

ILLINOIS POLLUTION CONTROL BOARD
December 5, 2024

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 13-72
) (Enforcement - Water)
PETCO PETROLEUM CORPORATION,)
)
Respondent.)

ORDER OF THE BOARD (by J. Van Wie):

On September 16, 2024, Petco Petroleum Corporation (Petco) filed a Motion to Reconsider (Mot.) an August 22, 2024 Board order.¹ The Board’s August 22, 2024 order denied Petco’s Motion to Dismiss Counts 62 through 73 of the People’s First Amended Complaint and struck the remaining portion of Petco’s Affirmative Defense H raised in its motion to dismiss. On September 30, 2024, the People of the State of Illinois (People) filed their response. For the reasons detailed below, the Board denies Petco’s Motion to Reconsider.

In this order, the Board first provides the legal background on motions to reconsider. The Board then turns to its discussion of Petco’s arguments and renders its determination on the motion to reconsider. To conclude, the Board issues its order.

LEGAL BACKGROUND

The Board’s procedural rules allow parties to file a motion for reconsideration of a Board order. In ruling on 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. In addition to these two grounds, the Board will consider whether it erred in applying existing law. Chatham BP v. IEPA, PCB 15-173, slip op. at 2 (Nov. 5, 2015), *citing* Korogluyan v. Chicago Title & Trust Co., 213 Ill.App.3d 622 (1st Dist. 1991). “[T]he 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 the hearing, changes in the law, or errors in the court’s previous application of the existing law.” Sierra Club, Environmental Law and Policy Center, Prairie Rivers Network, and Citizens Against Ruining the Environment v. Midwest Generation, LLC, PCB 13-15, slip op. at 8-9 (Feb. 6, 2020), *citing* Korogluyan v. Chicago Title & Trust Co. at 627 (1st Dist. 1991). A motion to reconsider may also specify “facts in the record

¹ People v. Petco Petroleum Corporation, PCB 13-72 (Aug. 22, 2024). This order provides an abbreviated factual and procedural background of this matter. For more detailed factual and procedural history, *see also* People v. Petco Petroleum Corporation, PCB 13-72 (Aug. 8, 2024) (ruling on the People’s Motion to Strike Affirmative Defenses but reserving ruling on Petco’s Motion to Dismiss and related portion of Affirmative Defense H).

which were overlooked.” Wei Enterprises v. IEPA, PCB 04-23, slip op. at 3 (Feb. 19, 2004).

DISCUSSION

Petco Alleges a Recognized Ground to Reconsider

In support of its motion to reconsider, Petco argues that the Board erred in finding that the catch-all statute of limitations in Section 13-205 of the Code of Civil Procedure does not apply to enforcement actions brought by the State before the Board. As noted, error in applying existing law is a recognized ground for reconsideration. See Chatham BP, PCB 15-173, slip op. at 2. Petco also argues that the Board’s determination creates a new rule allowing for parties to bring stale claims before the Board.

Petco Reiterates an Argument Addressed in Prior Board Order

A motion to reconsider must do more than merely reiterate arguments already made by the movant and rejected by the Board. In its motion, Petco argues that the Board erred in determining that this action brought before the Board under Section 31 of the Environmental Protection Act (415 ILCS 5 (2022)) (Act) is not a “civil action” to which the catch-all statute of limitations in Section 13-205 of the Code of Civil Procedure (715 ILCS 5 (2022)) applies. Mot. at 2; 415 ILCS 5/31 (2022), 715 ILCS 5/13-205 (2022).

In support of this argument, Petco makes the same assertions that it made in its original motion to dismiss. It even cites the same case law. First, Petco argues that the Board and circuit courts have concurrent jurisdiction over most enforcement actions brought by the People for violations of the Act. Mot. at 3-4, 6, *citing* People v. Donald Pointer, PCB 96-64, slip op. at 1 (Feb. 19, 1998); Mot. to Dis. at 8-9, *citing* People v. Donald Pointer, PCB 96-64, slip op. at 1 (Feb. 19, 1998). Additionally, Petco argues that the legislature’s intent was for the Section 13-205 catch-all statute of limitations for civil actions to apply because it did not expressly codify a common law exception in the statute. Mot. at 9, *citing* People v. Ramirez, 214 Ill.2d 176, 179 (2005) (concerning statutory construction giving effect to legislative intent); Mot. to Dis. at 7, *citing* People v. Ramirez, 214 Ill.2d 176, 179 (2005); *see also* Mot. to Dis at 2, 9, 12. Finally, Petco argues that the claims added by the People’s First Amended Complaint are stale, and that the Board’s finding that Section 13-205 does not apply to People’s actions to enforce the Act before the Board could allow for actions that are time-barred in circuit court to be brought to the Board hundreds of years after a violation occurs. Mot. at 6-7, 10, *citing* People v. NL Indus., 152 Ill. 2d 82, 102-103 (1992) (concerning civil penalties in civil actions); Mot. to Dis. at 3, 8, *citing* People v. NL Indus., 152 Ill. 2d 82, 102-103 (1992).

Petco repeats its assertion that Section 13-205 should apply to any action brought by the People. Mot. at 4-5; *see* Mot. to Dis. at 3, 9, 13. Petco’s motion to dismiss raised the threshold question of whether a People’s enforcement action brought before the Board is a “civil action” to which Section 13-205 applies. Mot. to Dis. at 2 (“An enforcement action under the Act is a civil action, regardless of the venue in which it is filed or appealed.”), 9-10; Mot. at 5-7, 9-10 (arguing that a private versus public complainant makes no difference for Section 13-205). The Board agreed to decide the threshold question and found that the People’s First Amended Complaint

filed with the Board is an administrative proceeding and not a “civil action,” which is brought in court. The Board concluded that the First Amended Complaint is therefore not subject to the catch-all statute of limitations in Section 13-205 for “civil actions not otherwise provided for”. People v. Petco, PCB 13-72, slip op. at 5.

The Board has already evaluated and ruled on the threshold applicability of Section 13-205 in its order. Because Petco’s arguments were already raised and rejected, they cannot be bases for reconsideration.

Petco’s “New Rule” Argument Does Not Establish That the Board Misapplied Existing Law

Petco also asks the Board to reconsider because it claims the Board’s finding “creat[es] a new rule” that undermines uniform application of the Section 13-205 statute of limitations and its protections against stale claims. Mot. at 5. The Board interprets this as part of Petco’s argument that the Board erred in not applying the express language of Section 13-205 to this Section 31 enforcement action brought by the State before the Board. However, Petco’s policy argument fails to establish that the Board’s determination that Section 31 enforcement actions brought by the State before the Board are not “civil actions” subject to Section 13-205.

Instead, Petco merely restates that the Board should recognize the concurrent jurisdiction of the Board and circuit courts to hear enforcement actions alleging violations of the Act, and accordingly find that, whether the action is brought by the People before the Board or in circuit court, it is a “civil action” subject to Section 13-205. *See*, Mot. at 2, 4, 10; Mot. to Dis. at 2, 8. Petco’s only new assertion, that the Board’s order cited inapposite federal caselaw to support its determination that actions brought before the Board are administrative proceedings rather than civil actions, also relies on Petco’s original venue selection argument. *See* Mot. at 4, 6-7 (arguing that because the Board and circuit courts have concurrent jurisdiction over Section 31 enforcement actions, they are “civil actions” to which Section 13-205 applies whether the State files with the Board or circuit court); *see also* Mot. to Dis. at 8-9. Petco does not challenge the court’s reasoning in the *Township of Bordentown* or *Wind River Mining* determinations that proceedings brought before state agencies, rather than in courts, were administrative proceedings rather than civil actions. People v. Petco Petroleum Corporation, PCB 13-72, slip op. at 4 (Aug. 22, 2024), *citing* Twp. of Bordentown v. FERC, 903 F.3d 234, 267 (3d Cir. 2018); Wind River Mining Co. v. U.S., 946 F.2d 710, 712 (9th Cir. 1991)²; Mot. at 8. Petco attempts to distinguish these cases by arguing that these federal courts did not address the application of a statute of limitations for civil actions or the resulting policy implications of that application in either forum. Mot. at 8. Yet, Petco’s review does not undermine the courts’ characterizations of administrative proceedings conducted by state agencies. It just reiterates Petco’s argument that Section 13-205 should apply to Section 31 enforcement actions brought by the State before the Board to avoid allowing the State to bring stale claims before the Board that Petco contends would be barred in circuit court. Mot. at 1, 8-10; Mot. to Dis. at 12, 16-17.

² A typographical error in the Board’s August 22, 2024 order incorrectly cited the plaintiff in this case as “Wood River Mining Co.”. The Board corrects this to “Wind River Mining Co.”.

The Board finds that Petco does not establish that the Board misapplied existing law to create a “new rule” that would undermine Section 13-205’s application to “civil actions not otherwise provided for”. Petco’s motion challenges the Board’s determination of the threshold question of Section 13-205 applicability, yet in support of its position, merely restates the arguments of its original motion to dismiss. Because the Board already evaluated these arguments and made a determination on them, the Board finds Petco does not establish a basis for reconsideration.

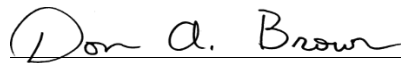
CONCLUSION

Petco’s motion for reconsideration alleges a recognized ground for reconsideration, but to support it merely repeats the argument on the applicability of Section 13-205 to enforcement actions before the Board that the Board rejected in its prior order. Petco fails to substantiate a new argument for reconsideration. The Board therefore denies Petco’s Motion to Reconsider the Board’s August 22, 2024 order, and directs the parties to proceed as directed by that order.

Petco is directed to file its amended affirmative defenses by January 6, 2025, which is the first business day after 30 days from the date of this order.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 5, 2024, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board