

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 December 6, 2007 final order ("Board's final order" or "final order").

II. THE PETITIONER RAISES NO NEW FACTS OR EVIDENCE

Several of the arguments posited by the Petitioner relate to its belief that the Board failed to properly consider information that was before the Board as of the date of the final order. 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.

The Petitioner is merely attempting to re-argue issues that were already raised and briefed prior to the Board reaching its decision on December 6, 2007. 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 arguments that the Board misapplied the relevant law. An examination of each such argument, however, makes clear that there is no justification for granting the Petitioner's motion.

The Petitioner argues the Board should reconsider their determination because "(1) the Board's holding is not supported by the law for a number of reasons, including its approval of the Agency's interpretation of the term "desired interval"; (2) the Board's holding would result in monitoring wells at

the Site being constructed in violation of the requirements of 35 Ill. Adm. Code 734.430(a) based on the undisputed evidence contained in the Record; (3) the Board's holding that requiring monitoring wells to be screened at the static groundwater level is reasonable for detecting petroleum indicator contaminants because those contaminants are lighter than the groundwater is not supported by the undisputed evidence contained in the Record; (4) the Board's holding is contrary to accepted principles of professional geology and professional engineering practices and, therefore, is not in accordance with 35 Ill. Adm. Code 734.510(a); (5) the Board ignored the evidence in the Record establishing that groundwater at the Site is under confined conditions; (6) the Board erroneously concluded that the results of the hydraulic conductivity tests are consistent with the silty clay unit being the groundwater-producing layer; and (7) the Agency and the Board erroneously concluded that monitoring wells installed as the Agency directed would produce water even though undisputed evidence in the Record and newly discovered evidence demonstrates that they would not produce water. Keller also requests that the Board reconsider the denial of Keller's attorney's fees.

The above arguments do not raise any sufficient grounds for reconsideration of the Board's decision. The Board's decision took into account the very arguments raised in the Petitioner's motion to reconsider, since they were also raised at hearing and in the Petitioners' pleadings prior to the issuance of the final order. Those pleadings included a Reply to Respondent's Motion for Summary Judgment, its Post-Hearing Brief and in its Reply to Respondent's Post-Hearing Brief. The only "new evidence" offered is the drilling of a new well, long after the final decision of the Illinois EPA and therefore was not before the Illinois EPA when making its decision. Further, the Petitioner misses the point that what was at issue was the placement of the screen at the desired interval and not how the well was drilled. Further, the Illinois EPA does not direct the installation of wells as the Petitioner states.

Instead, the Illinois EPA requires the wells be constructed in a manner that complies with the Act and regulations.

When reviewing an Illinois EPA decision on a submitted corrective action plan and/or budget, the Board must decide whether or not the proposals, as submitted to the Illinois EPA, demonstrate compliance with the Act and Board regulations. Broderick Teaming Company v. Illinois EPA, PCB 00-187 (December 7, 2000). The Board will not consider new information not before the Illinois EPA prior to its determination on appeal. The Illinois EPA's final decision frames the issues on appeal. Todd's Service Station v. Illinois EPA, PCB 03-2 (January 22, 2004), p. 4. In deciding whether the Illinois EPA's decision under appeal here was appropriate, the Board must therefore look to the documents within the Administrative Record ("Record"), along with relevant and appropriate testimony provided at the hearing held on August 22, 2007, in this matter. This "new evidence" is not relevant and was not before the Illinois EPA when it made its decision and therefore it should be struck. The Petitioner has presented no reason as to why the Board's decision should be reconsidered in the Petitioner's favor, other than the Board's interpretation did not agree with that of the Petitioner. The Petitioner had a full hearing and plenty of opportunities to argue their position before the Board. The Board's order was correctly decided based upon the evidence in the record and the testimony at trial.

V. ORAL ARGUMENT

Section 101.700(a), 35 Ill. Adm. Code 101.700(a), of the Board's rules sets forth the purpose of oral arguments before the Board. The purpose of oral argument is to address legal questions. Oral argument is not intended to address new facts. The Petitioner has had a full hearing and has addressed its arguments in several pleadings and briefs. Now it claims to have "new evidence" and wants to have an oral argument to discuss it. However, as stated above, the purported "new evidence" should be struck because it is not relevant nor was it before the Illinois EPA when it made its decision. Further, oral

argument is not appropriate in this situation and is not needed when the Petitioner has had such a full hearing of its issues.

VI. CONCLUSION

The Petitioner's arguments in its motion to reconsider are without merit and thus the motion should be denied. 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,
Respondent

Melanie A. Jarvis
Assistant Counsel
Special Assistant Attorney General
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: January 17, 2008

This filing submitted on recycled paper.

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on January 17, 2008 I served true and correct copies of a RESPONSE TO PETITIONERS' MOTION FOR RECONSIDERATION AND REQUEST FOR ORAL ARGUMENT to the Board by electronic filing through the Board's COOL system and to the Petitioner and Hearing Officer by email and by placing true and correct copies thereof in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. Mail drop box located within Springfield, Illinois, with sufficient First Class postage affixed thereto, upon the following named persons:

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

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

Carolyn S. Hesse
Barnes & Thornburg
1 North Wacker Drive
Suite 4400
Chicago, IL 60606

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

Melanie A. Jarvis
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)