

ILLINOIS POLLUTION CONTROL BOARD
September 4, 2003

GINA PATTERMANN,)
)
Complainant,)
)
v.)
) PCB 99-187
BOUGHTON TRUCKING AND) (Citizens Enforcement - Noise, Air)
MATERIALS, INC.,)
)
Respondent.)

ORDER OF THE BOARD (by T.E. Johnson):

On August 21, 2003, complainant Ms. Gina Patterman filed a motion for clarification of the Board's August 7, 2003 order in this matter (Mot.). The respondents filed a response on August 29, 2003 (Resp.).

On August 7, 2003, the Board granted Boughton's motion for discovery sanctions in part and denied the motion in part. The Board barred Mr. Zak from testifying at hearing regarding Boughton's noncompliance with Illinois Environmental Protection Agency (Agency) regulations and possible modifications to Boughton's facility. However, the Board did not bar any other witnesses, pleadings, or documents pertaining to the subject matter of Mr. Zak's proposed testimony, nor did the Board award Boughton attorney fees.

Ms. Patterman filed this citizens' enforcement complaint against Boughton on June 17, 1999, alleging noise and air pollution violations. The Boughton facility is a stone quarry that produces crushed stone, located at 11746 South Naperville Plainfield Road in Plainfield, Will County.

MOTION FOR CLARIFICATION

Ms. Patterman asks the Board to clarify: (1) whether the Board will allow Ms. Patterman to choose a new witness to testify regarding Boughton's violation of Agency regulations and possible modifications to Boughton's facility; and (2) whether the Board will extend the deposition cut-off date to allow such substitute testimony. Mot. at 2.

BOUGHTON'S RESPONSE

In response, Boughton argues the Board's August 7, 2003 order clearly bars Ms. Zak's testimony and affirms that the discovery period is closed. Resp. at 1. Boughton reiterates that it has been seriously prejudiced by Ms. Patterman's ongoing pattern of negligence and the Board should not allow Ms. Patterman to further abuse the discovery process by reopening discovery and allowing the parties to depose additional witnesses. Resp. at 3.

DISCUSSION

In the Board's August 7, 2003 order, the Board barred Mr. Zak from testifying at hearing, but denied Boughton's motion to bar any other witnesses, pleadings, or documents pertaining to the subject matter of Mr. Zak's proposed testimony. The Board also noted in the Board's August 7, 2003 order that the all depositions had to be completed by May 2, 2003, and all dispositive motions filed on or before May 30, 2003. The Board will not reopen discovery.

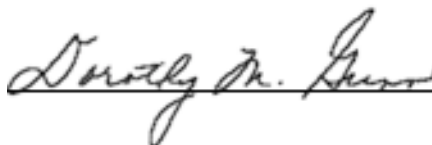
Consequently, the August 7, 2003 order effectually prevents Ms. Patterman from designating any new witnesses at this late date. Nothing in the Board's August 7, 2003 order or any hearing officer order bars Ms. Patterman herself from testifying at hearing.

CONCLUSION

Ms. Patterman may not designate any new witnesses at this late date. To that end, the Board will not extend the deposition cut-off date previously agreed to by the parties and Hearing Officer Halloran.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 4, 2003, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board