

In complainant's response (Comp. Resp.), complainant argues that movants' motion fails to sufficiently set forth grounds for intervention. Comp. Resp. at 1. Complainant also argues that the movants fail to state which issues in their pending lawsuit will be effected by collateral estoppel. Comp. Resp. at 2. Complainant also notes that the movants do not argue that complainant cannot adequately represent the movants' interests. Comp. Resp. at 3.

In respondent's response (Resp.), respondent asserts movants have failed to meet the procedural requirements for intervention. Resp. at 1. Respondent alleges movants have not adequately supported how their interests may be adversely affected or how they may be materially prejudiced if not allowed to intervene. Resp. at 2.

Respondent also argues that movants will only be collaterally estopped if they are allowed to intervene. Resp. at 3. Respondent asserts movants' interests are adequately represented in the circuit court proceedings. Additionally, respondent argues that the case before the Board will be delayed if movants are allowed to intervene. Resp. at 3.

In their reply, movants argue that they could be adversely affected if the Board finds that alleged fugitive dust emissions are not violation of the Act, because that is the basis for one of movants' claims in the civil lawsuit. Reply at 2. Movants further argue the attorney general, who represents the complainant the People of the State of Illinois, may not represent their specific interests, since they live so close to the facility. Reply at 2. Movants further argue that if they are called as witnesses in this case, they could be impeached with those statements in the civil lawsuit. Reply at 3.

DISCUSSION

To prevail on their motion, movants must satisfy Section 101.402(d) of the Board's procedural rules, which provide that:

Subject to subsection (b) of this Section, the Board may permit any person to intervene in any adjudicatory proceeding if:

- 1) The person has a conditional statutory right to intervene in the proceeding;
- 2) The person may be materially prejudiced absent intervention; or
- 3) The person is so situated that the person may be adversely affected by a final Board order. 35 Ill. Adm. Code 101.402(d).

Subsection 101.402(b) of the Board's procedural rules provides that,

“in determining whether to grant a motion to intervene, the Board will consider the timeliness of the motion and whether intervention will unduly delay or materially prejudice the proceeding or otherwise interfere with an orderly or efficient proceeding.” 35 Ill. Adm. Code 101.402(b).

As is reflected above, the Board's decision to grant or deny intervention is discretionary.

Movants do not contend that they have a statutory right to intervene. Movants do allege, however, that they may be materially prejudiced or adversely affected if they are not allowed to intervene. Motion at 2.

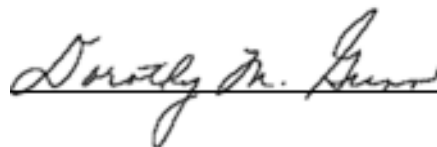
The Board is not persuaded that movants will be materially prejudiced if they are not allowed to intervene. The attorney general represents all of the people of the State of Illinois in this matter. Movants' concern that "it is foreseeable that what may appear to the attorney general to be a satisfactory resolution in this proceeding may not be satisfactory from the perspective of the movants" (Reply at 2), is unpersuasive. The Board believes the attorney general is fully cognizant of the people who live near this affected facility. Complainant, who is represented by the attorney general, even intends to call some of the movants as witnesses. Comp. Resp. at 3. The Board believes the attorney general will adequately represent the concerns of all of the People of the State of Illinois in this matter.

The Board further notes that if indeed the Board finds that respondent violated the Act, any order the Board issues will address these violations, and as is customary, order respondents to cease and desist from further violations of the Act. The Board does not believe such a finding would adversely affect movants. To the extent that the Board does not find respondent violated the Act, movants still will not be adversely affected in their lawsuit. The Illinois Supreme Court has identified three minimum threshold requirements for the application of collateral estoppel. The requirements are: (1) that the issue decided in the prior adjudication is identical with the one presented in the suit in question; (2) that there was a final judgment on the merits in the prior adjudication; and (3) that the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication. Talarico v. Dunlap, 177 Ill. 2d 185, 191; 685 N.E.2d 325, 328 (1997). Respondent, therefore, is correct when it argues that a final Board order will not have a collateral estoppel effect if movants are not parties to this proceeding. Resp. at 3. Since the third requirement under the Talarico is not satisfied, the Board will not address the first two requirements. To the extent that movants believe or allege that a finding by the Board will influence a judge or jury in the civil case (*see* Reply at 4), the Board declines to speculate over what influence its findings might have.

The motion to intervene is denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 6, 2001, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board