

ILLINOIS POLLUTION CONTROL BOARD
September 9, 1999

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 99-191
) (Enforcement - Air)
 PANHANDLE EASTERN PIPELINE COMPANY, a)
 Delaware corporation,)
)
)
 Respondent.)

ORDER OF THE BOARD (by M. McFawn):

This case is before the Board on two motions filed by complainant, the People of the State of Illinois: a "Motion to Set Hearing Date" filed on August 23, 1999, and a "Motion to Relocate Hearing" filed on August 27, 1999. Respondent Panhandle Eastern Pipeline Company (Panhandle) filed a response to the "Motion to Set Hearing Date" on August 27, 1999. The Board denies complainant's "Motion to Set Hearing Date"; however, the Board cancels the hearing scheduled by the hearing officer for September 21-23, 1999. This action renders complainant's "Motion to Relocate Hearing" moot.

Complainant commenced this action on June 29, 1999. Panhandle filed an answer and affirmative defenses on July 27, 1999, and on August 3, 1999, propounded its first set of discovery requests. Hearing Officer John Knittle set an initial status conference for August 16, 1999.

At the initial status conference, Panhandle noted that under 35 Ill. Adm. Code 103.125(a), the hearing officer is required to set a hearing within 90 days of the date of filing unless the Board orders otherwise. ¹ Although complainant asserted that it would not be ready for hearing at that time, on August 20, 1999, the hearing officer issued an order setting the hearing for September 21-23, 1999; these dates are within 90 days of the filing of the complaint. Also on August 20, 1999, the hearing officer issued an order setting deadlines for filing dispositive motions and responses (August 27, 1999, and September 3, 1999, respectively) and a deadline for completion of discovery (September 17, 1999). The hearing officer's order also set another status conference on September 20, 1999.

The Board notes initially that the hearing officer was correct to set a hearing within 90 days of filing of the complaint. Complainant describes the time frame set in Section 103.125(a) as "discretionary," "Motion to Set Hearing Date" at 2, but the discretion rests with the Board, not the hearing officer. Absent a Board order providing otherwise, the hearing officer is required by Section 103.125(a) to comply with the 90-day time frame. In a case where a longer time frame is appropriate, the parties must seek relief from this requirement from the Board, as complainant has done here.

In the "Motion to Set Hearing Date," complainant asserts that it will need at least seven months for discovery and "a few months to prepare for hearing," and asks the Board to set a hearing in this matter on or after May 28, 2000. Panhandle takes issue with a number of complainant's assertions in the motion, and recommends that rather than setting a specific hearing date, the Board cancel the scheduled hearing and have the hearing officer set a new hearing date after the September 20 status conference.

¹ Section 103.125(a) provides, "The Hearing Officer, after appropriate consultation with the parties, shall set a time and place for hearing to be held within 90 days after the filing of the complaint unless the Board orders otherwise."

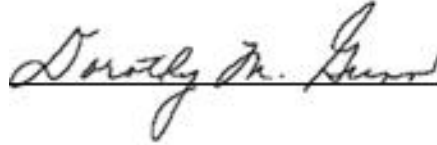
Given the nature of the allegations in this case, some lengthier period for discovery is appropriate. The parties agree that the current hearing dates do not allow sufficient time for discovery, and the Board accordingly vacates those hearing dates. The Board cannot conclude, however, that a hearing date in May of 2000 or later should be set at this time. Panhandle's objections to the timeline proposed by complainant are well taken. Complainant's motion does not explain why discovery would take seven months, or why, after completion of discovery, hearing preparation will require months of additional work. Complainant appears to be factoring in time to handle contingencies which may never occur, *i.e.*, additional rounds of written discovery or depositions which may not be necessary and scheduling conflicts which may not arise. It may be that this case could proceed to hearing before May of 2000.

The Board therefore denies complainant's "Motion to Set Hearing Date." The current September 1999 hearing dates however, are vacated. The Board also vacates the dispositive motion deadline and discovery deadline set in the hearing officer's order of August 20, 1999. The hearing officer is directed to set a hearing date after consultation with the parties, taking into account the parties' need for discovery and hearing preparation.

Because the hearing which was the subject of complainant's "Motion to Relocate Hearing" has been cancelled, that motion is moot and is denied on that basis.

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 9th day of September 1999 by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board