

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	PCB No. 11-50
The CITY OF MORRIS, an Illinois	)	
municipal corporation, and	)	(Enforcement-Land)
COMMUNITY LANDFILL COMPANY, INC.,	)	
a dissolved Illinois corporation,	)	
	)	
	)	
Respondents.	)	

**NOTICE OF FILING**

PLEASE TAKE NOTICE that on April 7, 2020, Complainant filed its RESPONSE TO MOTION FOR LEAVE TO REPLY, a copy of which is attached hereto and served upon you

PEOPLE OF THE STATE OF ILLINOIS  
KWAME RAOUL  
Attorney General of the  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos Litigation Division

ELIZABETH WALLACE, Chief  
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BY: /s/ Christopher Grant  
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**CERTIFICATE OF SERVICE**

I, Christopher Grant, an attorney, certify that I caused to be served a copy of Complainant's Response to Motion for Leave to Reply, and Notice of Filing, upon those persons listed below by electronic mail on April 7, 2020

/s/ Christopher Grant  
CHRISTOPHER GRANT

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**COMPLAINANT’S RESPONSE TO CITY OF MORRIS’S  
MOTION FOR LEAVE TO FILE REPLY**

Now Comes Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, and Responds in opposition to Respondent CITY OF MORRIS’S (“Morris”) Motion for Leave to File Reply in Support of Motion to Dismiss for Want of Prosecution (“Motion”). In support thereof, Complainant states, as follows:

**I. BACKGROUND**

On February 19, 2020, Morris filed its Motion to Dismiss this matter for want of prosecution. On March 8, 2020, Complainant filed its Response. On March 22, 2020, Morris filed its Motion and then filed the proposed Reply on March 31, 2020.

Morris has failed to properly plead or allege any “material prejudice” as required by the Board Procedural Rules, and Complainant now only responds in opposition to Morris’s Motion. However, if the Board, in its discretion, accepts the Reply filed by Morris on March 31, 2020, Complainant requests leave to file a sur-reply to Morris’s Reply to avoid material prejudice stemming from Morris’s misrepresentation of existing law.

## II. MORRIS FAILS TO PLEAD OR ALLEGE MATERIAL PREJUDICE

The Board does not allow the filing of a Reply brief except in extraordinary circumstances not demonstrated in Morris's Motion. Section 101.500(e) provides that "[t]he moving person will not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice." 35 Ill. Adm. Code 101.500(e). A specific showing of material prejudice is a basic and necessary requirement. *See, e.g., Land and Lake Company et al. v Village of Romeoville*, PCB 91-7, slip op. at 1 (March 14, 1991) (Motion did not contain allegations of prejudice and Board could not, on its own review, conclude that prejudice would result).<sup>1</sup> Further, where a party has "adequately stated its position in its motion," the Board will deny a motion for leave to reply. *People v. Peabody Coal Co.*, PCB 99-134, slip op. at 3 (Apr. 18, 2002). Also, when the Board concludes that a reply brief provides no assistance in making its determination, it will deny a motion for leave to reply. *Commonwealth Edison Co. v. Illinois Environmental Protection Agency*, PCB 04-215, slip op. at 2 (Apr. 26, 2007); *see also Midwest Generation EME v. Illinois Environmental Protection Agency*, PCB 04-216, slip op. at 3 (Aug. 18, 2005).

Morris's Motion fails to allege any prejudice whatsoever. Instead, Morris baldly states that the State's Response contains "numerous erroneous representations". (Motion at ¶ 3). However, none of the claimed "erroneous representations" relate in any way to Morris's original Motion to Dismiss for Want of Prosecution. *See People v. The Bigelow Group Inc.*, PCB 97-217, slip op. at 1 (January 8, 1998) (Reply denied where arguments raised did not pertain to the issues

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<sup>1</sup> The decisions in *Land and Lakes* and *The Bigelow Group* were based on the former iteration of Rule 101.500(e), which was 101.241(c). However, the requirement for 'material prejudice' is the same in both Rules.

before the Board); *see also People v. Chemetco, Inc.*, PCB 96-76, slip op. at 3 (March 21, 1996) (Reply denied where reply did not state further argument for consideration by the Board).

For instance, in its proposed Reply, Morris incorporates a “statute of limitation” argument concerning the 2013 Violation Notice, which is entirely irrelevant to the Motion to Dismiss for Want of Prosecution; additionally, when raised in a proper pleading, it was rejected in its entirety by the Board in *People v. Amsted Rail Company Inc.*, PCB 16-61, slip op. at 3-4 (March 3, 2016).<sup>2</sup> (Proposed Reply at p. 4). Similarly, Morris contends that it is not responsible for providing financial assurance for the landfill, citing to *City of Morris v. Cmty. Landfill Co.*, 2011 IL App (3d) 090847, even though i) Section 21.1 of the Environmental Protection Act was amended in response to that decision, and ii) the Complaint in this case does not allege financial assurance violations. (Proposed Reply at p. 3); 415 ILCS 5/21.1 amended by Public Act 97-887, § 5, effective August 2, 2012.. None of Morris’s contentions provides the Board with assistance in making its determination regarding Morris’s Motion to Dismiss for Want of Prosecution<sup>3</sup>.

Morris has failed to allege any material prejudice which warrants denial of its Motion. In addition, the Reply should be denied because the purported “erroneous representations” do not relate to Morris’s original Motion to Dismiss for Want of Prosecution. *Commonwealth Edison Co. v. Illinois Environmental Protection Agency*, PCB 04-215, slip op. at 2 (Apr. 26, 2007).

### **III. ALTERNATIVE REQUEST TO ALLOW SUR-REPLY**

If the Board decides to accept Morris’s proposed Reply for consideration, Complainant requests that it be given leave to file a Sur-Reply brief in response. “When ruling upon motions

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<sup>2</sup> Morris’s arguments and case citations directly mirror those rejected by the Board in denying the Respondent’s Motion to Dismiss in that case.

<sup>3</sup> Morris does however acknowledge that Illinois case law does not allow for dismissal with prejudice in a Motion to Dismiss for Want of Prosecution and withdraws its request. Morris Proposed Reply p.5

for leave to file sur-replies, the Board has considered the ‘prevent material prejudice’ standard from Section 101.500(e).” *City of Quincy, v. Illinois Environmental Protection Agency*, PCB 08-86. slip op. at 2 (June 17, 2010). Lack of a sur-response would materially prejudice Complainant, because in its proposed Reply, Morris makes several misrepresentations of law and existing Board precedent. As discussed above in Section II of this Response, Morris’s proposed Reply incorporates “statute of limitation” arguments, (Proposed Reply at p. 4), and unfounded legal arguments concerning amended Section 21.1 (Proposed Reply at p. 3),

Allowing a short period for Complainant to file a sur-reply will not significantly delay the Board’s consideration and will avoid material prejudice to Complainant. Accordingly, if the Board grants Morris’s Motion, Complainant asks that the Board grant Complainant 14 days to file a sur-reply.

WHEREFORE, Complainant respectfully requests that the Board issue an order:

- 1) Denying Respondent City of Morris’s Motion for leave to file Reply Brief in Support of Motion to Dismiss for Want of Prosecution;
- 2) Alternatively, granting Complainant leave to file a sur-reply within 14 days; and
- 3) Ordering such other relief as the Board deems appropriate and just.

Respectfully Submitted,

PEOPLE OF THE STATE OF ILLINOIS  
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Attorney General of the  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos Litigation Division

ELIZABETH WALLACE, Chief  
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