

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 14-2
	)	(Enforcement – Land)
DEMOLITION EXCAVATING GROUP,	)	
INC., an Illinois corporation, RHONDA	)	
FISHER, and EDWARD FISHER,	)	
	)	
Respondents.	)	

**NOTICE OF ELECTRONIC FILING**

TO: See Attached Service List

PLEASE TAKE NOTICE that today I have filed with the Pollution Control Board the following **People’s Response in Opposition to Respondents Rhonda Fisher and Edward Fisher’s Motion for Reconsideration**, on behalf of the People of the State of Illinois, a copy of which is attached and hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

BY:  \_\_\_\_\_  
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DATE: April 22, 2015

**SERVICE LIST**

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the contrary, they were known to them prior to the State's filing of the Complaint in this matter on July 2, 2013; the Fishers simply elected not to take advantage of the numerous opportunities available to them over the last nearly two years to put them forward. Moreover, none of the facts that the Fishers allege in their Motion for Reconsideration, even if true, would negate Respondents' liability, as found by the Board. Indeed, they are all consistent with the Complaint and Order in this case.

### ARGUMENT

#### **I. The Fishers' Motion Alleges No New Evidence to Warrant Reconsideration**

Section 101.902 of the Board's procedural rules provides that, "[i]n ruling upon 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; *see also Broderick Teaming Co. v. Illinois Env't'l Protection Agency*, PCB 00-187, 2001 WL 376542 at \*2 (April 5, 2001). A motion for reconsideration may be filed "to bring to the [Board's] attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the [Board's] previous application of existing law." *Citizens Against Regional Landfill v. County Board of Whiteside County*, PCB 92-156 at 2 (Ill.Pol.Control.Bd. Mar. 11, 1993) (citing *Korogluyan v. Chicago Title & Trust Co.*, 213 Ill. App. 3d 622, 627 (1<sup>st</sup> Dist. 1991)). If a movant is seeking reconsideration based on newly discovered evidence, they 'must show that the newly discovered evidence existed before the initial hearing but had not yet been discovered or was otherwise unobtainable.'" *Simmons v. Reichardt*, 406 Ill. App. 3d 317, 324 (4<sup>th</sup> Dist. 2010) (quoting *Stringer v. Packaging Corp. of Am.*, 351 Ill. App. 3d 1135, 1141, (4<sup>th</sup> Dist. 2004)). When a motion for reconsideration contains material that was available prior to a

tribunal's judgment but never presented, it is well within its discretion to deny the motion. *River Vill. I, LLC v. Cent. Ins. Companies*, 396 Ill. App. 3d 480, 493 (1<sup>st</sup> Dist. 2009).

To the extent that the Fishers' Motion for Reconsideration alleges facts not already part of the administrative record, they do not meet the standard for "new evidence." For example, the Fishers contend that the Illinois EPA told one of their employees that a permit was not required for their open dumping. They also claim to have relied on this information for their actions that are the subject of this litigation. They were therefore by their own admission well aware of this alleged fact and cannot demonstrate that it had not been discovered or was not obtainable before the Board issued its Order. Similarly, the Fishers make no claim, nor can they, that they did not possess any of the documents attached to their Motion for Reconsideration throughout this litigation.

## **II. The Fishers' Motion Does Not Identify Any Errors in the Board's Application of the Law**

Even if the Fishers are able to prove all of the facts alleged in their Motion for Reconsideration, the State would be entitled to the relief granted in the Board's Order. Their Motion for Reconsideration contains no facts inconsistent with a finding of liability for violating Sections 21(a), 21(e), 21(p)(1), 21(p)(4), and 21(p)(7) of the Act, 415 ILCS 5/21(a), (e), (p)(1), (p)(4), (p)(7) (2012), or with the facts in the Complaint that have been deemed admitted.

The Fishers allege that they believed when they were engaging in it that the dumping of waste at the Hilst Site was lawful. However, ignorance of what the Act requires is no defense to a violation. *Illinois Env't'l Protection Agency v. John Brown*, AC 04-82, 2005 WL 1255242 at \*7 (May 19, 2005); *See also People v. Fiorini*, 143 Ill. 2d 318, 336, (1991) ("knowledge or intent is not an element to be proved for a violation of the Act. This interpretation of the Act...is the established rule in Illinois"). And while the Fishers' Motion for Reconsideration

mischaracterizes the Illinois EPA's communication to Daniel Saal, even if true the Fishers' account does not provide a defense to their violations.

The Fishers claim that they subsequently removed waste from the Hilst and Pekin S&G sites similarly does not demonstrate error in the Board's application of the law. The State has never disputed that the waste that the Respondent's dumped on the Hilst and Pekin S&G sites was subsequently removed; indeed, the State alleged in the Complaint that it was. *See* Complaint, Count I, ¶22; Complaint ("On March 12, 2013, Inspector Figge conducted an inspection of the Hilst Site and all the wastes had been removed."); Complaint, Count II, ¶13 ("On July 20, 2012, Derrek Henry contacted DEG and requested that DEG remove the wastes from the Pekin S&G Site. On July 23, DEG removed the wastes and returned it to the Pekin High School West Campus site"). Accordingly, even if the facts alleged in the Fishers' Motion for Reconsideration constitute "new evidence," they do not suggest an error in the Board's Order.

### **III. The Fishers Motion Cannot Seek Reconsideration on Behalf of DEG**

The letter Motion for Reconsideration was signed by Respondents Rhonda Fisher and Edward Fisher and written on DEG letterhead. The Motion for Reconsideration does not, however, affirmatively state on behalf of which Respondent or Respondents it was submitted. Section 101.400(a)(2) of the Board's procedural rules provides that "[w]hen appearing before the Board, any person other than individuals must appear through an attorney-at-law licensed and registered to practice law." 35 Ill. Adm. Code 101.400(a)(2). DEG is an Illinois corporation, and as such can only appear before the Board through an attorney-at-law licensed and registered to practice in Illinois. Upon information and belief, neither Rhonda Fisher nor Edward Fisher are licensed attorneys, and neither has entered an appearance on behalf of DEG in this matter.

Accordingly, the Motion for Reconsideration should not be considered by the Board with respect to DEG.

**CONCLUSION**

Respondents Rhonda Fisher and Edward Fisher's Motion for Reconsideration does not put forward any newly discovered evidence that could support a conclusion that the Board's March 19, 2015 Opinion and Order in this matter was made in error. It therefore fails to offer a basis for reconsideration of the Board's March 19, 2015 Opinion and Order and must be denied.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
by LISA MADIGAN  
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**CERTIFICATE OF SERVICE**

I, RYAN G. RUDICH, an Assistant Attorney General, certify that on the 22<sup>nd</sup> day of April, 2015, I caused to be served by first class mail the foregoing Notice of Electronic Filing and People's Response in Opposition to Respondents Rhonda Fisher and Edward Fisher's Motion for Reconsideration to the parties on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 69 West Washington Street, Chicago, Illinois 60602.

  
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RYAN G. RUDICH