

ILLINOIS POLLUTION CONTROL BOARD

June 21, 2007

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 03-191
)	(Enforcement – Land)
COMMUNITY LANDFILL COMPANY,)	
INC., an Illinois corporation, and the CITY OF)	
MORRIS, an Illinois municipal corporation,)	
)	
Respondents.)	

ORDER OF THE BOARD (by N.J. Melas):

On May 29, 2007, both the City of Morris (Morris) and the Community Landfill Company, Inc. (CLC), filed motions for reconsideration of the Board's May 17, 2007 order. The Board's May 17, 2007 order granted a motion by the Office of the Attorney General, on behalf of the People of the State of Illinois (People), to set a hearing date or, alternatively, to sever the respondents' claims. For the reasons set forth below, the Board affirms the May 17, 2007 order granting the People's motion to set a hearing date and directs the hearing officer to proceed expeditiously to hearing with both respondents.

PROCEDURAL BACKGROUND

On May 17, 2007, the Board granted the People's motion to set a date for a hearing on the remedy and directed the hearing officer, together with the parties, to set a hearing date in this matter.

On May 29, 2007, both Morris (Morris Mot.) and CLC (CLC Mot.) filed motions to reconsider the Board's May 17, 2007 order. The People responded on May 30 (Resp. to Morris) and 31, 2007 (Resp. to CLC), respectively. On June 18, 2007, Morris requested leave to file a reply, accompanied by the reply (Reply), alleging the People's "[r]esponse contains several misleading statements concerning the environmental condition of the facility at issue." Reply at 1. The Board grants Morris' motion for leave and accepts the reply brief.

**MORRIS' MOTION FOR RECONSIDERATION
OF THE BOARD'S MAY 17, 2007 ORDER**

Morris moves the Board for reconsideration of the May 17, 2007 order to consider evidence not before the Board at the time it issued the May 17, 2007 order. Morris Mot. at 2. Specifically, Morris states that contrary to the People's "bald, unsubstantiated accusations that have been previously rejected by both this Board and, more recently, the Circuit Court of

Grundy County,” the Morris Community health or the environment. *Id.*

Landfill poses no imminent danger to human

Morris states that Mr. Devin Moose, an engineer with Shaw Environmental, states there is no imminent threat to human health or the environment and that upgrades at the site are underway. Morris Mot. at 2. Because the Board did not consider this evidence concerning the lack of environmental threat before issuing the May 17, 2007 order, Morris requests that the Board reconsider its order and stay the hearing “pending availability of a critical fact witness without whom the City cannot receive a hearing that complies with the requirements of fundamental fairness.” *Id.* at 3.

CLC’S MOTION FOR RECONSIDERATION OF THE BOARD’S MAY 17, 2007 ORDER

CLC also argues that the motion to set a hearing date should have been denied because the current condition of the landfill poses no imminent threat to the environment. CLC states that it will suffer prejudice if the Board schedules a hearing and Morris calls Mr. Edward Pruim as a witness. CLC Mot. at 2. CLC concludes that without imminent harm present, the Board should reconsider its order and reverse the decision to schedule a hearing at the present time. *Id.*

THE PEOPLE’S RESPONSES

The People ask the Board to affirm its ruling in the May 17, 2007 order and reject any further attempts by the respondents to delay resolution of this matter. Resp. to Morris at 2. The People contend that the present situation clearly calls for a final hearing in this matter. First, the respondents have been found in violation, but neither respondent has provided closure or post closure financial assurance. Resp. to CLC at 2. Second, closure of parcel B is more than 10 years overdue, yet neither respondent has initiated closure. *Id.* Third, methane gas exceedences have been discovered at the landfill. *Id.* Fourth, Morris is denying legal responsibility for the landfill in a pending Grundy County Circuit Court matter, and fifth, the State of Illinois continues to spend legal resources to correct landfill maintenance issues. *Id.*

The People assert that even if the Board finds no imminent threat to the environment, such a threat is not a requirement for proceeding to a final hearing in an enforcement matter. Resp. to CLC at 2. For all of these reasons, argue the People, hearing on the sole issue of remedy against both respondents must proceed at the earliest possible date. *Id.*

MORRIS’ REPLY

In its reply, Morris disputes the People’s statement that the landfill gas condition at the facility is deteriorating. Morris attached monitoring and sampling results to its reply that it states show the landfill is actually improving as far as methane gas is concerned. Reply at 2. Morris reiterates that based on this information, there is certainly no need for an expedited hearing on this matter. *Id.*

BOARD DISCUSSION

In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law, to conclude that the Board's decision was in error. 35 Ill. Adm. Code 101.902. In Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (Mar. 11, 1993), the Board noted that “the intended purpose of a motion for reconsideration is to bring to the court’s attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law,” citing Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992). A motion to reconsider may specify “facts in the record which were overlooked.” Wei Enterprises v. IEPA, PCB 04-23, slip op. at 5 (Feb. 19, 2004). “Reconsideration is not warranted unless the newly discovered evidence is of such conclusive or decisive character so as to make it probable that a different judgment would be reached.” Patrick Media Group, Inc. v. City of Chicago, 255 Ill. App. 3d 1, 8, 626 N.E.2d 1066, 1071 (1st Dist. 1993).

Because the motions filed by respondents present new evidence not considered by the Board in issuing the May 17, 2007 order, the Board grants the respondents’ motions. However, as discussed below, the Board affirms the May 17, 2007 order and directs the hearing officer to proceed to hearing on remedy.

The motions filed by both respondents focus exclusively on the argument that because there is no imminent threat of harm to human health or the environment at the Morris Community Landfill, a hearing is not necessary at this time. The Board noted in the May 17, 2007 order that it was “persuaded by several of the People’s arguments,” including both the alleged deteriorating conditions as well as the nonexistence of compliant closure or post-closure financial assurance. Again, the Board is persuaded by the People’s arguments that it is necessary to proceed to hearing on remedy at this time for more reasons than the condition of the landfill. Most importantly, resolution is imperative because the respondents have not yet initiated closure nor provided compliant closure or post-closure financial assurance. While also a consideration in resolving this matter in a timely fashion, any imminent threat of harm to human health or the environment is only one factor among many the Board may consider in fashioning a remedy in this case.

The Board also notes that again neither respondent supports their argument in favor of postponing hearing with any indication of when Mr. Edward Pruim may be available for hearing. This matter has been pending for more than 4 years, with the Board having found violations over a year ago. The Board again declines to further delay resolution of this matter and directs the parties to hearing.

CONCLUSION

For the reasons set forth above, the Board affirms the May 17, 2007 order granting the People’s motion to set a hearing date and directs the hearing officer to proceed to hearing with both respondents.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 21, 2007, by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board