

ILLINOIS POLLUTION CONTROL BOARD

April 18, 2013

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 07-95
)	(Enforcement - Land)
AET ENVIRONMENTAL, INC., a Colorado)	
corporation, and E.O.R. ENERGY, LLC, a)	
Colorado limited liability company,)	
)	
Respondents.)	

ORDER OF THE BOARD (by D. Glosser):

This matter is before the Board on two separate motions filed by E.O.R. Energy, LLC (EOR) and AET Environmental, Inc. (AET) (collectively respondents) asking the Board to reconsider two separate Board orders. For the reasons discussed below, the Board denies both motions.

Below, the Board explains the background of this case before proceeding to address a motion to strike EOR's motion filed by People of the State of Illinois (People). The Board then addresses the separate motions together.

BACKGROUND

On March 23, 2007, the People filed a five-count complaint against AET and EOR. On April 19, 2007, the Board accepted the complaint for hearing. The complaint concerns respondents' transport, storage, treatment, and disposal of hazardous acid to and at EOR's two oil fields. The first oil field (Rink-Truax Lease) is located north of 2050 N. Road and 400 E. Road in South Fork Township, Christian County. The second oil field (Galloway Lease) is located along Township Road 4.25E South East of the junction with Township Road 13S in Pawnee, Cotton Hill Township, Sangamon County.

The People alleged that respondents violated Section 21(e) of the Environmental Protection Act (Act) (415 ILCS 21(e) (2010)) by transporting hazardous wastes into Illinois for storage and disposal at a site that does not meet the Act's requirements (count I). In addition, the People alleged that EOR violated Sections 21(e) and (f)(1) of the Act (415 ILCS 21(e), (f)(1) (2010)) by storing, disposing, and/or abandoning hazardous wastes at a site that does not meet the Act's requirements, thereby conducting a hazardous-waste storage operation without a Resource Conservation and Recovery Act (RCRA) permit (count II). In count III the People alleged that EOR violated 35 Ill. Adm. Code 703.121(a) and (b), 35 Ill. Adm. Code 703.150(a)(2), and Section 21(f)(2) of the Act (415 ILCS 21(f)(2) (2010)) by failing to apply for or acquire a RCRA permit before storing hazardous waste at their site.

Count IV alleged that EOR violated 35 Ill. Adm. Code 725.111, 725.113, 725.114, 725.115(a), 725.116, 725.117, 725.131, 725.132, 725.137, 725.151(a), 725.155, 725.171(c), 725.173, 725.175, 725.212(a), 725.242(a), 725.243(a), 725.274, and 725.278, thereby violating Section 21(f)(2) of the Act. 415 ILCS 5/21(f)(2) (2010). According to the complaint, EOR violated these provisions under count IV by failing to follow proper procedures, take all necessary precautions, and keep and maintain all appropriate records regarding the management of the hazardous waste acid.

Lastly, the People alleged in Count V that EOR violated 35 Ill. Adm. Code 704.121 and 704.203, thereby violating Section 12(g) of the Act (415 ILCS 5/12(g) (2010)), by injecting hazardous waste acid into wells without having an Underground Injection Control (UIC) permit and failing to comply with the listed requirements of Section 704.203.

On June 27, 2012, the People simultaneously filed motions for summary judgment against AET and EOR. EOR did not retain attorneys nor timely respond to the People's motion for summary judgment. On August 6, 2012, an attorney filed an appearance on behalf of AET. On September 6, 2012, the Board granted the People's summary judgment motion against EOR. On September 14, 2012, an attorney filed an appearance on behalf of EOR.

In granting the motion for summary judgment against EOR, the Board found that summary judgment was appropriate as to EOR. *See People v. AET Environmental, Inc., and E.O.R. Energy, LLC*, PCB 07-95 (Sept. 6, 2012). Based on the facts admitted the Board found that EOR violated Sections 12(g), 21(e) and (f)(1) and (2) of the Act (415 ILCS 5/12(g), 21(e) and (f)(1) and (2) (2010))¹ and multiple provisions of the Board's hazardous waste regulations and underground injection control (UIC) regulations. The Board found that EOR violated Sections 12(g), 21(e) and 21(f) (1) and (2) of the Act (415 ILCS 5/12(g), 21(e) and 21(f) (1) and (2) (2010)) and numerous provisions of the Board's rules as alleged in the complaint. Having found that EOR violated the Act and Board regulations, the Board imposed a civil penalty of \$200,000 and directed EOR to pay that civil penalty.

On October 18, 2012, EOR, through its attorney, filed a motion to reconsider the Board's September 6, 2012 Order. On November 14, 2012, the People filed a response to EOR's motion to reconsider. On December 3, 2012, EOR filed a motion for leave to reply to the People's response. By hearing officer order, EOR was allowed until December 12, 2012 to file a reply, which was timely filed. On January 10, 2013, the Board denied the motion to reconsider and found the Board has subject matter jurisdiction, and the Board could properly rule on the motion for summary judgment. Because EOR failed to raise "new evidence or a change in the law, to conclude that the Board's decision was in error", the Board affirmed its order of September 6, 2012. *See People v. AET Environmental, Inc., and E.O.R. Energy, LLC*, PCB 07-95 (Jan. 10, 2013).

¹ All citations to the Act will be to the 2010 compiled statutes, unless the provision at issue has been substantively amended in the 2010 compiled statutes.

By hearing officer order, AET was allowed to respond to the motion for summary judgment and did so, timely, on November 14, 2012. *See* Hearing officer Order 10/23/12. On December 4, 2012, the People filed a motion directed to the hearing officer asking that the response be stricken. On December 24, 2012, AET timely filed a response to the motion to strike.

On January 24, 2013, the Board found it has subject matter jurisdiction and granted the People's motion for summary judgment. *See People v. AET Environmental, Inc., and E.O.R. Energy, LLC*, PCB 07-95 (Jan. 24, 2013). Thus, the Board found 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. *Id.*

PROCEDURAL BACKGROUND ON MOTIONS

On February 19, 2013, EOR filed a motion asking the Board to reconsider the January 10, 2013 order (EOR Mot.). On February 26, 2012, the People filed a motion seeking to strike EOR's motion to reconsider (People Mot.). Pursuant to hearing officer order, EOR's response (EOR Resp.) was due on March 18, 2013 and was timely filed. *See* Hearing Officer Order (Mar. 5, 2013).

Also pursuant to hearing officer order, AET was allowed until March 22, 2013, to file its motion for reconsideration. *See* Hearing Officer Order (Mar. 5, 2013). On March 22, 2013, the motion was filed (AET Mot.). On April 9, 2013, the People timely filed its response to AET's motions (People Resp.). *See* Hearing Officer Order (Mar. 5, 2013).

PEOPLE'S MOTION TO STRIKE

EOR filed a motion asking that the Board vacate its January 10, 2013 order and deny the motion for summary judgment. EOR Mot. at 1. The People seek to have EOR's motion stricken as the motion is the second post-judgment motion. People Mot. at 2. Because this is EOR's second post-judgment motion, the People claim the motion is improper and must be stricken. EOR claims that the Board's rules only refer to the time for filing a motion to reconsider and do not bar successive motions for reconsideration.

Given the substantive nature of the Board's January 10, 2013 order, the Board will allow EOR to file its motion to reconsider. Therefore, the Board denies the motion to strike the motion to reconsider and the Board will rule on the motion to reconsider.

MOTIONS TO RECONSIDER

As indicated above, EOR filed a motion asking that the Board vacate its January 10, 2013 order and deny the motion for summary judgment. EOR Mot. at 1. EOR claims the Board's January 10, 2013 order "erroneously" applied federal and state law, and therefore, the Board lacks subject matter jurisdiction. *Id.*

AET seeks reconsideration arguing that the Board order of January 24, 2013 "erroneously" applied federal and state law and the Board lacks subject matter jurisdiction. AET

Mot. at 1. The People oppose the motion to reconsider arguing that AET has presented no new facts or errors in the Board's application of the law.

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 Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (Mar. 11, 1993), the Board 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 court's previous application of the existing law." Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992). However, the law is well settled that a "lack of subject matter jurisdiction may be raised at any time, in any court, either directly or collaterally." Sandholm v. Kuecker 2012 IL 111443 ¶67 (FN 3), citing Fredman Brothers Furniture Co. v. Department of Revenue, 109 Ill.2d 202, 215, 93 Ill. Dec. 360, 486 N.E.2d 893 (1985). EOR and AET fail to raise "new evidence or a change in the law, to conclude that the Board's decisions were in error". Therefore, the Board denies the motions to reconsider filed by EOR on February 19, 2013 and AET on March 22, 2013.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 18, 2013, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board