

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

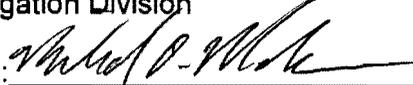
PLEASE TAKE NOTICE that on April 9, 2013, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, PEOPLE'S RESPONSE TO AET ENVIRONMENTAL, INC.'S MOTION FOR RECONSIDERATION, a copy of which is attached hereto and herewith served upon you.

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
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031

CERTIFICATE OF SERVICE

I hereby certify that I did on April 9, 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 RESPONSE TO AET ENVIRONMENTAL, INC.'S MOTION FOR RECONSIDERATION upon the persons listed on the Service List.


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
Chicago, IL 60612

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794

Count I, which alleges illegal transport of a waste from Colorado for storage and disposal in Illinois. On June 27, 2012, the People filed their Motion for Summary Judgment Against AET for the violations alleged in Count I of the People's Complaint. AET failed to respond to the People's Motion for Summary Judgment within 14 days of service which is required by Sections 101.500(d) and 101.516(a) of the Board's General Rules, 35 Ill. Adm. 101.500(d) and 101.516(a). On August 6, 2012, attorney Felipe N. Gomez filed his Appearance on behalf of AET. On September 14, 2012, Mr. Gomez also filed his Appearance on behalf of EOR. The Hearing Officer waived Rules 101.500(d) and 101.516, over the People's objection, and granted AET an extension to file a response to the People's Motion for Summary Judgment by November 14, 2012, during an October 23, 2012 status call. On November 14, 2012, AET filed a pleading titled "AET Response To Motion For Summary Judgment" ("Response").

On January 24, 2013, the Board issued an Order finding that AET violated Section 21(e) of the Act, 415 ILCS 5/21(e)(2010) and directed AET to pay a civil penalty of \$60,000. On March 22, 2013, AET filed a Motion to Reconsider the Board's January 24, 2013 Order. AET's Motion to Reconsider incorporates by reference, arguments made by EOR in its Motion to Reconsider dated February 19, 2013, which the People moved to Strike by their Motion dated February 26, 2013. As of the writing of this Response, the Board has not ruled on the People's Motion to Strike.

III. RECORD BEFORE THE BOARD

In its Response to the People's Motion for Summary Judgment ("Response"), Respondent took issue with the Johnson Affidavit and the Requests to Admit ("RTA") relied upon by the People in support of their Motion for Summary Judgment ("MSJ"). Respondent devoted much of its Response to outlining the failings it perceived in both documents. Respondent makes no effort to refute or challenge either source with any additional evidence. Respondent has not moved to strike the Johnson Affidavit. Respondent failed to offer any counter-affidavits to refute the Johnson Affidavit or the admissions. In short, Respondent has

not provided any evidence counter to the evidence contained in the attachments to the People's MSJ. Moreover, the Board has rejected Respondent's arguments and has correctly held that there are no genuine issues of material fact. In its Motion for Reconsideration, Respondent continues to present the same arguments alleging the Board's misreading of the record which have been rejected by the Board. Furthermore, Respondent's Motion for Reconsideration fails to provide any newly discovered evidence. The Respondent's arguments were not persuasive the first time and remain unpersuasive at this time.

IV. RESPONDENT'S ARGUMENTS ON JURISDICTION WERE PREVIOUSLY CONSIDERED BY THE BOARD AND REJECTED

Respondent's Motion for Reconsideration is merely an attempt to repackage and reargue the same jurisdictional arguments which were made in the Response and by EOR in its Motions for Reconsideration. These arguments have been rejected by the Board; likewise, these jurisdictional arguments should be rejected here as well. The additions found in the present Motion for Reconsideration are no more persuasive than the earlier arguments made by AET. The Board has clearly and repeatedly held that the Board and the Illinois EPA have the authority to determine that EOR disposed of the hazardous waste acid in the EOR Wells.

The Board's holding is correct as a matter of law, as articulated in the Board's January 24, 2013 Order. The Illinois DNR has the authority to regulate the injection of Class II fluids into Class II wells; however, the Illinois Oil and Gas Act does not grant the Illinois DNR authority to permit the injection of hazardous waste into Class II wells. The Board correctly held that the Illinois EPA and the Board have exclusive jurisdiction over the regulation of hazardous wastes.

In its Motion for Reconsideration, Respondent continues to argue that the acid material disposed of in the EOR Wells was a Class II fluid and therefore outside of the authority granted to the Illinois EPA and the Board. The Respondent's argument is not supported by the record. The record clearly establishes that the material was a hazardous waste under Illinois law and not merely a Class II fluid with hazardous characteristics as the Respondent attempts to argue.

AET has failed to introduce no evidence in its Response or in its Motion for Reconsideration to refute or challenge the fact that the fluid was hazardous waste. The Board correctly held that it had jurisdiction to determine whether the acid material was properly stored or disposed of at the Kincaid P&P Site and the EOR Wells and the record lacks any evidence that the acid material was a Class II fluid, not a hazardous waste.

V. ILLINOIS DNR'S ABILITY TO ISSUE NOTICES OF VIOLATION NOT DETERMINATIVE

Respondent also repeats the argument that Illinois DNR was the only State agency which could issue a notice of violation for the injection of hazardous waste into the EOR Wells. Respondent erroneously relies on the fact that Duane Pulliam of the Illinois DNR accompanied Rich Johnson to the Kincaid P&P Site and the EOR Wells and subsequently issued no notice of violation from the Illinois DNR. Notably, this fact actually supports the Board's finding that the Illinois EPA and the Board have jurisdiction over this matter.

Section 45(a) of the Act, 415 ILCS 5/45(a) (2010) states in pertinent part:

- (a) No existing civil or criminal remedy for any wrongful action shall be excluded or impaired by this Act. Nothing in this Act shall be construed to limit or supersede the provisions of the Illinois Oil and Gas Act and the powers therein granted to prevent the intrusion of water into oil, gas or coal strata and to prevent the pollution of fresh water supplies by oil, gas or salt water or oil field wastes, except that water quality standards as set forth by the Pollution Control Board apply to and are effective within the areas covered by and affected by permits issued by the Department of Natural Resources. **However, if the Department of Natural Resources fails to act upon any complaint within a period of 10 working days following the receipt of a complaint by the Department, the Environmental Protection Agency may proceed under the provisions of this Act (emphasis added).**

According to the Respondent and the record the Illinois DNR was aware that a complaint was made about the improper injection of hazardous waste into the EOR Wells. Illinois DNR did not act upon the complaint; therefore, the Illinois EPA had no option but to proceed under the Act and associated regulations to ensure that the people and environment of Illinois were protected from AET and EOR's actions.

VI. CONCLUSION

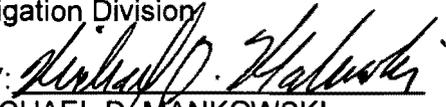
Respondent has provided no basis for the Board to reconsider its January 24, 2013 Decision. Respondent has not provided new facts which were unavailable at the time the Board made its decision, nor has the Respondent presented any novel legal arguments. Respondent's arguments merely rely on perceived points of error and rehashed continuations of the arguments made in its Response. Respondent should not be given a second bite at the apple. The Board has properly determined, in accordance with the Act, that AET violated Section 21(e) of the Act. The Board's allocation of a \$60,000 penalty against the Respondent was fair, reasonable and in accord with the penalty provisions of the Act.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board deny Respondents' Motion for Reconsideration of the Board's Order Dated January 24, 2013.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 
MICHAEL D. MANKOWSKI
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

Dated: 4/9/2013