

ILLINOIS POLLUTION CONTROL BOARD
September 6, 2012

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 04-16
)	(Enforcement - Air)
PACKAGING PERSONIFIED, INC.,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.A. Burke):

Two motions filed on August 27, 2012, by the complainant, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), are ruled upon today by the Board: a motion to extend the December 4, 2012 deadline for closing the record in this enforcement proceeding; and a motion to cancel the supplemental hearing scheduled for September 24 and 25, 2012. Both motions are opposed by the respondent, Packaging Personified, Inc. (Packaging), through a response filed on August 29, 2012. For the reasons below, the Board grants the People's motions and sets a new record-closing deadline of February 4, 2013.

Both the People's motion to extend the December 4, 2012 record-closing deadline and the People's motion to cancel the September 24 and 25, 2012 supplemental hearing are premised upon the time required to resolve a dispute over the adequacy of Packaging's responses to the People's discovery requests. The Board finds that the People have acted in a timely manner in filing these two motions and demonstrated that the relief sought by the motions is not a result of any lack of diligence on the part of the People.

The Board's order denying the People's motion to reconsider the Board's March 1, 2012 order was issued on June 7, 2012. The hearing officer's ensuing telephonic status conference with the parties, which concerned proposed discovery scheduling, was held on June 25, 2012. Three days later, the People issued written discovery to Packaging, which the company answered on July 30, 2012. The People considered Packaging's answers incomplete. The People later reviewed the documents made available by Packaging on August 23, 2012, at the company's Carol Stream facility. The People believed Packaging's document production to be incomplete. On August 27, 2012, four days after the document review and some four weeks before the scheduled supplemental hearing, the People filed the motion to cancel the hearing, along with the related motion to extend the record-closing deadline. Three days later, on August 30, 2012, the People filed a motion asking that the hearing officer compel Packaging to further respond to the People's discovery requests. In addition, the People's motion to cancel the hearing proposes to reschedule the hearing on November 14 and 15, 2012, or another date after the discovery dispute is resolved, and is supported by the affidavit of Assistant Attorney General Christopher Grant.

Packaging opposes the People's sought-after hearing cancellation and extension of the record-closing deadline but does not allege that the People have acted in an untimely fashion or without due diligence. Nor should the People's motions for cancellation and extension come as a surprise to Packaging, as the hearing officer's August 16, 2012 order noted the prospect that "the hearing dates may have to be revisited and/or rescheduled." People v. Packaging Personified, Inc., PCB 04-16, Hearing Officer Order at 1 (Aug. 16, 2012). Packaging's response in opposition to cancelling the hearing and extending the record-closing deadline acknowledges the discovery dispute described by the People's motions and argues the sufficiency of the company's discovery responses. It is presently unknown, of course, whether Packaging's responses to the People's discovery requests will be found inadequate. These matters will be addressed by the hearing officer in ruling upon the People's motion to compel.

The Board makes no comment here on the merits of the People's motion to compel. The Board must now, however, allow for time to consider and rule upon the motion to compel, as well as time to conduct additional discovery should the motion be granted. Pursuant to the hearing officer's July 3, 2012 order, discovery is to close today, September 6, 2012. *See Packaging*, PCB 04-16, Hearing Officer Order at 1 (July 3, 2012); *see also* 35 Ill. Adm. Code 101.616(c) (generally, "[a]ll discovery must be completed at least 10 days prior to the scheduled hearing"). The Board remains mindful that it set the original 180-day deadline for record closing "[g]iven the narrow scope of the supplemental penalty hearing and to avoid undue delay." Packaging, PCB 04-16, slip op. at 18 (Mar. 1, 2012). However, the Board cannot find today that the People's motion to compel, and any matters arising from the hearing officer's decision on the motion, will be finally resolved in time to hold the currently-scheduled supplemental hearing.

For these reasons, the Board grants the People's motion to cancel the supplemental hearing scheduled for September 24 and 25, 2012, and directs the hearing officer to expeditiously reschedule the supplemental hearing upon final disposition of the People's motion to compel. Under these circumstances, the Board also grants the People's motion to extend the date for closing the record and extends the deadline by 60 days as proposed by the People. Accordingly, this record will close no later than February 4, 2013, which is the first business day following the 60th day after December 4, 2012. The Board's September 8, 2011 order continues to be stayed pending final Board action.

IT IS SO ORDERED.

Board Members D. Glosser and C.K. Zalewski concurred.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 6, 2012, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board