgments or orders must be filed, but may toll the appealability of the judgment under Rule 303(a)(1). A postjudgment motion directed at a final order on a Rule 137 claim is also subject to this rule. ILCS S. Ct. Rule 274.

12. The Board's September 6, 2012 Order was a final order granting the People's Motion for Summary Judgment against EOR.

13. EOR's first Motion to Reconsider was a postjudgment motion directed at the Board's September 6, 2012 final order.

14. The Board's January 10, 2013 Order reaffirmed the holding in its September 6, 2012 Order and did not modify the September 6, 2012 order in any way other than to adjust the penalty payment schedule to reflect EOR's filing of its motion for reconsideration.

15. Under the plain language of Supreme Court Rule 274, the Board's January 10, 2013 Order was not a modified final judgment, at which the Respondent could direct another postjudgment motion. See *People ex rel. Madigan v. Petco Petroleum Corp.*, 363 Ill.App.3d 613, 621-622, 841 N.E.2d 1065 (Ill.App. 4 Dist.,2006).

16. Pursuant to Supreme Court Rule 274, Respondent's February 19, 2013 Motion to Reconsider, is a second attempt to file a postjudgment motion challenging the Board's September 6, 2012 final order.

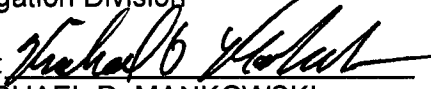
17. Therefore, EOR's February 19, 2013 Motion to Reconsider is void as a matter of law and must be stricken.

WHEREFORE, the PEOPLE request this Honorable Board to strike Respondent E.O.R. Energy, LLC's February 19, 2013 Motion to Reconsider in its entirety, in accordance with Board Rule 101.520 and Supreme Court Rule 274 and grant any such other relief as the Board may deem appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

MATTHEW J. DUNN, Chief
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BY: 

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Dated: 2/26/2013