

ILLINOIS POLLUTION CONTROL BOARD

January 14, 2010

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 07-53
)	(Enforcement - Water)
MOLINE PLACE DEVELOPMENT, L.L.C.,)	
)	
Respondent.)	
)	
)	

HEARING OFFICER ORDER

On January 3, 2007, complainant filed the initial complaint in this matter, and for nearly three years, respondent did not participate in these proceedings. An appearance filed on December 22, 2009 by respondent's new attorney, Ms. Jennifer Martin, included an affidavit from respondent's principal, Mr. Michael Shamsie. According to Mr. Shamsie, respondent had been represented by another attorney, Ms. Rynell Beckendorf, in a related circuit court matter until Ms. Beckendorf withdrew on November 20, 2009. Although respondent's lack of participation was documented in hearing officer orders, Mr. Shamsie's affidavit implies that he believed that Ms. Beckendorf was representing respondent in the action before the Board.

On October 30, 2009, complainant filed a request for admission of fact as a precursor to filing a motion for summary judgment. Respondent's response to the request was due by November 30, 2009. On December 22, 2009, Ms. Martin filed a motion for extension of time until January 28, 2010 to respond to complainant's request to admit facts. Complainant objected on grounds that respondent did not have legal representation from January 2007 to December 2009; respondent failed to answer the complaint; and respondent failed to respond to the requests to admit in a timely manner.

Requests to admit facts, followed by motions for summary judgment, may be necessary when dealing with respondents who refuse to appear before the Board. Certainly, respondent has not acted diligently in the past, but this is expected to change now that Ms. Martin has filed her appearance.

The hearing officer grants respondent's request for an extension of time. Complainant has not yet filed its motion for summary judgment, and will not be prejudiced by the delay. In order to prevail on a motion for summary judgment, there must be no issues of material fact. If the hearing officer denies respondent's request, respondent will simply raise any facts in its response to complainant's motion for summary judgment. Since any questions of fact will be raised eventually, it is more time efficient to allow them now so that complainant can decide how

it wants to proceed in this case. Accordingly, respondent's due date for the response to the request to admit is extended to January 28, 2010.

On January 14, 2010, the parties participated in a telephone status conference with the hearing officer. The asbestos clean-up should be completed within the next month, after which the site is expected to be sold to another developer. When the site is sold, this enforcement docket will pertain only to a penalty demand. The parties are planning to meet on February 1, 2010.

The parties are directed to participate in a telephone status conference with the hearing officer at 9:30 a.m. on March 16, 2010. The status conference shall be initiated by the complainant.

IT IS SO ORDERED.



Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
webbc@ipcb.state.il.us

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on January 14, 2010, 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 January 14, 2010:

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



Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
217/524-8509
webbc@ipcb.state.il.us

PCB 2007-053
Raymond Callery
Office of the Attorney General
Environmental Bureau
500 South Second Street
Springfield, IL 62706

PCB 2007-053
c/o Michael R. Shamsie
Moline Place Development, L.L.C.
455 Avenue of the Cities
East Moline, IL 61244

PCB 2007-053
c/o Michael R. Shamsie
Crosstowne Place Development, L.L.C.
455 Avenue of the Cities
East Moline, IL 61244

PCB 2007-053
Jennifer M. Martin
Hodge Dwyer & Drive
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705-5776