

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 11-050
)	
The CITY OF MORRIS, an Illinois municipal)	
corporation, and COMMUNITY LANDFILL)	
COMPANY, INC., a dissolved Illinois)	
corporation,)	
)	
Respondents.)	

NOTICE OF MOTION

YOU ARE HEREBY NOTIFIED, that on the **1st** day of **April, 2020**, at **10:30 a.m.** or as soon thereafter as Counsel may be heard, we shall telephonically appear before Hearing Officer Halloran, and then and there present the following:

Present **Respondent City of Morris' Motion to Dismiss for Want of Prosecution**,
a copy attached,

At which time and place you may appear, if you so desire.

Dated: February 20, 2020 Respectfully submitted,

On behalf of CITY OF MORRIS

/s/ Richard S. Porter
One of Its Attorneys

Richard S. Porter
Charles F. Helsten
Hinshaw & Culbertson LLP
100 Park Avenue
P.O. Box 1389
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Scott M. Belt
Scott M. Belt & Associates, P.C.
105 E. Main Street
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AFFIDAVIT OF SERVICE

The undersigned certifies that on February 20, 2020, she served a copy of the foregoing Notice of Motion for Respondent City of Morris' Motion to Dismiss for Want of Prosecution upon the following:

Christopher Grant
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by e-mailing and by depositing a copy thereof, enclosed in an envelope, in the United States Mail at 100 Park Avenue, Rockford, Illinois 61101, proper postage prepaid, at or about the hour of 5:00 o'clock p.m., addressed as above.



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RESPONDENT CITY OF MORRIS' MOTION TO DISMISS FOR WANT OF PROSECUTION

Respondent, City of Morris, an Illinois municipal corporation, by and through its attorneys, Hinshaw & Culbertson, LLP, states as follows for its Motion to Dismiss for Want of Prosecution:

1. The People of the State of Illinois (hereinafter "Complainant") filed the present enforcement action against Respondents, City of Morris ("Morris") and Community Landfill Company, Inc ("CLC") on February 18, 2011. On April 8, 2011, this enforcement action was subsequently assigned to Hearing Officer Bradley P. Halloren.

2. On April 13, 2011, present Counsel entered his appearance, and that of attorneys Charles F. Helsten and Scott M. Belt, on behalf of Morris. On April 19, 2011, attorney Mark LaRose entered his appearance on behalf of CLC.

3. On June 1, 2011, both Morris and CLC filed their respective Answers to the Complainant's Complaint. Morris' Answer included four (4) Affirmative Defenses. On June 22, 2011, the Complainant filed its Reply to Morris' Affirmative Defenses. No subsequent pleadings have been filed in this matter.

4. Subsequent to the Complainant's June 22, 2011 filing of its Reply to Morris' Affirmative Defenses, a period in excess of 1-year elapsed during which the Complainant did

nothing to move this enforcement action forward. Specifically, via Orders dated August 30, 2011, October 20, 2011, December 13, 2011, January 26, 2012, April 12, 2012, and June 28, 2012, Complainant made assertions to the Hearing Officer that the Complainant intended to file a motion for summary judgment, it was securing affidavits for the same, and a proposed discovery schedule would be discussed. Despite these assertions, none of the stated actions occurred, i.e., no summary judgment motion was filed and no discovery schedule was entered and no discovery was issued.

5. Subsequently, at the September 13, 2012 status conference, the Complainant then stated that it was having internal discussions regarding consolidating the present action with other alleged violations and moving the matter to the Circuit Court. These assertions to the Hearing Officer continued at status conferences dated November 15, 2012, January 10, 2013, April 11, 2013, May 22, 2013, and June 27, 2013. Despite these assertions, this matter was never moved to the Circuit Court. Had the matter been moved to the Circuit Court, a dismissal order could have been entered.

6. During the July 24, 2013 status conference, more than 2-years after this enforcement action was initially filed, the Complainant finally stated that it intends to proceed with the present matter and that the parties would discuss discovery, including depositions, prior to the next status conference. The Complainant also reiterated its previous assertion that it intended to file a motion for summary judgment. These assertions continued during the August 22, 2013, September 26, 2013, and October 30, 2013 status conferences. Despite these assertions, the Complainant never issued any discovery requests upon Respondents and did nothing to move this matter forward on the merits.

7. The only discovery issued to date is that issued by Morris after the October 30, 2013 status conference. No discovery has ever been issued by the Complainant. Via status

conferences dated December 18, 2013, February 20, 2014, and May 5, 2014, the Complainant stated that “discovery is proceeding”, yet the only discovery issued to date is that issued by Morris, not the Complainant. Further, during the May 5, 2014 status conference, while the Complainant stated that it was reviewing a draft motion for summary judgment, no such motion has ever been filed in this matter.

8. Starting with the August 14, 2014 status conference, and continuing for the following 2-years, including through the August 14, 2016 status conference, the Complainant again stated that it was considering filing a complaint in the Circuit Court regarding similar alleged violations and would accordingly voluntarily dismiss the present enforcement action. Despite these assertions being made for 2-years, no such Circuit Court filing was ever made, and the present enforcement matter was never dismissed.

9. From September 29, 2016 through the status conference of September 25, 2019, the Complainant stated that settlement discussions were being had based upon Morris’ proposed Consent Order, yet no Consent Order was ever entered during that 3-year period.

10. Finally, during the status conference dated December 17, 2019, the Complainant again stated that it was awaiting approval of a complaint to be filed in the Circuit Court and then subsequently dismissing the present enforcement action. The matter was continued to a status conference dated April 1, 2020. No circuit court filing has been made and no dismissal order has been entered.

11. Despite this enforcement matter pending for almost 9 years, and the Complainant’s repeated assertions to the Hearing Officer, the Complainant has issued no discovery, requested no depositions, and filed no pleadings or motions, other than the Complainant’s original Complaint. Further, despite repeated assertions that the Complainant

intended to file a new matter in the Circuit Court, and then dismiss the present enforcement action, the Complainant has not done so.

12. Under Illinois law, a matter may be dismissed “for inexcusable delay and lack of diligence”, which is referred to as a dismissal for want of prosecution. *People v. Kruger*, 2015 IL App (4th) 131080. A plaintiff has an obligation to prosecute its case, and the Complainant in this matter has shown little desire to move this case forward on its merits or otherwise resolve this enforcement action, including allowing years to go by where the same assertions are made to the Hearing Officer regarding unfiled motions for summary judgment, unissued discovery, and unacted upon voluntary dismissals.

13. Accordingly, this matter should be dismissed for want of prosecution. *See Ryan v. Dixon*, 28 Ill.App.3d 463, 466 (2d Dist. 1975) (affirming dismissal for want of prosecution, and noting “[t]he inherent power of Illinois courts to dismiss a lawsuit for want of prosecution is well established and is based on the necessity of preventing undue delays in the disposition of pending cases and in avoiding congestion in the progress of trial calendars”). A determination of whether there has been a lack of prosecution which justifies a dismissal rests with the sound discretion of the trial court (in the case the Board), and that determination will not be disturbed unless it is shown to be an abuse of discretion. *Elward v. Mancuso Chevrolet, Inc.*, 122 Ill.App.2d 421, 426 (1st Dist. 1970). For the reasons stated herein, including the complete lack of moving this case forward on its merits, the total absence of the Complainant issuing any discovery, the unacted upon assertions of filing dispositive motions, and the repeated assertions that this matter will be voluntarily dismissed in favor of a Circuit Court action, this Board’s decision to enter a dismissal order for want of prosecution is well founded, not an abuse of discretion, and respectfully should be entered.

WHEREFORE, Respondent the City of Morris respectfully requests that this Board grant Respondent City of Morris' Motion to Dismiss for Want of Prosecution, enter an Order dismissing the Complainant's pending enforcement action, PCB 2011-050, with prejudice, plus enter such other and further relief in favor of Respondent as this Court deems just and proper.

Dated: February 20, 2020

Respectfully submitted,

On behalf of CITY OF MORRIS

/s/ Richard S. Porter
One of Its Attorneys

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