

ILLINOIS POLLUTION CONTROL BOARD

August 5, 2004

PEOPLE OF THE STATE OF ILLINOIS)	
<i>ex rel.</i> GARY W. PACK, MCHENRY)	
COUNTY STATE'S ATTORNEY,)	
)	
Complainant,)	
)	
v.)	PCB 01-43
)	(Enforcement – RCRA)
)	
MICHAEL STRINGINI,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

This matter is before the Board on a June 23, 2004 motion for an interlocutory appeal of a June 21, 2004 hearing officer filed by the People of the State of Illinois, through Gary Pack, McHenry County State's Attorney (People).

The case concerns a facility leased by Stringini from approximately 1980 to 1984 to allegedly reclaim metals from foundry sand. On October 16, 2003, the Board issued an interim order that granted the People's motion for summary judgment as to counts I, II, III, IV, VI, VIII, X and XI of the complaint; and granted Stringini's motion for summary judgment regarding count IX. The Board also found a genuine issue of fact exists as to allegations in count V and VII. On December 4, 2003, the Board issued an order that granted the People's motion to dismiss counts V and VII and directed the parties to proceed to hearing and present Board with sufficient evidence to allow Board to assess civil penalty on counts I, II, III, IV, VI, VIII, and XI of the complaint.

A hearing was held on March 23, 2004. Hearing Officer Bradley Halloran issued a hearing report on April 6, 2004 that, *inter alia*, set a briefing schedule requiring the People's post-hearing brief be filed before May 3, 2004; Stringini's post-hearing brief be filed before June 2, 2004; and the People's reply be filed before June 17, 2004.

The People timely filed their brief on April 14, 2004. On June 21, 2004, the hearing officer granted Stringini's motion for extension of time until June 29, 2004, to file his brief; and gave the People until July 16, 2004, to file a reply.

On June 23, 2004, the People filed the instant motion. Stringini filed his brief (a letter he characterized as a response to the post-hearing brief) on June 29, 2004, but did not specifically respond to the People's motion.

In its motion, the People assert that the hearing officer allowed Stringini to file its motion to extend time by facsimile through an *ex parte* communication. The People contend that the hearing officer did not indicate how he authorized Stringini to file via facsimile, and it can therefore only be concluded that the authorization came in an *ex parte* communication with Stringini. The People further assert that extensions are to be granted on only good cause and Stringini's motion to extend contains no such basis. The People assert that Board Members and employees are prohibited by the Board's regulations from engaging in *ex parte* communications designed to influence a party's action.

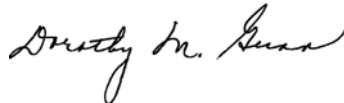
Pursuant to 35 Ill. Adm. Code 101.518, the Board may consider interlocutory appeals from a hearing officer order. In this instance, the Board will accept the motion. Initially, the Board will consider the implication that the hearing officer improperly engaged in *ex parte* communications with Stringini. *Ex parte* communications are defined in the Board's regulations as a communication between a person who is not a Board member or employee and a Board member or employee that reflects on the substance of a pending Board proceeding that takes place outside the record of the proceeding. 35 Ill. Adm. Code 101.202. Communications regarding matters of procedure and practice are specifically exempted from the definition. *Id.*

The Board finds that the communications between Hearing Officer Halloran and Stringini were proper. The communications were procedural in nature and did not reflect on the substance of the proceeding. Accordingly, Hearing Officer Halloran did not violate the prohibitions contained in 35 Ill. Adm. Code 101.114.

In addressing the motion for extension itself, the Board affirms Hearing Officer Halloran's decision. The hearing officer is familiar with the procedural history of the case, and in his discretion granted the motion for extension of time. The Board finds that no material prejudice resulted from this action, and Stringini's June 29, 2004 response is accepted. The People are hereby given until August 19, 2004, to file any reply to the response.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 5, 2004, by a vote of 4-0.

A handwritten signature in cursive script, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk