

ILLINOIS POLLUTION CONTROL BOARD
March 18, 2004

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 97-193
)	(Enforcement - Land)
COMMUNITY LANDFILL COMPANY,)	
INC,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On December 5, 2003, complainant filed a motion for leave to file a third amended complaint (Mot). On January 30, 2004, Community Landfill Company, Inc. (CLC) filed a response in opposition to the third amended complaint (Resp.). On February 25, 2004, the hearing officer entered an order stating that complainant would not be replying to CLC's response.

For the reasons discussed below the Board denies complainant's motion for leave to file the third amended complaint. The parties shall proceed to hearing, expeditiously, on the second amended complaint pursuant to the Board's prior orders for summary judgment. See People v. Community Landfill Company, Inc., PCB 97-193 (July 26, 2001) and People v. Community Landfill Company, Inc., PCB 97-193 (Aug. 23, 2001); People v. Community Landfill Company, Inc., PCB 97-193 (Oct. 3, 2002).

BACKGROUND

Respondent operates a permitted landfill located at 1501 Ashley Road in Morris, Grundy County. The approximate 119-acre site consists of two parcels, Parcel A and Parcel B. On May 1, 1997, complainant filed an initial six-count complaint alleging that respondent violated various sections of the Illinois Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2002)) and the Board's landfill regulations (35 Ill. Adm. Code 807). Specifically the complaint included allegations that the respondent allowed uncovered refuse, leachate seeps, and landscape waste at the landfill. On April 3, 1998, complainant filed an amended complaint adding counts VII through X. These counts relate to the depositing of excess waste in Parcel B at elevations above the permitted height. On November 24, 1999, a second amended complaint was filed by complainant adding counts XI through XXII. These additional counts include further allegations that the improper handling of asbestos and improper disposal of waste tires violated the Act and Board's regulations. Counts XI through XXII also include allegations that several permit provisions were violated.

On July 31, 2000, complainant filed a partial motion for summary judgment (concerning counts V and XII) and on October 30, 2000, respondent filed a cross-motion for summary judgment. On April 5, 2001, the Board entered an order granting complainant's motion for summary judgment on count V, but denying both motions for summary judgment on count XII and directing the parties to hearing on count XII and the issue of penalties for count V. People v. Community Landfill Company, Inc., PCB 97-193 (Apr. 5, 2001). On July 26, 2001, the Board granted a motion to reconsider its April 5, 2001 order. In the order of July 26, 2001, the Board denied complainant's motion for summary judgment on count XII and thus granted respondent's motion. See People v. Community Landfill Company, Inc., PCB 97-193 (July 26, 2001) and People v. Community Landfill Company, Inc., PCB 97-193 (Aug. 23, 2001).

On October 15, 2001, complainant filed another partial motion for summary judgment. On October 24, 2001, the hearing officer allowed respondent 90 days to conduct discovery and an additional 30 days to file a response to the motion for summary judgment. On March 1, 2002, respondent filed a cross-motion for partial summary judgment. On October 3, 2002, the Board granted the complainant's motion for summary judgment on counts III, IV, VII, VIII, IX, X, XIII, XIV, XVI, XXI, and in part on count XIX. People v. Community Landfill Company, Inc., PCB 97-193 (Oct. 3, 2002). The Board also granted respondent's motion for summary judgment on counts XI, XVIII, and XXII and dismissed counts XI, XVIII, and XXII. People v. Community Landfill Company, Inc., PCB 97-193 (Oct. 3, 2002). The Board further found that genuine issues of material fact existed on counts I, II, VI, XV, XVII, and XX; and therefore, denied both motions for summary judgment on those counts. People v. Community Landfill Company, Inc., PCB 97-193 (Oct. 3, 2002).

On December 5, 2003, complainant filed a motion for leave to file a third amended complaint (Mot). The third amended complaint would add two owners and managers of CLC, Mr. Edward Pruim and Mr. Robert Pruim as respondents. On January 30, 2004, CLC filed a response in opposition to the third amended complaint (Resp.). On February 25, 2004, the hearing officer entered an order stating that complainant would not be replying to CLC's response.

DISCUSSION

First, the Board will summarize complainant's arguments in support of the filing of a third amended complaint. Next, the Board will briefly recount the arguments of CLC in opposition to the motion. Finally, the Board will set forth the Board's analysis, findings, and decision.

Arguments

In the motion for leave to file a third amended complaint, the complainant states that since the Board's granting of summary judgment, the parties have engaged in additional discovery. Mot. at 1. Complainant deposed CLC's environmental consultant and corporate representative during that discovery period. Mot. at 1-2. Based on the information obtained, complainant seeks to amend the complaint. Mot. at 2. The third amended complaint consists of the same eighteen counts before the Board on liability, penalty or both. *Id.* The third amended

complaint adds two individuals as respondents. *Id.* The complaint alleges that the individuals were personally involved in the day-to-day operation of CLC and participated in the alleged violations. *Id.* Complainant argues that the amendment of the complaint will not delay the resolution of this matter. *Id.*

CLC argues that the Board should deny the motion for leave to file a third amended complaint because the third amended complaint is “untimely, prejudicial” and the complainant had several previous opportunities to amend the complaint and did not. Resp. at 4. CLC maintains that courts have held that the right to amend pleadings is not absolute. Resp. at 4, citing Hall v. Northwestern University Medical Clinics, 152 Ill. App. 3d 716, 722; 504 N.E.2d 781, 785 (1st Dist. 1987) and Trans World Airlines, Inc. v. Martin Automatic, Inc., 215 Ill. App. 3d 622; 575 N.E.2d 592 (2nd Dist. 1991). CLC asserts that the law in Illinois is well settled that courts look to four factors in determining whether or not to grant leave to file an amended complaint. Resp. at 4. The factors are:

1. Whether the proposed amendment would cure the defective pleading;
2. whether other parties would sustain prejudice or surprise by virtue of the proposed amendment;
3. whether the proposed amendment is timely; and
4. whether previous opportunities to amend the pleading could be identified. Resp. at 4, citing Universal Scrap Metal, Inc. v. J. Sandman and Sons, Inc., 337 Ill. App. 3d 501, 508; 786 N.E.2d 574, 581 (1st Dist. 2003) [cites omitted].

CLC argues that only three of the factors listed above apply to the proposed amended complaint. CLC notes that the complainant is not asserting the amended complaint cures a defective pleading. Resp. 4-5. CLC maintains however that the remaining three factors weigh heavily against the complainant. Resp. at 5. CLC argues the filing is untimely and complainant had previous opportunities to amend the pleading. Lastly to allow the third amended complaint would be “extremely prejudicial” to CLC and the proposed new respondents. Resp. at 5.

Board Analysis

The Board’s rules require a motion for leave to file an amended complaint, but the rules do not set forth specific criteria for rejecting an amended petition. The Code of Civil Procedure (735 ILCS 5/1-1 *et seq.* (2002)) (Code) does not expressly apply to procedures before the Board. However, if the Board’s rules are silent, the Board may look to the Code (735 ILCS 5/1-1 *et seq.* (2002)) for guidance. 35 Ill. Adm. Code 101.100(b). Therefore, the Board will look to the Code (735 ILCS 5/1-1 *et seq.* (2002)) and the cases interpreting the Code (735 ILCS 5/1-1 *et seq.* (2002)) for guidance in ruling on this motion.

The courts have consistently held that parties do not have an absolute right to amend pleadings under the Code (735 ILCS 5/1-1 *et seq.* (2002)). See Zubi v. Acceptance Indemnity

Insurance Company, 323 Ill. App. 3d 28, 30-32; 751 N.E.2d 69, 80 (1st Dist. 2001). As CLC has argued, the courts have enunciated four factors to use to determine whether or not a pleading may be amended. *Id.* and *see* Resp. at 4. The first factor, whether the amendment cures a defect, is not at issue here. Complainant does not assert that the amended complaint is necessary to cure a defect. However, the remaining factors of prejudice or surprise, timeliness, and previous opportunities to amend, do impact the Board's decision.

To assess the second factor, whether the other parties would sustain prejudice or surprise by virtue of the amendment, the Board looks to the current status of the case. This case was originally filed in 1997 and the Board has already made several substantive rulings including finding CLC is in violation under several counts of the complaint. *See* People v. Community Landfill Company, Inc., PCB 97-193 (July 26, 2001) and People v. Community Landfill Company, Inc., PCB 97-193 (Aug. 23, 2001). The complainant is seeking to add two new respondents. Thus, the new respondents would find a case where the co-respondent has already been found in violation on a number of counts. Since the Board has already found violations, this places the new respondents in a difficult position, and the Board finds that they would be prejudiced. Also, CLC correctly points out that CLC will be prejudiced because of the new delay necessary to allow new respondents to fully litigate the alleged violations against them. *See* Resp. at 9. Therefore, the Board finds that allowing the third amended complaint would prejudice other parties.

In reviewing the third factor, whether the filing is timely, the Board examines the history of the proceeding. As stated above, this case was originally filed in 1997. Now almost seven years later and after two Board decisions on summary judgment motions, complainant seeks to add new respondents. Furthermore, these new respondents are and have been the owners of CLC since the inception of this case. The Board disagrees with complainant's argument that adding these two new respondents nearly seven years after the inception of the case is timely, especially when the respondents have been owners or officers of CLC since the case was filed. Therefore, the Board finds that the amended complaint is not timely.

In analyzing the fourth factor, whether previous opportunities for amendment existed, the Board also looks at the history of the proceeding. Complainant has filed two previous amendments to the complaint, one on April 3, 1998, and another on November 24, 1999. Thus, complainant has had not only the opportunity, but has been allowed to exercise that opportunity by the Board on two prior occasions. In the motion for leave to file, complainant seeks leave "based on additional information received since the second amended complaint was filed" (Mot. at 2). Again the complainant does not specify and the Board cannot determine what information was received that was not previously available. Therefore, the Board finds that this factor weighs against allowing the amendment.

The Board finds that the third amended complaint would prejudice the other parties, is not timely, and that complainant previously had the opportunity to amend the complaint. Because the right to amend a complaint is not absolute, the Board finds that the third amended complaint should not be accepted. Therefore, the Board denies the motion for leave to file a third amended complaint and strikes the third amended complaint. The Board further directs this matter to hearing expeditiously.

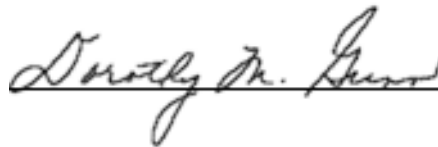
The Board notes that nothing in this order prevents the complainant from filing a separate enforcement action against the new respondents named in the third amended complaint.

CONCLUSION

After reviewing the arguments, pleadings and facts surrounding the filing of the third amended complaint, the Board finds that the third amended complaint would prejudice the other parties, is not timely, and that complainant previously had the opportunity to amend the complaint. The Board therefore denies the motion for leave to file a third amended complaint and strikes the third amended complaint. The Board further directs this matter to hearing expeditiously.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 18, 2004, by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board