

ILLINOIS POLLUTION CONTROL BOARD  
May 23, 1991

LEFTON IRON AND METAL COMPANY, )  
INC., a Missouri Corporation )  
and LEFTON LAND AND DEVELOPMENT )  
COMPANY, INC., a Missouri )  
Corporation, )

Complainants, )

v. )

PCB 87-191  
(Enforcement)

MOSS-AMERICAN CORPORATION, a )  
Delaware Corporation, and )  
KERR-McGEE CHEMICAL CORPORATION )  
a Delaware Corporation, )

Respondents. )

KERR-McGEE CHEMICAL CORPORATION )  
a Delaware Corporation, )

Counterclaimant, )

v. )

LEFTON IRON & METAL COMPANY, INC. )  
A Missouri Corporation, and )  
LEFTON LAND AND DEVELOPMENT CO., )  
INC., a Missouri Corporation, )

Counterdefendants. )

ORDER OF THE BOARD (by R.C. Flemal):

This matter comes before the Board on Lefton Iron and Metal Company's, Inc. ("Lefton") Motion to Reopen Docket filed on April 29, 1991. A response was filed by Kerr-McGee Corporation ("Kerr-McGee") on May 7, 1991.

The Board dismissed this enforcement action on November 29, 1990. It did so for several reasons. First, Kerr-McGee assumed liability for the clean-up via a consent decree entered with the Attorney General in the Circuit Court of St. Clair County. Second, within that same lawsuit, an action by the People against Lefton was still pending. Third, and perhaps most important, any decision rendered by this Board in the case would be limited in that the issues at bar not only involve violations of the Illinois Environmental Protection Act ("Act"), but include equitable remedies outside the scope of the Act.

In its motion of April 29, 1991, Lefton asserts that on October 29, 1990, unbeknownst to the parties, "the Circuit Court of St. Clair County entered an Order granting Lefton's Motion to Dismiss on the grounds that the Pollution Control Board had primary jurisdiction of the matter..." In its Reply Motion, Kerr-McGee initially points out that Lefton did not file a motion for reconsideration within 35 days of the Board's November 29, 1990 Order.

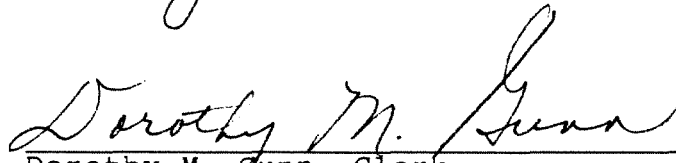
Kerr-McGee also claims that Lefton's factual basis for requesting relief, as stated in their motion is misleading. Moreover, Kerr-McGee states that a motion for reconsideration is currently pending before the Circuit Court and regardless of the outcome, that court still retains jurisdiction over one count of Kerr-McGee's counterclaim.

We agree with Kerr-McGee. Two full months after Lefton's alleged discovery of the Circuit Court's action, Lefton has come before this administrative body and asks that we reopen this case. Kerr-McGee is correct that Lefton did not file a motion for reconsideration within 35 days of the November 29th Order. Even if Lefton did not discover the Circuit Court's action until March 1, 1991, Lefton also failed to file within 35 days of that discovery. The Board accordingly finds Lefton's motion untimely.

In addition to the timeliness problem, Lefton's motion is also factually incorrect. The Circuit Court of St. Clair County did not dismiss the bulk of the case - let alone state (or even imply) that the Board has primary jurisdiction. Moreover, the court retained one count of Kerr-McGee's counterclaim which pertains to equitable issues. Finally, two other counts of Kerr-McGee's counterclaim are currently under reconsideration by the Circuit Court - a fact which Lefton conveniently omitted. Accordingly, Lefton's motion to reopen the docket is denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 23<sup>rd</sup> day of May, 1991, by a vote of 6-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board