ILLINOIS POLLUTION CONTROL BOARD January 10, 2013

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):

On December 18, 2012, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a motion to extend the February 4, 2013 deadline for closing the record in this enforcement proceeding. Packaging Personified, Inc. (Packaging) has not filed any response to the motion. For the reasons below, the Board grants the People's motion and sets a new record-closing deadline of April 5, 2013. The Board discusses the relevant procedural history of this case before turning to and ruling upon the People's motion.

The Board set the February 4, 2013 deadline for closing the record in an order of September 6, 2012, granting the People's prior motion for a 60-day extension of the recordclosing deadline. That previous motion for extension was granted based largely upon the fact that there was pending at the time a motion to compel filed by the People. *See People v.* <u>Packaging Personified, Inc.</u>, PCB 04-16, slip op. at 2 (Sept. 6, 2012) (also granting People's motion to cancel supplemental hearing on penalty scheduled for September 24 and 25, 2012). Additional filings regarding the discovery dispute were made after the Board's September 6, 2012 order, concluding with Packaging's October 25, 2012 response in opposition to the People's October 19, 2012 amended motion to compel.

The People's amended motion to compel was granted by hearing officer order of November 15, 2012: "the respondent is directed to produce complete federal tax returns, with all schedules and attachments for the years 1995 through 2004." <u>Packaging</u>, PCB 04-16, Hearing Officer Order at 2 (Nov. 15, 2012). A November 20, 2012 hearing officer order mentions the possibility of holding the supplemental hearing on penalty in early January 2013. *See Packaging*, PCB 04-16, Hearing Officer Order at 1 (Nov. 20, 2012). The latest hearing officer order in this case was issued on December 6, 2012. In that order, the hearing officer notes that "[d]ue to the parties' respective scheduling conflicts and discovery issues, the February 4, 2013 record close date set by the Board may be difficult to achieve" and that the People "anticipate[] filing a motion to extend the record close deadline." <u>Packaging</u>, PCB 04-16, Hearing Officer Order at 1 (Dec. 6, 2012).

The People's pending December 18, 2012 motion to extend the February 4, 2012 recordclosing deadline states that "the Parties are attempting to negotiate an agreement regarding nondisclosure of the tax returns, which have not yet been provided to [the People]." Motion at 1. The People add that one of the Assistant Attorneys General assigned to this case is getting married in January 2013. *Id.* The People assert that because of the on-going discovery dispute and the pending nuptials, it would be a "serious hardship" to hold the hearing and close the record by the current deadline. *Id.* at 1-2. The People ask for a 60-day extension of the record-closing deadline. *Id.* at 2.

The Board finds that, as chronicled above, the People have acted in a timely manner in filing this motion and demonstrated that the relief sought by the motion is not a result of any lack of diligence on the part of the People. Further, the People's motion should come as no surprise to Packaging, which did not respond to the motion and therefore waives any objection to the motion being granted. *See* 35 Ill. Adm. Code 101.500(d). Under these circumstances, the Board 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 April 5, 2013, which is the 60th day after February 4, 2013. The Board's September 8, 2011 order, which, among other things, imposed civil penalties (Packaging, PCB 04-16, slip op. at 43-44 (Sept. 8, 2011)), continues to be stayed pending final Board action.

The Board directs the hearing officer to expeditiously schedule the supplemental hearing consistent with the new record-closing deadline of April 5, 2013. The Board reminds the parties that the Board set the original 180-day deadline for record closing "[g]iven the narrow scope of the supplemental penalty hearing and to avoid undue delay" (<u>Packaging</u>, PCB 04-16, slip op. at 18 (Mar. 1, 2012)) and urges the parties to proceed expeditiously to hearing.

IT IS SO ORDERED.

Members Glosser and Zalewski Concurred

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 10, 2013, by a vote of 5-0.

In T. J

John Therriault, Assistant Clerk Illinois Pollution Control Board