ILLINOIS POLLUTION CONTROL BOARD April 17, 2003

PEOPLE OF THE STATE OF ILLINOIS,)	
~)	
Complainant,)	
)	DCD 04
V.)	PCB 02-56
)	(Enforcement - Water)
CHIQUITA PROCESSED FOODS, L.L.C., a)	
Wisconsin limited liability corporation,)	
)	
Respondent.)	

ORDER OF THE BOARD (by T.E. Johnson):

This matter is before the Board on a January 6, 2003 motion to vacate a summary judgment order filed by the People of the State of Illinois (People). On January 17, 2003, Chiquita Processed Foods, L.L.C., a Wisconsin limited liability corporation (Chiquita) filed a response to the motion along with the affidavit of attorney David M. Walter.

For the reasons identified below, the Board denies the People's motion to vacate summary judgment.

PROCEDURAL BACKGROUND

On November 9, 2001, the complainant filed a complaint alleging that Chiquita caused or allowed water pollution in violation of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2002)) and the associated regulations at its pumpkin processing facility located in Princeville, Peoria County.

On November 21, 2002, the Board issued an order that granted Chiquita partial summary judgment. In the order, the Board dismissed counts IV and V without prejudice. In summary, the Board found that the Illinois Environmental Protection Agency (Agency) did not meet the requirements of Section 31(a)(1) of the Act (415 ILCS 5/31(a)(1) (2002)), in that the violations alleged in counts IV and V were referred to the Attorney General's Office by the Agency without the issuance or service of a written notice of violation prior to the referral. *See* People v. Chiquita, PCB 02-56 (Nov. 21, 2002). The Board found that no genuine issue of material facts exists on these matters.

MOTION TO VACATE SUMMARY JUDGMENT

In the motion, the People argue that, without regard to new evidence or a change in the law, the Board's rationale for its order granting summary judgment through a dismissal without prejudice result was simply mistaken. Mot. at 4.

Chiquita responds that the People's motion is untimely. Chiquita asserts that although the motion itself is dated December 20, 2002, it was not mailed for filing until at least eleven days later, on December 31, 2002. Resp. at 1. Chiquita contends that the motion was filed at least 40 days after the Board's November 21, 2002 order was entered, and as result, even if the motion is otherwise properly brought, it is untimely and must be denied on that basis. Resp. at 2. Chiquita also argues that the motion presents no new evidence and references no changes in the law. Resp. at 9.

DISCUSSION

The People's motion is entitled a motion to vacate summary judgment, and is brought pursuant to Section 101.520 of the Board's procedural rules. 35 Ill. Adm. Code 101.520. In ruling on a motion for reconsideration under 35 Ill. Adm. Code 101.520, the Board is to consider "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." Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156, slip op. at 2 (Mar. 11, 1993), citing Koroglyun v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 572 N.E.2d 1154, 1158 (1st Dist. 1992). Section 101.902 of the Board's procedural rules sets forth the factors the Board will consider when ruling upon a motion under 35 Ill. Adm. Code 101.520. Those factors include "new evidence, or a change in the law, to conclude that the Board's decision was in error." 35 Ill. Adm. Code 101.902.

The Board issued the order in question on November 21, 2002. Any motion to reconsider must be filed within 35 days of adoption of the Board order, in this instance December 26, 2003. *See* 35 Ill. Adm. Code 101.520(a). The People's motion was sent for filing on December 31, 2002.

As more than 35 days after the adoption of the Board order had passed before the motion was filed, the Board does not accept the motion. However, the Board notes that the People's motion does not present any new evidence or claim that the law has changed since November 21, 2002. In fact, the People make their argument without regard to new evidence or change in the law, but instead assert that the Board's rationale for its order granting summary judgment was mistaken. Accordingly, as the People have failed to meet the standard for the filing of a motion under 35 Ill. Adm. Code 101.520, the motion would be denied even if timely filed.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 17, 2003, by a vote of 6-0.

Dorothy M. Gunn, Clerk Illinois Pollution Control Board

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