CWM CHEMICAL SERVICES, INC., ET AL.

(Slip Opinion)

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BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

	)	
In the Matter of:	)	
	)	
CWM Chemical Services, Inc.	)	
Chemical Waste Management, Inc.	)	TSCA Appeal No. 91-6
and Waste Management, Inc.	)	
	)	
Docket No. II TSCA-PCB-91-0213	)	
	)	

[Decided March 23, 1992]

DECISION ON INTERLOCUTORY APPEAL

Before Environmental Appeals Judges Ronald L. McCallum and Timothy J. Dowling (Acting). Judge Edward E. Reich did not participate in this case.

TSCA Appeal No. 91-6

DECISION ON INTERLOCUTORY APPEAL

Decided March 23, 1992

Syllabus

This is an interlocutory appeal from a November 6, 1991 Order by Administrative Law Judge Thomas B. Yost. In that Order, Judge Yost held that the five-year statute of limitations in 28 U.S.C. §2462 applies to the assessment of administrative penalties under TSCA. As a result, a large portion of the complaint filed by the Director of the Environmental Services Division, EPA Region II, was dismissed. On November 18, 1991, Judge Yost certified this issue for interlocutory appeal pursuant to 40 C.F.R. §22.29. Because the identical issue was under consideration in another case, *3M Company (Minnesota Mining and Manufacturing)*, TSCA Appeal No. 90-3, the Chief Judicial Officer stayed all proceedings to allow sufficient time to properly consider the issue in the context of this case as well as 3M.

Held: In light of the recent decision in *3M Company (Minnesota Mining and Manufacturing)*, TSCA Appeal No. 90-3 (CJO, February 28, 1992), holding that the statute of limitations in 28 U.S.C. §2462 does not apply to the assessment of administrative penalties under TSCA, Judge Yost's November 6, 1991 Order is reversed, the dismissed portions of the complaint are reinstated, and the stay is vacated.

Before Environmental Appeals Judges Ronald L. McCallum and Timothy J. Dowling (Acting). Judge Edward E. Reich did not participate in this case.

Per curiam:

On November 18, 1991, Administrative Law Judge Thomas B. Yost, pursuant to a motion by Complainant, Director of the Environmental Services Division, EPA Region II, certified an issue for interlocutory appeal to the Administrator in the above-referenced case. *See* 40 C.F.R. §22.29. The appeal arises from Judge Yost's November 6, 1991 order holding that the five-year statute of limitations contained in 28 U.S.C. §2462 applies to the assessment of administrative penalties under the Toxic Substances Control Act (TSCA). *See* Order on Motion for Leave to File Response (ALJ Yost, Nov. 6, 1991). On appeal, Complainant seeks reversal of that determination and the resulting dismissal of a

large portion of the complaint.

On December 13, 1991, all proceedings in this matter were stayed pending resolution of the issue on interlocutory appeal. In light of the recent decision in *3M Company (Minnesota Mining and Manufacturing)*, TSCA Appeal No. 90-3 (February 28, 1992), holding that the five-year statute of limitations in 28 U.S.C. §2462 does not apply to the assessment of administrative penalties under TSCA, we reverse the applicable portions of Judge Yost's November 6, 1991 order. The reasoning of the *3M* decision applies with equal force to this case. *See 3M* at 22-29. Accordingly, none of the allegations in the complaint are time barred, the dismissed portions of the complaint are reinstated, and the December 13th stay is hereby vacated. [1]

So ordered. [2]

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[1] Complainant's request for oral argument is denied.

[2] The Environmental Appeals Board, as the Administrator's delegatee, has the authority to issue decisions in proceedings on interlocutory appeal. *See* 57 Fed. Reg. 5324-25 (Feb. 13, 1992) (revising 40 C.F.R. §§22.04(a) & 22.29).