ILLINOIS POLLUTION CONTROL BOARD
October 17, 2013

PEOPLE OF THE STATE OF ILLINOIS, Complainant, v. SHERIDAN-JOLIET LAND DEVELOPMENT, LLC, an Illinois limited liability company, and SHERIDAN SAND & GRAVEL CO., an Illinois corporation, (4201 Road Site) Respondents.	)	PCB 13-19 (Enforcement - Land)

PEOPLE OF THE STATE OF ILLINOIS, Complainant, v. SHERIDAN-JOLIET LAND DEVELOPMENT, LLC, an Illinois limited liability company, and SHERIDAN SAND & GRAVEL CO., an Illinois corporation, (Wiensland Site) Respondents.	)	PCB 13-20 (Enforcement - Land) (Consolidated)

ORDER OF THE BOARD (by J.D. O'Leary):

On September 12, 2013, Sheridan-Joliet Land Development, LLC and Sheridan Sand & Gravel Co. (collectively, respondents) filed a motion and supporting memorandum (Mot.) asking the Board to reconsider its August 8, 2013 order in these consolidated cases. On September 25, 2013, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a response in opposition to the motion to reconsider. For the reasons given below, the Board denies the motion.

Below, the Board first summarizes its August 8, 2013 order, respondents' motion to reconsider, and the People's response. The Board then provides its ruling on the motion.

BOARD ORDER OF AUGUST 8, 2013

The Board's August 8, 2013 order resolved multiple pending motions filed by respondents as well as the People. The key rulings were the Board's denial of respondents' motions to strike or dismiss the complaints and of respondents' motions to strike amended notices of filing of the complaints (amended notices) in PCB 13-19 and 13-20, which the order consolidated. The amended notices, which the People filed several months after the complaints in each case, included a notification that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 *et seq.* (2012), to correct the alleged violations (financing notification).

In the portions of the order the Board is asked to reconsider, the Board found that the requirement under Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2012)) that the Office of the Attorney General file the financing notification contemporaneously with the complaint does not affect the Board's subject matter jurisdiction. The Board further found that failure to comply with the financing notification requirement may be cured by a subsequent filing providing the notification. In so ruling, the Board followed People v. City of Herrin, PCB 95-158 (July 7, 1995), rather than IEPA v. Production Finishers & Fabricators, Inc., PCB 85-31 (Jan. 9, 1986), which respondents had urged the Board to apply. Consistent with City of Herrin, the Board found it had jurisdiction over this case and that the amended notices the People filed in each case cured their failure to file a financing notification with each complaint.

RESPONDENTS' MOTION TO RECONSIDER AND PEOPLE'S RESPONSE IN OPPOSITION

Respondents maintain that the Board erred in following City of Herrin rather than Production Finishers, which, according to respondents, is the "only precedential decision on point." Mot. at 4. City of Herrin did not even reach the question whether the financing notification requirement is jurisdictional, according to respondents, and as such, should not have been followed. *Id.* at 4-5.

Respondents add that the Board has stated it is bound, not only by decisions of "superior court[s]," but by its own prior decisions. Mot. at 5, citing M.I.G. Investments, Inc. v. IEPA, PCB 85-60 (Aug. 15, 1985). While an administrative agency may generally make "adjustments" to its precedents that are not arbitrary and capricious, respondents continue, here the Board neither made an adjustment to Production Finishers nor "overrule[d]" it. *Id.* at 5-6, citing Hunt Super Service, Inc. v. Edgar, 172 Ill. App. 3d 512, 526 N.E.2d 1125 (4th Dist. 1988). Rather, respondents maintain, the Board ruled "directly opposite to that decision" for the "totally arbitrary and capricious reason" that it would be "more expedient to deny" the motions to dismiss than to follow prior Board precedent. *Id.* According to respondents, a motion to dismiss must be granted where doing so would "preserve[ ] the principle of *stare decisis*" (*id.* at 6, citing Hoffman v. Nustra, 143 Ill. App. 3d 259, 492 N.E.2d 981 (2nd Dist. 1986)). That doctrine provides that courts should stand by their precedents and not disturb settled points. *See, e.g.*, People v. Clemons, 2012 IL 107821, ¶ 9, 968 N.E.2d 1046, 1049-50 (2012). Respondents claim that "a question once deliberately examined and decided [should] be considered as settled and closed to further argument," and that accordingly the Board should reconsider its rulings

regarding the financing notification. *Id.* at 6-7, citing Hoffman v. Nustra, 143 Ill. App. 3d 259, 492 N.E.2d 981 (2nd Dist. 1986).

In their response, the People argue the motion should be denied because it identifies no "new evidence or [ ] change in the law to support reversal" of the August 8, 2013 order. Resp. at 2, citing 35 Ill. Adm. Code 101.902. Rather, according to the People, respondents merely re-argue points rejected in the Board's order. *Id.* at 2-3. The People further contend that City of Herrin is the most recent decision on point, and contrary to respondents' claim, actually addressed the "identical issue" presented by respondents here—whether the failure to file a financing notification with a complaint is a jurisdictional defect. *Id.* at 3. The People add that the Board's decision explained that there, as here, the respondent put the question squarely before the Board in City of Herrin, through a "Motion Attacking Jurisdiction." *Id.*

Further, the People maintain respondents' reliance on M.I.G. Investments is misplaced because that decision recognizes that the Board may reconsider and correct its own prior decisions, and thus actually supports the Board's decision to depart from Production Finishers. Resp. at 3-4. The People add that the Board's August 8, 2013 decision is consistent with Hunt Super Service because it followed City of Herrin, which had already effectively made an "adjustment" to Production Finishers. *Id.* at 4. In any event, according to the People, Production Finishers should not be treated as precedential because it did not "deliberately examine[ ] and decide[ ]" whether the financing notification requirement is jurisdictional. *Id.* Rather, the People continue, Production Finishers was a two-paragraph order with "no analysis of the issue" and a mere "one-sentence conclusion." *Id.* at 4-5. The People conclude that the Board's August 8, 2013 decision, by contrast, "deliberately examined and decided" the issue and also honored *stare decisis* by adhering to City of Herrin. *Id.* at 5.

DISCUSSION

In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law, to determine whether the Board's decision was in error. 35 Ill. Adm. Code 101.902. The Board has 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 [Board's] previous application of existing law." Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156, slip op. at 2 (Mar. 11, 1993), citing Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992).

The Board has reviewed the parties' filings and is not persuaded to reconsider the August 8, 2013 order. Respondents' motion does not cite new evidence or a change in the law showing that the Board's denial of respondents' motions to dismiss and motions to strike the amended notices was erroneous. Rather, the motion seems to assert that the Board erred in its application of existing law. Respondents' first argument is that the Board should have followed Production Finishers rather than City of Herrin because the latter case is not on point. The Board's August 8, 2013 decision explained why the Board followed City of Herrin, a decision that is both on point and also the most recent relevant one, rather than Production Finishers. *See* People v. Sheridan-Joliet Land Development, LLC, PCB 13-19 & 13-20 (cons.), slip op. at 17-18, 27-28.

The Board finds that the motion presents no basis to conclude that this aspect of the Board's decision was in error.

Respondents' other argument for reconsideration is that *stare decisis* required the Board to follow Production Finishers. Yet, as respondents themselves note, an administrative agency is not absolutely bound by its prior determinations and may make adjustments to them, as long as "the adjustments are not arbitrary or capricious." Illinois Council of Police v. Illinois Labor Relations Board, 404 Ill. App. 3d 589, 596-97, 936 N.E.2d 1212, 1218 (1st Dist. 2010); *see also* Hunt Super Service, 172 Ill. App. 3d at 518, 526 N.E.2d at 1129. Further, as the People suggest, in City of Herrin the Board had already effectively, if not explicitly, changed course away from Production Finishers. *See* Resp. at 4. Thus, by the time the Board had to address the issue in this case, the Board had long since departed from Production Finishers. Given that prior departure from the approach in Production Finishers, the Board had every reason, including in particular the interest in standing by prior decisions, to follow City of Herrin rather than Production Finishers. Accordingly, the Board finds that respondents' argument based on *stare decisis* does not warrant reconsideration of the Board's August 8, 2013 decision.

For the reasons discussed above, respondents' motion to reconsider is denied.

IT IS SO ORDERED.

I, John Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 17, 2013, by a vote of 4-0.

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John Therriault, Clerk
Illinois Pollution Control Board