

ILLINOIS POLLUTION CONTROL BOARD
March 15, 2007

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):

On February 9, 2007, the Office of the Attorney General, on behalf of the People of the State of Illinois (People) filed a motion requesting that the Board set a date for hearing on remedy in this matter. The People request, alternatively, that the Board sever the People's claims against the City of Morris (Morris) from the claims against Community Landfill Company (CLC) so that the hearing may go forward against Morris without further delay. For the reasons set forth below, the Board denies the People's motion.

PROCEDURAL BACKGROUND

The People filed this land enforcement action on April 17, 2003. On July 21, 2005, the People moved for summary judgment, which the Board granted on February 16, 2006. The Board found in the February 16, 2006 interim opinion and order that the respondents violated Section 21(d)(2) of the Act, and Sections 811.700(f) and 811.712(b) of the Board's regulations. 415 ILCS 5/21(d)(2) (2004); 35 Ill. Adm. Code 811.700(f), 811.712(b). The Board further directed the parties to hearing on the issue of remedy, including penalty, costs, and attorney fees, if appropriate.

The parties together with the hearing officer scheduled a hearing for October 24 through 27, 2006. On September 22, 2006, CLC moved to cancel the hearing. CLC reasoned that due to an emergency quintuple bypass surgery and subsequent complications, witness Mr. Edward Pruim was unable to attend hearing on the scheduled dates. On September 27, 2006, the People responded, objecting to CLC's motion to cancel the hearing. On September 28, 2006, respondent Morris filed a response in favor of canceling the hearing. On October 2, 2006, Morris timely filed a witness list identifying Mr. Edward Pruim as a witness. After hearing the parties arguments, on October 3, 2006, the hearing officer issued an order canceling the hearing.¹

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).

On October 5, 2006, the People moved for an interlocutory appeal of the hearing officer's ruling to cancel the hearing. The People simultaneously moved for interim relief. On October 19, 2006, the Board affirmed the hearing officer's decision to cancel hearing and denied the People's motion for interim relief.

At a February 8, 2007 status conference, CLC provided an updated medical evaluation of Mr. Edward Pruim. The evaluation states that Mr. Edward Pruim continues to be physically unable to participate in legal proceedings, and that his medical condition should be evaluated again in several months.

On February 9, 2007, the People filed this motion. Morris responded on February 23, 2007. CLC responded on February 27, 2007.

MOTION TO SET HEARING DATE
OR, ALTERNATIVELY, FOR SEVERANCE OF CLAIMS

The People request that the Board set a hearing date, arguing that the Board should not allow Mr. Edward Pruim's medical condition to "infinitely delay" final resolution of this matter. Mot. at 3. The People state that Mr. Edward Pruim is not a party, but merely a stockholder and officer of the respondent CLC and that his testimony is not so necessary or unique that his absence at hearing will prejudice either respondent. *Id.*

The People claim that Mr. Edward Pruim was not involved in CLC's arrangements for financial assurance. Mot. at 3. The People further argue that Mr. Robert Pruim is the president and only other shareholder of CLC. Mr. Robert Pruim's deposition testimony that the brothers share responsibilities of running the company, state the People, demonstrates that Mr. Robert Pruim can adequately address the issue of remedy at hearing. *Id.* at 4. For these reasons, state the People, Mr. Edward Pruim is not a necessary witness for Morris. The People further claim that Morris' identification of Edward Pruim as a necessary witness is "a blatant attempt to delay final resolution of this case." *Id.* at 6.

The People describe the Community Landfill of Morris as in a deteriorating condition. Mot. at 6. The People state that a recently filed case in circuit court alleges that the respondents CLC and Morris failed to install and operate a compliant landfill gas collection and control system. *Id.* In the circuit court case, the People allege over thirty violations of the Act, Clean Air Act Permit Program permit, and regulations contained in 35 Ill. Adm. Code, Part 220, Subpart B. *Id.*

According to the People, Morris can claim no prejudice should the Board decide to sever this action. Mot. at 7. The People claim that Morris cannot claim that it requires Edward Pruim's assistance to prepare for hearing because Morris' and CLCs' interests are adverse. The People reason that pursuant to applicable regulations, both owners and operators are individually responsible for maintaining financial assurance. *Id.* Nor, argue the People, can Morris claim that Mr. Pruim's testimony is necessary for a fair hearing on remedy for its

own violations. Mr. Pruim's actions, contend the People, have no relevance to Morris' failure to secure compliance financial assurance. *Id.*

The People claim that "the State will clearly be prejudiced by failure to either order both Respondents to hearing or to sever this case." Mot. at 7. The People explain that a Board order requiring Morris to immediately post financial assurance for closure and long term care of the landfill is necessary to effectively enforce the Act and Board regulations. *Id.* at 8.

MORRIS' RESPONSE

Morris opposes both holding a hearing without Mr. Edward Pruim and severing the respondents' claims, and asks the Board to deny the People's motion. Morris contends the arguments the People set forth in their motion have been previously addressed and resolved. Morris Resp. at 2.

First, Morris states that the claims cannot be severed because "[t]he determination of whether both or one Respondent shall be liable for any remedy crafted by the Board is yet to be determined." Morris Resp. at 2. Morris further argues that both parties need to be present at the hearing "in order to determine whether or not each Respondent is held liable for a remedy." *Id.*

Second, Morris contends that Mr. Edward Pruim's attendance at hearing is necessary. Morris restates its fear that if only one corporate representative, Mr. Robert Pruim, is available at hearing, he may defer to knowledge possessed only by the other corporate representative, Mr. Edward Pruim. Morris Resp. at 4. Further, states Morris, the board has already found that it is essential for Mr. Pruim to be present at hearing. *Id.*

Morris contends that it is an "ancillary" respondent in this matter, essentially "caught in a 'crossfire' between the Complainant, State of Illinois, and the Respondent, Community Landfill Co., Inc." Morris maintains that it cannot receive a fair hearing if it is not given the opportunity to examine the party that has been determined to have conducted day-to-day operations. To sever the claims and direct Morris to hearing without the availability of Mr. Pruim, argues Morris, would deprive Morris the opportunity to present all relevant evidence and testimony at hearing. For all of these reasons, Morris requests that the Board deny the People's motion to set the matter for hearing or, alternatively, sever the respondents' claims.

COMMUNITY LANDFILL'S RESPONSE

CLC also opposes the People's motion. CLC states the motion is "inappropriate and premature, and granting it would result in prejudice to the defendants." CLC Resp. at 1. CLC contends that the hearing officer has set a date of April 13, 2007, by which CLC must file a report from Mr. Pruim's physician. CLC asserts there is no reason to alter this schedule, especially since the Board has recognized that Mr. Edward Pruim's participation at hearing is imperative. *Id.* at 3.

CLC further argues that if the claims are severed, both Morris, CLC and their witnesses would have to appear at hearing twice, resulting in a waste of resources for the parties, the People, and the Board. CLC Resp. at 3. In the interest of administrative economy, states CLC, the Board should conduct the parties' hearings together. For all of these reasons, contends CLC, the Board should deny the People's motion to set a hearing date or, alternatively, to sever claims.

BOARD ANALYSIS

The People urge the Board to set a hearing date, or sever the respondents' claims so that it may resolve matters concerning Morris. The Board's procedural rules provide:

Upon motion of any party or on the Board's own motion, in the interest of convenient, expeditious, and complete determination of claims, and where no material prejudice will be caused, the Board may sever claims involving any number of parties. 35 Ill. Adm. Code 101.408.

As it now stands, severing the respondents' claims would not result in a convenient, expeditious and complete determination of claims. As argued by CLC, conducting two hearings on the same violations concerning the same parties and same facility would waste the resources of the Board and all of the parties involved. Further, Morris has stated its objection to proceeding to hearing without Mr. Edward Pruim in attendance.

The Board also declines to schedule a hearing at this time. The Board has directed CLC to provide an updated report from Mr. Edward Pruim's physician by April 13, 2007. At that time the parties should be prepared to set a hearing date. If by then, seven months post-surgery, Mr. Edward Pruim is still physically unable to attend hearing, the Board will allow the People to renew their motion to set a hearing date, or alternatively, to sever claims.

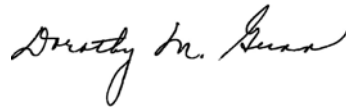
In support of the People's motion, the People state that the landfill is deteriorating. The People attached an affidavit of an Illinois Environmental Protection Agency inspector describing actual harm to the environment to the February 9, 2007 motion. According to the affidavit, recent inspections reveal direct venting of landfill gas into the atmosphere, and that many of the gas extraction wells at the landfill are nonfunctional. Based on the alleged and undisputed existence of deteriorating conditions, upon receipt of a renewed motion from the People the Board will consider directing the hearing officer to schedule a hearing, with or without the availability of Mr. Edward Pruim, as expeditiously as possible after the April 13, 2007 status conference. At this time, however, the Board denies the People's motion.

CONCLUSION

For the reasons set forth above, the Board denies the People's motion to set a hearing date or, alternatively, sever the respondents' claims. The parties should be prepared to set a hearing date at the next status conference, currently scheduled for April 13, 2007.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 15, 2007, by a vote of 4-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board