

ILLINOIS POLLUTION CONTROL BOARD  
November 16, 2000

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 99-191
	)	(Enforcement - Air)
PANHANDLE EASTERN PIPE LINE	)	
COMPANY,	)	
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by M. McFawn)

On June 29, 1999, the People of the State of Illinois, through the Attorney General (People) filed a two-count complaint against Panhandle Eastern Pipeline Company (Panhandle) for alleged violations at its compressor station in rural Glenarm, Sangamon County, Illinois. Specifically, count I of the complaint alleges that Panhandle violated the prevention of significant deterioration requirements found at Section 165 of the federal Clean Air Act (CAA) (42 U.S.C. § 165 (1997)) and the regulations found at 40 C.F.R. 52.21(i) and (j). Count II of the complaint alleges that Panhandle violated Section 9(b) of the Environmental Protection Act (Act) (415 ILCS 5/9(b) (1998)). Panhandle filed an answer on July 27, 1999, and the matter was set for hearing.

The hearing began on September 18, 2000.<sup>1</sup> At the close of the People's case, Panhandle filed a motion for judgment in its favor at the close of complainant's case-in-chief. Panhandle's motion claims that the People failed to adduce evidence sufficient to support all elements of the claim against Panhandle with respect to Section 31(a) of the Act. Panhandle argues that these alleged flaws in the People's case prevent the Board from entering a judgment in favor of the People, and requests that the Board enter a judgment in favor of Panhandle. The People filed a response on October 18, 2000, arguing that the motion should be denied on several grounds.

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<sup>1</sup> The hearing officer scheduled five days to conduct the hearing, based upon the parties prehearing representations. However, at the close of the scheduled time, Panhandle had not yet concluded with its case-in-chief. The hearing is scheduled to resume on November 28, 2000, in Springfield, Illinois.

## PANHANDLE'S ARGUMENT

Panhandle argues that its motion is not governed by the Board's procedural rules, and suggests that the Board look to the Illinois Code of Civil Procedure to apply Section 2-1110 (735 ILCS 5/2-1110).<sup>2</sup> That section states "[i]n ruling on the motion the court shall weigh the evidence, considering the credibility of the witnesses and the weight and quality of the evidence." *Id.* Panhandle also cites to Zannini v. Reliance Insurance Company of Illinois, 147 Ill. 2d 437 (1992). Zannini states that before a court may weigh the evidence in applying Section 2-1110, it must "first determine whether the complainant has presented a *prima facie* case." *Id.* at 449.

Panhandle's motion alleges that, at hearing, the People failed to present sufficient evidence as to the necessary elements to pursue a claim under Section 31 of the Act. Specifically, Panhandle's motion alleges that the People failed to demonstrate that the Illinois Environmental Protection Agency (Agency) met the notice requirements provided in Section 31(a) of the Act, and that the People failed to produce sufficient evidence that the Attorney General brought the complaint on his own initiative. Panhandle therefore claims that the People cannot succeed and Panhandle's motion must be granted. Resp. mot. at par. 10.<sup>3</sup>

## DISCUSSION

First, Panhandle seeks to have this matter dismissed on the grounds that the People failed to prove that the 180-day notice required under Section 31(a)(1) of the Act was timely served. Panhandle claims that the People therefore failed to prove a necessary element of its case. We note that by seeking judgment in its favor pursuant to Section 2-1110 of the Code of Civil Procedure, Panhandle claims that its motion is set beyond the governance of the Board's own procedural rules. However, as discussed below, the Board finds that the body of Panhandle's motion does not support this contention.

Panhandle's main argument is that Section 31(a)(1) of the Act presents an evidentiary requirement that the People must show as part of its main case. Section 31(a)(1) states:

Within 180 days of becoming aware of an alleged violation of the Act or any rule adopted under the Act or of a permit granted by the Agency or condition of the permit, the Agency shall issue and serve, by certified mail, upon the person complained against a written notice informing that person that the Agency has evidence of the alleged violation. 415 ILCS 5/31(a)(1) (1998).

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<sup>2</sup> Section 101.100(b) of the Board's procedural rules provides "in the absence of a specific provision in these procedural rules to govern a particular situation, the...participants may argue that a particular provision of the Code of Civil Procedure...provides guidance for the Board . . . ." 35 Ill. Adm. Code 101.100(b).

<sup>3</sup> Panhandle's motion will be referred to as "resp. mot. at par."

Section 31(e) of the Act provides the evidentiary burden upon a complainant before the Board. Section 31(e) states in pertinent part:

In hearings before the Board under this Title the burden shall be on the Agency or other complainant to show either that the respondent has caused or threatened to cause air or water pollution or that the respondent has violated or threatens to violate any provision of this Act or any rule or regulation of the Board or permit or term or condition thereof. 415 ILCS 5/31(e).

Panhandle provides no legal basis to support its argument that the notice requirement in Section 31(a)(1) of the Act is an evidentiary requirement under Section 31(e) of the Act. Furthermore, the plain language of Section 31(e) does not require or suggest that the People must demonstrate at hearing that the Agency complied with the notice requirements of Section 31(a)(1) as part of the evidentiary burden imposed by Section 31(e). Therefore, the Board finds that the notice requirement of Section 31(a)(1) is not an element of proof that the People must support at hearing in order to carry their *prima facie* case.

In addition, the Board disagrees with Panhandle's assertion that the Board's procedural rules do not apply to this situation. Having found that the People are not required to demonstrate compliance with the notice requirement of Section 31(a)(1) to support their *prima facie* case, the Board finds that its procedural rules do govern Panhandle's motion. The Board views Panhandle's motion as one that could have been raised under Sections 101.243 or 103.104(a) of the Board's procedural rules. Section 101.243 generally governs motions which challenge the sufficiency of the pleadings, and states in pertinent part "[a]ll motions to strike or dismiss challenging the sufficiency of any pleading filed with the Board shall be filed within 21 days after the service of the challenged document, unless the Board determines that material prejudice would result." 35 Ill. Adm. Code 101.243(a). Section 103.140(a) specifically governs motions to dismiss a complaint, and states in pertinent part "[a]ll motions by respondent to dismiss or strike the complaint...shall be filed within 14 days after receipt of complaint . . . ." 35 Ill. Adm. Code 103.140(a).

Panhandle has not demonstrated material prejudice in this instance. Panhandle received the notice from the Agency on March 20, 1997, over two years before the Attorney General filed the complaint. Comp. at par. 27.<sup>4</sup> This provided ample time for Panhandle to avail itself of the settlement mechanisms found in Section 31(a) of the Act. Section 31(a)(2) of the Act allows a person complained against to submit a written response to alleged violations, which may include a request to meet with the Agency, and a proposed compliance commitment agreement. Panhandle does not argue that the alleged late notice prevented it from submitting a written response to the notice of violation, requesting a meeting with the Agency, or submitting a written compliance commitment agreement.

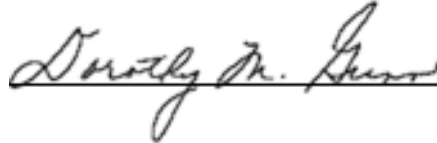
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<sup>4</sup> Reference to the Agency's complaint will be cited as "comp. at par. \_\_\_"

Panhandle's motion is denied. The hearing will reconvene as scheduled by the hearing officer.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 16th day of November 2000 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board