ILLINOIS POLLUTION CONTROL BOARD
October 19, 2006

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 03-191
	)	(Enforcement – Land)
COMMUNITY LANDFILL COMPANY, INC., an Illinois corporation, and the CITY OF MORRIS, an Illinois municipal corporation,	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by N.J. Melas):

The parties in this enforcement action were scheduled to go to hearing on October 24 through October 27, 2006, on the issue of remedy. On September 22, 2006, respondent, Community Landfill Company (CLC), filed a motion to cancel the hearing. CLC stated that Mr. Edward Pruim, the secretary and treasurer of CLC, had recently undergone heart surgery that was further complicated by an aortic aneurism, and was under his doctor's orders to avoid stressful work-related activities for five to six months. CLC stated that Mr. Pruim's attendance, participation, and testimony were essential for the defense of this proceeding.

On September 27, 2006, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), responded, objecting to CLC's motion to cancel the hearing. On September 28, 2006, respondent, City of Morris (Morris), filed responses in favor of canceling the hearing. Hearing officer Brad Halloran held a telephonic status conference on September 28, 2006, at which the parties made oral arguments in support of their positions. On October 2, 2006, Morris filed a witness list identifying Mr. Pruim as a witness. On October 3, 2006, the hearing officer issued an order granting CLC's motion and canceling the hearing.[1]

On October 5, 2006, the People moved for an interlocutory appeal of the hearing officer's ruling to cancel the hearing (Mot.). The People simultaneously moved for interim relief (Mot. for Int. Rel.) and expedited review of these motions. In the appeal, the People request that the Board reverse the hearing officer's October 3, 2006 ruling and keep October 24 through 27, 2006 as the hearing dates. CLC responded to the motions for interlocutory appeal and for interim relief on October 18, 2006. The Board has granted the People's motion to expedite and expedited its review of these motions and responsive pleadings.

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[1] The hearing officer granted a similar motion and cancelled hearing in two other enforcement cases involving Mr. Pruim, People v. CLC, PCB 97-193, 04-207 (consolidated).

MOTION FOR INTERLOCUTORY APPEAL

In support of its interlocutory appeal, the People argue that CLC's motion is legally insufficient and that Mr. Pruim is not a necessary party to this action. First, the People contend that pursuant to Section 101.510 of the Board's procedural rules, CLC's motion to cancel the hearing had to have proposed a date to reschedule the hearing, but did not. Mot. at 2; citing 35 Ill. Adm. Code 101.510(b). Second, the People note that Mr. Pruim is not a respondent in this matter, but is a co-owner of CLC and acts as secretary and treasurer of the corporation. *Id*. at 1. The People contend that Mr. Pruim was not previously named as a witness at the time of the motion, made less than a month away from hearing. The People argue that Mr. Pruim's participation is not necessary for a full and complete hearing on the remaining issues in this case. *Id*. at 3. The People add that using Mr. Pruim's absence to delay hearing essentially allows the respondents to continue violating the Environmental Protection Act (Act) for the near future. *Id*. at 4.

On October 12, 2006, Morris opposed the People's motion for interlocutory appeal (Resp.). Morris states that Mr. Pruim is now a named witness in this proceeding and his participation in this proceeding is essential. Resp. at 2. According to Morris, Mr. Pruim is the treasurer and chief financial officer of CLC and that matters involving closure and post closure financial assurance will necessarily involve financial questions. Morris states it fears that if only one corporate representative (Mr. Edward Pruim's brother, Mr. Robert Pruim) is called, he will "simply demurrer and defer to knowledge possessed by Mr. Edward Pruim . . . thereby in essence 'whipsawing' the City." *Id*.

Morris further contends there is no urgency to hold a hearing on remedy. Morris asserts that Mr. Devin Moose, Morris' primary technical consultant, stated in his deposition that no imminent and substantial threat to human health or the environment is posed by the landfill. Resp. at 3 (referring to Exhibit B of Morris' October 5, 2006 response to CLC's motion to cancel hearing and the People's response in opposition to the motion to cancel hearing). Finally, states Morris, at least one other material witness, Mr. Moose, has already made other plans and is now also unavailable to appear and testify during the originally scheduled hearing dates. *Id*. at 4.

The People replied on October 13, 2006 (Reply). In reply, the People state that the "deteriorating conditions" at the Morris Community Landfill warrant immediate action by the Board to avoid "material harm." Reply at 1. The People further state that the situation has "seriously degraded," and that closure costs have risen to $7.4 million. For these reasons, contend the People, the Board must require that the respondents immediately secure financial assurance for closure and post-closure care of the landfill. *Id*. at 3.

On October 18, 2006, CLC responded to the People's motion. CLC states that due to the nature of Mr. Pruim's medical condition it was impossible to propose a date to reschedule the hearing. CLC Resp. at 2. CLC contends that the hearing officer's order should not be reversed absent an abuse of discretion. CLC asserts that the People did not argue that the hearing officer abused his discretion in granting the motion to cancel. *Id*. For these reasons, argues CLC, the Board should deny the motion for interlocutory appeal. *Id*. at 3.

In granting CLC's motion to cancel hearing, the hearing officer stated that due to the issues to be addressed at hearing on the issue of remedy, it appeared imperative that Mr. Pruim, as a financial officer of CLC, be present at the hearing and available to testify. The hearing officer further noted that CLC's motion to cancel was not the result of lack of diligence.

The Board grants the People's motion for interlocutory review and affirms the hearing officer's cancellation of the hearing. Without any explanation or evidence of what constitutes "deteriorating conditions" or "material harm," the Board will not overrule the hearing officer's order. As noted by CLC, the People have not shown there is any existing or immediate threat of harm to human health or the environment caused by the landfill. As the hearing officer correctly noted, the issue left to be determined is remedy. CLC identified Mr. Pruim as a witness on October 2, 2006, consistent with the deadline set by the hearing officer for the filing of CLC's witness list. CLC has also properly moved the Board to cancel the hearing. Although the motion contained no date certain to reschedule the hearing, the Board finds that an instance such as this one, where a named witness experiences serious and unexpected medical problems, is extraordinary. In this case, a date certain for rescheduling the hearing cannot yet be ascertained. The Board is confident that the hearing officer will diligently work with the parties to identify a hearing date as soon as it becomes possible.

MOTION FOR INTERIM RELIEF

The People cite no authority in support of their motion for interim relief, yet state the Board should require the respondents to immediately arrange for closure and post-closure financial assurance in the amount of $17,448,366. Mot. for Int. Rel. at 6. The People state that the Illinois Environmental Protection Agency (Agency) has determined that respondents are required to provide $17,448,366 of closure and post-closure financial assurance. *Id*. at 2, Exh. A. According to the People, hearings have been held in other Board proceedings on issues relating to CLC's lack of financial assurance. *Id*. at 3; citing CLC and Morris v. IEPA, PCB 01-48, 49 (consolidated). The People believe, therefore, that a third hearing is not necessary to determine the amount of financial assurance.

The People state that the Board has broad authority to take actions reasonably necessary to accomplish the purposes of the Act and that the requested relief is necessary to protect the State. Mot. for Int. Rel. at 4; citing Discovery South Group Ltd. v. PCB, 275 Ill. App. 3d 547 (1st Dist. 1995). The People contend that the Board has not hesitated to order compliance prior to final resolution of all penalty issues in the past. *Id*.; citing Kratusack v. Patel *et al*., PCB 95-143 (Aug. 21, 1997). Without a court-enforceable interim order to obtain compliant financial assurance, state the People, the respondents will be allowed to avoid compliance as long as the hearing is delayed. *Id*. at 5.

CLC contends that the Board was correct in finding that it was "premature" to rule on the issue of penalty until factual determinations have been made in the February 16, 2006 interim opinion and order. According to CLC, this proceeding has not been "indefinitely delayed" and the People did not allege any imminent or irreparable harm that should prevent a postponement due to an emergency medical situation.

The Board denies the People's motion for interim relief. As the Board found in its February 16, 2006 interim opinion and order in this matter, it is premature to rule on the issue of penalty before consideration of the Section 33(c) and Section 42(h) factors. People v. CLC, PCB 03-191, slip op. at 12 (Feb. 16, 2006). In Kratusack, the Board ordered the respondent to cease and desist before sending the parties to hearing to determine any appropriate civil penalty, but only after the Board analyzed the relevant facts in light of the Section 33(c) factors. Kratusack v. Patel *et al.*, PCB 95-143 (Aug. 21, 1997).

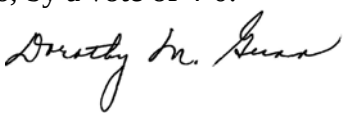
Under Section 33 of the Act, a Board order may include a direction to cease and desist from violations of the Act or any rule adopted under the Act, but only after determining the reasonableness of the emissions. *See* 415 ILCS 5/33(a)-(c) (2004). As held in the past, the Board considers the factors in Section 33(c) and Section 42(h) of the Act (415 ILCS 5/33(c), 42(h) (2004)) in determining and assessing penalties and each of those factors require factual determinations. People v. CLC, PCB 97-193, slip op. at 10 (Apr. 5, 2001). The Board finds the People's request for interim relief premature.

CONCLUSION

Accordingly, for the reasons set forth above, the Board grants the People's motion for interlocutory appeal of the hearing officer's October 3, 2006 order, and affirms the hearing officer's order. The hearing originally scheduled to take place October 24 through 27, 2006 is canceled. The Board denies the People's motion for interim relief as premature and anticipates that the parties will be prepared to address the issue of remedy at hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 19, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board