

ILLINOIS POLLUTION CONTROL BOARD
May 19, 2016

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 16-61
) (Enforcement-Air)
AMSTED RAIL COMPANY, INC.,)
)
Respondent.)

ORDER OF THE BOARD (By J.A. Burke):

The People of the State of Illinois (People) allege air emission violations against Amsted Rail Company, Inc. (Amsted), at its steel foundry in Granite City, Madison County. The People sought to strike five affirmative defenses asserted by Amsted. The Board struck three of Amsted’s affirmative defenses but denied the motion to strike two affirmative defenses relating to statutes of limitation. The People moved the Board to reconsider that decision (Mot.), to which Amsted responded (Resp.). For the reasons below, the Board denies the People’s motion.

As an initial matter, Amsted objects to the People’s motion because a reconsideration motion must be based on new evidence or a change in the law, and the People’s contention that the Board erred in applying existing law is insufficient. Resp. at 1. Section 101.902 of the Board’s procedural rules provides that the Board will consider factors raised in a motion to reconsider to determine whether a Board decision was erroneous. 35 Ill. Adm. Code 101.902. Such factors include new evidence or change in law. *Id.* The Board is not limited to these factors and can take up a motion to reconsider on the basis that the Board erred in applying existing law. Chatham BP, LLC v. IEPA, PCB 15-173, slip op. at 2 (Nov. 5, 2015).

The People contend that Amsted’s statutes of limitation defenses are legally insufficient for three reasons. First, the People contend that no set of facts entitles Amsted to a statute of limitation defense. Mot. at 4-5. The Board finds that the People’s argument repeats arguments the Board previously considered and rejected. *See* People’s Reply in Support of Motion to Strike (March 8, 2016) at 2-3; People v. Amsted Rail Co., PCB 16-61, slip op. at 2-3 (Apr. 7, 2016). This renewed argument provides no basis for the Board to conclude that its previous decision was in error. *See* City of Geneva v. Kane County, et al., PCB 94-58, slip op. at 2 (Oct. 6, 1994). As the Board previously stated, a motion to strike an affirmative defense attacks only the sufficiency of the pleading, not whether Amsted ultimately will prevail on the defense.

Second, the People contend that the Board – in its March 3, 2016 order on Amsted’s motion to dismiss – already determined that statutes of limitation do not apply. Mot. at 5-6. Amsted argues that the deferential standard afforded the People on that ruling is similar to the deferential standard granted to Amsted on the motion to strike. Resp. at 4. Amsted is correct that, where on a motion to dismiss deference is given to the complainant, on a motion to strike

that deference shifts to the respondent. For both motions, the movant admits well-pled facts and attacks only the legal sufficiency of the facts to support the claim or defense. The Board found that the People sufficiently pled the complaint to survive a motion to dismiss based on a statute of limitation and subsequently found that Amsted sufficiently pled statute of limitation defenses to survive a motion to strike. These findings allow the case to proceed to consider all the facts prior to a final determination. The Board also notes that its prior order on Amsted's motion to dismiss applied to Counts 1 through 6, not Counts 7 through 13 at issue in this motion.

Lastly, the People contend that the Board previously has stricken statute of limitation defenses in enforcement cases due to legal insufficiency. Mot. at 6 (citations omitted). For the reasons outlined above and in the April 7 opinion, the Board finds that such legal insufficiency is not present here.

The Board therefore denies the People's motion to reconsider its April 7, 2016 decision pertaining to Amsted's statutes of limitation affirmative defenses. The Board notes a typographical error in its April 7, 2016 order. The Board stated that Amsted filed an answer to counts VI through XIII. The counts Amsted previously responded to were VII through XIII.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 19, 2016, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board