

ILLINOIS POLLUTION CONTROL BOARD
May 17, 2012

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 04-16
) (Enforcement - Air)
PACKAGING PERSONIFIED, INC.,)
)
 Respondent.)

ORDER OF THE BOARD (by T.E. Johnson):

The Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a motion to stay this enforcement action until issuance of a Board order addressing the People's pending motion for reconsideration of the Board's March 1, 2012 order. In that order, the Board partially granted the motion for reconsideration filed by the respondent, Packaging Personified, Inc. (Packaging). Packaging's motion sought reconsideration of several aspects of the Board's September 8, 2011 final opinion and order. The Board's March 1, 2012 order also required supplemental hearing and briefing on penalty, with a record-closing deadline of August 28, 2012. Packaging opposes the People's motion for stay and moves for adoption of an order establishing a schedule to meet the August 28, 2012 deadline.

For the reasons below, the Board grants the People's motion for stay and denies Packaging's motion for a scheduling order. Today's order does not address the People's motion for reconsideration. When the Board issues its order addressing the People's motion to reconsider, the Board will, as appropriate, establish a new deadline for record closing.

In this order, the Board provides an abbreviated procedural history of this proceeding before summarizing the filings concerning the People's requested stay and Packaging's requested scheduling order. The Board then rules upon both motions.

PROCEDURAL HISTORY

This action was initiated on August 5, 2003, when the People filed an eight-count complaint against Packaging, alleging violations at the company's polyethylene and polypropylene film processing and printing facility. The facility is located at 246 Kehoe Boulevard in Carol Stream, DuPage County. The People's amended 12-count complaint was accepted on August 18, 2005. The Board issued its final opinion and order on September 8, 2011, finding that Packaging committed numerous air pollution control violations and imposing a \$456,313.57 civil penalty. *See People v. Packaging Personified, Inc.*, PCB 04-16, slip op. at 43-44 (Sept. 8, 2011).

In an order of March 1, 2012, the Board denied in part and granted in part Packaging's motion for reconsideration of the Board's September 8, 2011 decision. In the March 1, 2012 order, the Board also, on its own motion, directed that the parties expeditiously return to hearing solely to address a discrete "economic benefit" matter concerning penalty, to be followed by briefing. The Board instructed the hearing officer to close the record by August 28, 2012, the 180th day after March 1, 2012. The Board's March 1, 2012 order stated that "[a]fter the record closes, the Board, on reconsideration, will issue a supplemental opinion and order setting forth its reasoning for either retaining or modifying the \$456,313.57 penalty imposed upon Packaging." Packaging, PCB 04-16, slip op. at 18 (Mar. 1, 2012). The March 1, 2012 order also provided that the Board's September 8, 2011 order remains stayed pending final Board action. *Id.*

During a March 15, 2012 telephonic status conference with the hearing officer, the People stated that they would be filing a motion for reconsideration of the Board's March 1, 2012 order. In addition, Packaging stated that it contemplated filing a proposed discovery schedule. On March 28, 2012, the People filed the motion for reconsideration, which the Board does not rule upon in this order.

During an April 10, 2012 status call with the hearing officer, Packaging was granted leave to file a response to the People's motion for reconsideration by April 20, 2012. The People represented that they would soon file a motion to stay discovery in light of their pending motion for reconsideration, and Packaging represented that it would file an expedited response to that stay motion. Finally, the hearing officer informed the parties that if the Board does not extend the record closing date of August 28, 2012, the supplemental hearing would need to be held on or about June 5, 2012.

On April 13, 2012, the People filed a "Motion to Stay Discovery and Extend Record Deadline" (Mot. Stay). On April 16, 2012, Packaging simultaneously filed three documents: "Response in Opposition to Complainant's Motion for Reconsideration of March 1, 2012 Order"; "Respondent's Motion for a Scheduling Order and Supplemental Hearing Date" (Mot. Sched.); and "Respondent's Response in Opposition to Complainant's Motion to Stay Discovery and Extend Record Deadline" (Resp.). Packaging's motion for a scheduling order, to which the People did not respond, is directed to the hearing officer, but the Board rules upon the motion today in the interests of administrative economy.

SUMMARIES

The People's Motion for Stay

The People move the Board to stay discovery and extend the August 28, 2012 deadline for closing the record. Mot. Stay at 1. The People recount the hearing officer's statement that the supplemental hearing would need to be held on or about June 5, 2012, to meet this record-closing deadline. *Id.* The People note that they filed a motion for reconsideration of the March 1, 2012 order. The People's motion to reconsider maintains that the supplemental hearing is "unnecessary, and that the Board should reinstate its September 8, 2012 Final Order." *Id.*

In the motion for stay, the People ask the Board to stay these proceedings until after the Board rules upon the People’s motion for reconsideration. According to the People, if the reconsideration motion is granted, “additional discovery and trial preparation will be unnecessary,” and if the reconsideration motion is denied, the Board “can then establish a new date for close of the record.” Mot. Stay at 2. In this way, the People continue, the parties will “avoid the expense of expediting discovery for an early and possibly unnecessary hearing.” *Id.*

**Packaging’s Response Opposing Stay and
Packaging’s Motion for Scheduling Order**

Packaging opposes the People’s motion to stay discovery and extend the deadline for closing the record. Packaging also moves for an order establishing a schedule to complete the record by the Board’s August 28, 2012 deadline. Packaging first argues against the Board reaching any decision on the People’s motion for reconsideration prior to the supplemental hearing: “The Board solicited the additional evidence to be presented at the supplementary hearing precisely for the purpose of considering such evidence and briefing in order to reach its decision on reconsideration.” Resp. at 1.

Next, Packaging incorporates by reference its simultaneously-filed motion for scheduling order (Resp. at 1), in which Packaging proposes the following schedule for record completion:

Simultaneous Disclosure of Expert Opinions	June 5, 2012
Completion of Expert Depositions and Close of Discovery	June 26, 2012
Exchange of Exhibits and Witness Lists	July 10, 2012
Supplemental Hearing	July 17, 2012
Simultaneous Closing Briefs	August 7, 2012
Simultaneous Reply Briefs	August 21, 2012
Record Close	August 28, 2012
(Mot. Sched. at 1).	

According to Packaging, this schedule would give the parties “an additional two months to prepare for the supplementary hearing,” which is sufficient “[g]iven the limited nature of the evidentiary hearing.” Resp. at 1. Accordingly, Packaging asks that the People’s motion for stay be denied “based upon the absence of any demonstrated harm to Complainant as a result of complying with the Board’s March 1, 2012 Order.” *Id.*

Packaging also asserts that its response to the People’s motion for reconsideration “demonstrates the infirmities” of that motion. Resp. at 2. Packaging therefore maintains that the Board should deny the People’s stay request in light of the “low probability of success” of the People’s motion to reconsider. *Id.*

DISCUSSION

Under Section 101.514(a) of the Board’s procedural rules, “[m]otions to stay a proceeding must be directed to the Board and must be accompanied by sufficient information

detailing why a stay is needed” 35 Ill. Adm. Code 101.514(a). The decision to grant or deny a motion for stay is “vested in the sound discretion of the Board.” See People v. State Oil Co., PCB 97-103 (May 15, 2003), *aff’d sub nom* State Oil Co. v. PCB, 822 N.E.2d 876 (2d Dist. 2004).

The Board requires additional time to review the People’s pending motion for reconsideration of the March 1, 2012 order and Packaging’s response in opposition to that motion. Therefore, an order addressing the People’s motion to reconsider will issue no earlier than June 7, 2012, which is the date of the next regularly-scheduled Board meeting. Accordingly, absent a stay, even Packaging’s proposed record-closing schedule indicates that the parties would need to start discovery *before* issuance of the Board’s order taking up the People’s motion for reconsideration. Resources expended by the parties on hearing preparation would be wasted if the Board ultimately reconsiders its March 1, 2012 order and decides not to require the supplemental hearing.

Under these circumstances, the Board grants the People’s motion to stay this proceeding until the Board issues an order that addresses the People’s motion for reconsideration. When the Board issues that order, the Board will, if appropriate, establish a new deadline for closing the record. The Board therefore denies Packaging’s motion to issue an order adopting the company’s proposed schedule for record completion. The Board’s September 8, 2011 order continues to be stayed pending final Board action.

IT IS SO ORDERED.

Board Members D. Glosser and C.K. Zalewski concurred.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 17, 2012, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board