

ILLINOIS POLLUTION CONTROL BOARD
April 18, 2011

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STATE OF ILLINOIS
Pollution Control Board

KCBX TERMINAL COMPANY,)
)
Petitioner,)
)
v.) PCB 11-43
) (Permit Appeal - Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

HEARING OFFICER ORDER

On April 5, 2011, all parties participated in a telephonic status conference with the hearing officer. After discussing the filing timeline for petitioner's response to respondent's motion to quash subpoena, the telephonic conference was continued to April 7, 2011.

On April 7, 2011, the parties again participated in a telephonic status conference with the hearing officer. Discussions centered on respondent's motion to strike requests for admission, filed April 5, 2011, respondent's motion to quash subpoena, filed March 25, 2011, and respondent's motion for additional time to respond to discovery, filed March 15, 2011. Petitioner has timely filed its respective responses. The April 7, 2011, telephonic status conference was then continued to April 14, 2011, where the above-captioned case was discussed along with a related case.¹

Respondent's Motion For Additional Time To Respond To Discovery

On March 15, 2011, the respondent filed a motion for additional time to respond to discovery. Respondent states in its motion that it needs an additional 30 days, or May 6, 2011, to respond to petitioner's requests to admit, interrogatories and document requests because it will not be able to assemble and file the administrative record in this matter until two days before the responses are due. *Id.* at 2. Respondent's responses were due April 6, 2011. Respondent states that the additional time is needed because petitioner's discovery requests are extensive and burdensome. *Id.*

On March 22, 2011, petitioner filed its response. In its response, the petitioner asserts that the written discovery requests are "relevant..necessary...straightforward and seek information easily attainable by the Illinois EPA". *Id.* at 3-4.

¹ On March 29, 2011, the respondent filed a motion to consolidate KCBX v. IEPA, PCB 10-110, with KCBX v. IEPA, PCB 11-43. The motion to consolidate as well as petitioner's response is under consideration by the Board.

Over objection, respondent's motion for additional time to respond to discovery was granted to the extent that respondent's responses to petitioner's request to admit, interrogatories and document requests are now due to be filed on or before April 19, 2011.²

Respondent's Motion To Strike Requests For Admission

On April 5, 2011, the respondent filed a motion to strike requests for admission. Respondent argues that petitioner's requests to admit extremely exceed the maximum amount allowed by the recently amended Illinois Supreme Court Rule 216. Illinois Supreme Court Rule 216 allows a maximum of 30 requests "unless a higher number is agreed to by the parties..." *Id.* at 2. The respondent correctly notes that the Board's procedural rules do not limit the number of requests that can be served on a party, but that it can look to the Supreme Court Rules for guidance. *Id.* Finally, the respondent cites to Section 101.616(d) of the Board's procedural rules and asks that the hearing officer find an abuse of the discovery process and limit the number of requests to admit. *Id.* at 2-3.

On April 8, 2011, the petitioner filed its response in opposition to respondent's motion to strike requests for admission. The petitioner notes that Section 101.618 of the Board's procedural rules addressing requests to admit is silent on the number of requests to admit one may propound. *Id.* at 3. Additionally, the petitioner states that the requests to admit are not unreasonable or harassing and that the number of requests are for the purpose of clarifying and narrowing the issues at hearing. *Id.* at 4-5.

The respondents' motion was denied. The respondent has been given a reasonable amount of time to answer the written discovery. Further, the requests may assist in clarifying and narrowing issues at hearing.

Respondent's Motion To Quash Subpoena

On March 25, 2011, the respondent filed a motion to quash subpoena filed by the petitioner relating to witness George Kennedy. Mr. Kennedy is a former Illinois Environmental Protection Agency engineer named by petitioner as a witness in this case. In particular, the respondent requests the hearing officer quash the discovery deposition of Mr. Kennedy scheduled for April 14, 2011, because the petitioner has subpoenaed Mr. Kennedy for an evidentiary deposition later that same day. *Id.* The respondent also requests that the evidence deposition be limited to 3 hours. *Id.* at 8.

The respondent also notes that Mr. Kennedy will be out of the country at the time of the

² It is noted that petitioner, in its response to respondent's motion to consolidate case PCB 110-10 with case PCB 11-43, had no objection to respondent's motion to consolidate filed in KCBX v. IEPA, PCB 10-110, provided that the consolidation does not result in delay to the discovery scheduled agreed to in this case. The ruling today, granting an extension of time to respond to discovery, is not in any way the result of the possible consolidation of PCB 11-43 and PCB 10-110.

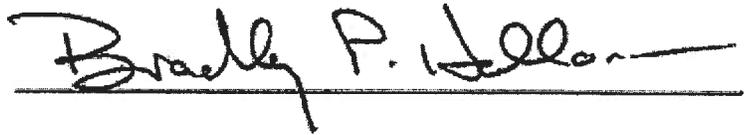
hearing scheduled for June 1, 2011. The respondent argues that taking a discovery deposition and an evidentiary deposition on the same day is "nothing but harassment". *Id.* at 3.

On April 5, 2011, the petitioner filed its response in opposition to respondent's motion to quash subpoena. The petitioner states, *inter alia*, that the Board's rules nor the Illinois Supreme Court Rules prohibit both discovery depositions and evidentiary depositions taken on the same day, and that there exists no time limit for evidentiary depositions. The petitioner states that it needs to determine whether Mr. Kennedy has any relevant testimony and utilize the evidence deposition because Mr. Kennedy will be out of the country on the date of the scheduled hearing. *Id.* at 6.

The respondent's motion to quash is denied. There exists no rules, either in the Board's rules or the Illinois Supreme Court Rules, that prohibit the number and type of depositions per day, nor do any of the rules place a time limit on evidence depositions.

The parties or their legal representatives are directed to appear at a telephonic status conference with the hearing officer on May 12, 2011 at 10:00 a.m. The telephonic status conference must be initiated by the complainant, but each party is nonetheless responsible for its own appearance. 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 that reads "Bradley P. Halloran". The signature is written in a cursive style and is positioned above a solid horizontal line.

Bradley P. Halloran
Hearing Officer
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