

ILLINOIS POLLUTION CONTROL BOARD
November 24, 2008

FOX MORaine, L.L.C.,)	
)	
Petitioner,)	
)	
v.)	
)	PCB 07-146
UNITED CITY OF YORKVILLE, CITY)	(Pollution Control Facility
COUNCIL,)	Siting Appeal)
)	
Respondent.)	
)	
)	
KENDALL COUNTY,)	
)	
Intervenor.)	

HEARING OFFICER ORDER

A telephonic status conference in the above-captioned matter was held on November 13, 2008. The petitioner represented that Donald Hamman, a material principal and owner of Fox Moraine, LLC, was unexpectedly scheduled for quadruple bypass surgery for November 21, 2008. The petitioner orally made a motion to cancel the hearing in this matter scheduled for December 16, 17 and 18, 2008. A briefing schedule was established regarding petitioner's oral motion to cancel the hearing. The written motion to cancel and respondent's response have been timely filed.

Motion To Cancel The Hearing

On November 13, 2008, petitioner filed its written motion to cancel the hearing scheduled for December 16, 17 and 18, 2008. As represented orally at the earlier telephonic status conference, Donald Hamman is the material principal and owner of Fox Moraine, LLC. Petitioner represents that Hamman's physicians advised that Hamman must avoid all stressful activities for at least sixty days following the open-heart surgery. Mot. at 1. Petitioner further represents that Hamman's presence and participation in the hearing is crucial and that petitioner will suffer material prejudice if the hearing is not canceled. Id.

In the motion, petitioner states that if the hearing is canceled, it will file an additional waiver of the statutory decision deadline, to and including August 6, 2008. Mot. at 2.

On November 20, 2008, the petitioner filed a letter from Hamman's primary care physician confirming Hamman's surgery on November 21, 2008, and requesting that Hamman refrain from any stress for the next 90 days to facilitate his recovery.

Response

On November 20, 2008, the respondent filed its response to petitioner's motion to cancel the scheduled hearing. Respondent represents that based on the physician's letter confirming the status of Hamman's surgery and health, it has no objections to canceling the hearing. Respondent does request that upon Hamman's post-operative rest, that an aggressive schedule for discovery completion and a hearing be established. Resp. at 1-2.

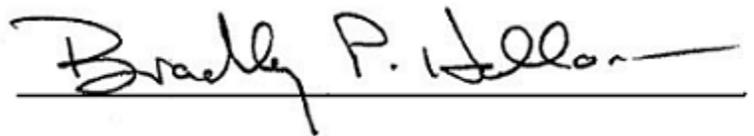
Ruling

The hearing scheduled for December 16, 17 and 18, 2008, in the above-captioned matter is hereby cancelled. The respondent has no objection and the petitioner demonstrated that its request to cancel the hearing is not the result of its lack of due diligence. *See* Section 101.510 of the Board's procedural rules.

As represented by the petitioner in its motion, it is directed to file a waiver of the statutory decision deadline to and including August 6, 2009.

The parties or their legal representatives are directed to appear at a telephonic status conference with the hearing officer on January 22, 2009, at 2:00 p.m. The telephonic conference must be initiated by the petitioner, but each party is nonetheless responsible for its own appearance. The petitioner represented that the conference call-in number will be the same as on November 13, 2008. At the conference the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line.

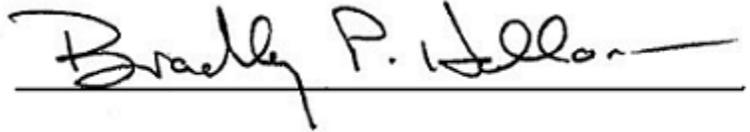
Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order was mailed, first class, on November 24, 2008 to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on November 24, 2008:

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601

A handwritten signature in black ink that reads "Bradley P. Halloran" with a horizontal line underneath it.

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