

ILLINOIS POLLUTION CONTROL BOARD
February 7, 2013

MAHOMET VALLEY WATER)
AUTHORITY; CITY OF CHAMPAIGN,)
ILLINOIS, a municipal corporation; DONALD)
R. GERARD; CITY OF URBANA, ILLINOIS,))
a municipal corporation; LAUREL LUNT)
PRUSSING; CITY OF BLOOMINGTON,)
ILLINOIS, a municipal corporation; COUNTY)
OF CHAMPAIGN, ILLINOIS; COUNTY OF)
PIATT, ILLINOIS; TOWN OF NORMAL,)
ILLINOIS, a municipal corporation; VILLAGE)
OF SAVOY, ILLINOIS, a municipal)
corporation; and CITY OF DECATUR,)
ILLINOIS, a municipal corporation,)
)
Complainants,)
)
PEOPLE OF THE STATE OF ILLINOIS,)
)
Intervenor,)
)
v.)
)
CLINTON LANDFILL, INC., an Illinois)
corporation,)
)
Respondent.)

PCB 13-22
(Citizens Enforcement - Land)

ORDER OF THE BOARD (by T.A. Holbrook):

On November 9, 2012, the Mahomet Valley Water Authority; the City of Champaign, Illinois; Donald R. Gerard; the City of Urbana, Illinois; Laurel Lunt Prussing; the City of Bloomington, Illinois; the County of Champaign, Illinois; the County of Piatt, Illinois; the Town of Normal, Illinois; the Village of Savoy, Illinois; and the City of Decatur, Illinois (collectively, complainants) filed a complaint (Comp.) against Clinton Landfill, Inc. (Clinton Landfill). The complaint alleges that Clinton Landfill violated various provisions of the Environmental Protection Act (Act) by transforming a municipal solid waste disposal unit in DeWitt County into a chemical waste unit without obtaining prior site approval by the DeWitt County Board. Comp. at 2.

On December 21, 2012, the Attorney General filed a motion to intervene (Mot.) on behalf of the People of the State of Illinois. The Board has received no response to the motion.

For the reasons below, the Board today grants the Attorney General's unopposed motion to intervene in this enforcement proceeding on behalf of the People of the State of Illinois. Having granted the motion, the Board grants the Attorney General's request for leave to file a response to respondent's pending motion to dismiss. The Attorney General's response is due within 14 days, on or before Thursday, February 21, 2013. The Board reserves ruling on pending motions to dismiss and for leave to file a reply.

Below, the Board first provides the procedural history of this case. The Board then summarizes the Attorney General's motion to intervene. The Board next provides statutory and regulatory authorities cited in the Attorney General's motion and pertaining to the issue of intervention. Finally, the Board discusses the issues presented before issuing its order.

PROCEDURAL HISTORY

On November 9, 2012, complainants filed a complaint alleging that Clinton Landfill had violated various provisions of the Act. On November 13, 2012, complainants filed proof of service of the complaint upon Clinton Landfill on November 10, 2012.

On December 5, 2012, Clinton Landfill filed a motion to dismiss. On December 24, 2012, petitioners filed a response to the motion to dismiss. On January 7, 2013, Clinton Landfill filed a motion for leave to file a reply accompanied by its reply.

On December 21, 2012, the Attorney General filed a motion to intervene on behalf of the People of the State of Illinois (Mot.).

SUMMARY OF MOTION TO INTERVENE

The Attorney General notes that "several local governments and two individuals serving as public officials" filed the complaint on November 9, 2012. Mot. at 1.

The Attorney General states that the Board's procedural rules provide 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." Mot. at 1-2; citing 35 Ill. Adm. Code 101.402(b). Addressing these factors, the Attorney General first argues that her "participation in this proceeding will not unduly delay this proceeding because the Board is not expected to make any substantive ruling on the complaint without an appropriate record first being made." Mot. at 2. The Attorney General further argues that "her participation in this proceeding will not materially prejudice any existing party." *Id.*

The Attorney General adds that Section 42 of the Act authorizes "the Attorney General to bring enforcement proceedings before the Board in the name of the People of the State of Illinois. . . ." Mot. at 2, citing 415 ILCS 5/42(f) (2010). The Attorney General characterizes this authority as "an unconditional statutory right to intervene in this proceeding pursuant to Section 101.402(c). . . ." Mot. at 2, citing 35 Ill. Adm. Code 101.402(c). The motion argues that this authority "is consistent with the Attorney General's broad constitutional powers," which are

reflected in by the Attorney General Act. Mot. at 2. The motion states that Section 4 of that statute “provides that the Attorney General shall represent ‘the state . . . in all cases in which the state or the people of the state are interested.’” *Id.*, citing 15 ILCS 205/4 (2010). The motion further states that “the Attorney General’s standing to participate in pending litigation under the Environmental Protection Act has been upheld by numerous Supreme Court decisions.” Mot. at 2, citing People ex rel. Hartigan v. E&E Hauling, Inc., 153 Ill.2d 473 (1992); Pioneer Processing, Inc. v. EPA, 102 Ill.2d 119, 138-39 (1984); EPA v. PCB, 69 Ill.2d 394, 401 (1977). The motion argues that, whether its source is constitutional or statutory, “the Attorney General’s ability to intervene and act on behalf of the State and our citizens is unconditional.” Mot. at 2.

The Attorney General argues that the complaint directly raises issues addressing “[t]he broader interests of the State.” Mot. at 3. The motion cites constitutional language stating that “[t]he public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this policy.” *Id.*, citing ILL. CONST. art. XI, § 1. The motion adds that the General Assembly has provided that the Act’s purposes include establishment of “a unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment. . . .” Mot. at 3, citing 415 ILCS 5/2(b) (2010). The Attorney General argues that the motion to intervene reflects this public policy and this purpose of the Act by seeking “to ensure compliance with the statutory mandates as to the permitting and local siting approval for pollution control and hazardous waste disposal facilities.” Mot. at 3.

Noting that the respondent has filed a motion to dismiss the complaint, the motion to intervene states that the Attorney General seeks intervention in order “to respond to the motion to dismiss and to participate fully in this action.” Mot. at 3. The motion argues that “[t]he disposition of this action without the Attorney General’s intervention may impair or impede the ability of the Attorney General to protect the interests set forth above.” *Id.*

The motion elaborates that, although respondent’s motion seeks dismissal of the complaint on the basis that it improperly attacks a permit issued by the Agency, “no permit has been issued under Section 39.3” of the Act. Mot. at 3 n.2, citing 415 ILCS 5/39.3 (2010). The motion argues that, through Section 39.3, “the legislature plainly intended to involve the Attorney General in the permitting of hazardous waste disposal sites.” Mot. at 3, n.2. The Attorney General argues that, “[d]espite contentions as to what the current permit does or does not authorize, no application has been made pursuant to Section 39.3 and, if such application had been made, then the Attorney General would have been notified and afforded the opportunity to intervene prior to any permitting decision to authorize disposal of hazardous wastes.” *Id.* In addition, the motion states that “[t]he Attorney General intends to argue that the Board may rely upon Landfill, Inc. v. PCB, 74 Ill.2d 541 (1978), in denying the motion [to dismiss].” *Id.* at 3-4. The Attorney General adds that she “seeks leave to file a response to the motion to dismiss within 14 days of intervention being granted.” *Id.* at 4. The motion concludes by stating that it raises the potential application of Section 39.3 of the Act and Landfill, Inc. because the Board’s procedural rules provide “that an intervenor cannot raise issues that might more properly have been raised at an earlier stage of the proceeding.” *Id.*, citing 35 Ill. Adm. Code 101.402(e).

STATUTORY AND REGULATORY PROVISIONS

Section 42 of the Act provides in pertinent part that

* * *

- (a) Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof, or that violates any order of the Board pursuant to this Act, shall be liable for a civil penalty of not to exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000 for each day during which the violation continues. . . .
- * * *
- (f) The State’s Attorney of the county in which the violation occurred, or the Attorney General; shall bring such actions in the name of the people of the State of Illinois. 415 ILCS 5/42 (2010).

Section 101.402(b) of the Board’s procedural rule provides in its entirety that, “[i]n 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).

Section 101.402(c) of the Board’s procedural rules provides in its entirety that,

[s]ubject to subsection (b) of this Section, the Board will permit any person to intervene in any adjudicatory proceeding if:

- 1) The person has an unconditional statutory right to intervene in the proceeding; or
- 2) It may be necessary for the Board to impose a condition on the person. 35 Ill. Adm. Code 101.402(c).

Section 101.402(e) of the Board’s procedural rules provides in its entirety that

[a]n intervenor will have all the rights of an original party to the adjudicatory proceeding, except that the Board may limit the rights of the intervenor as justice may require. The limits may include providing that: the intervenor is bound by Board and hearing officer orders already issued or by evidence already admitted; that the intervenor does not control any decision deadline; and that the intervenor cannot raise issues that were raised or might more properly have been raised at an earlier stage of the proceeding. 35 Ill. Adm. Code 101.402(e).

Section 103.212(c) of the Board’s procedural rules provides in its entirety that “[t]he Board will automatically set for hearing all complaints filed by the Attorney General or a State’s Attorney on behalf of the People of the State of Illinois.” 35 Ill. Adm. Code 103.212(c).

DISCUSSION

Section 101.500(d) of the Board's procedural rules provides in pertinent part that, "[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board . . . in its disposition of the motion." 35 Ill. Adm. Code 101.500(d). The Board has received no response to the Attorney General's motion to intervene.

Under its procedural rules, "[t]he Board may permit any person to intervene in any adjudicatory proceeding." 35 Ill. Adm. Code 101.402(a). On December 21, 2012, the Attorney General filed a motion seeking intervention in this pending enforcement proceeding. In determining whether to exercise its discretion to allow intervention, "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(c).

As noted above, the Attorney General filed a motion to intervene on December 21, 2012. Although the respondent filed a motion to dismiss a short time before that date, that motion remains pending, and the Attorney General seeks intervention in part to respond to it. *See* Mot. at 3. As the Board has not yet determined whether to accept the complaint for hearing, the Board has issued no discovery orders and has not scheduled a hearing. Consequently, the Board finds that the Attorney General's motion is timely. *See Wonder View Improvement Ass'n., People of the State of Illinois and IEPA, as Intervenors v. N. Illinois Utilities, Inc.*, PCB 91-48, slip op. at 1 (Apr. 9, 1992) (granting Attorney General's unopposed motion for intervention in enforcement proceeding on behalf of People and Illinois Environmental Protection Agency following Board order dismissing complaint), citing *Pioneer Processing v. IPCB*, 102 Ill.2d 119, 464, N.E.2d 238 (1984).

The Attorney General argues that her participation "will not unduly delay the proceeding because the Board is not expected to make any substantive ruling on the complaint without an appropriate record being made." Mot. at 2. Seeking intervention in part to respond to the pending motion to dismiss, the Attorney General requests leave to file a response "within 14 days of intervention being granted." *Id.* at 4. The Board notes that the respondent on January 7, 2013 filed a motion for leave to file a reply to complainants' response to the motion to dismiss. That motion for leave also remains pending. In addition, the Attorney General argues that "her participation in this proceeding will not materially prejudice any existing party." *Id.* at 2. Based on these circumstances and arguments, the Board finds that intervention will not "unduly delay or materially prejudice the proceeding." 35 Ill. Adm. Code 101.402(b).

The motion to intervene argues that "the Attorney General has an unconditional statutory right to intervene in this proceeding. . . ." Mot. at 2. The motion states that, under Section 42 of the Act, the Attorney General has authority "to bring enforcement actions before the Board in the name of the People of the State of Illinois. . . ." *Id.*, citing 415 ILCS 5/42 (2010). The motion further argues that caselaw provides ample support for the exercise of this authority. Mot. at 2. For example, the Supreme Court has stated that the Attorney General is the chief legal officer of

the state and “has the duty and authority to represent the interests of the People of the State to insure a healthful environment.” Mot. at 2 n.1, citing, *e.g.*, Pioneer Processing , Inc. v. IEPA, 102 Ill. 2d 119, 138, 464 N.E.2d 238, 247 (1984); *see* Land & Lakes Co. v. IPCB, 245 Ill. App.3d 631, 640, 616 N.E.2d 349, 354 (3rd Dist. 1993) (analogizing duty and authority of Attorney General to State’s Attorney).

Section 42(f) of the Act specifically provides that the Attorney General “shall bring” actions alleging violations of the Act, Board regulations, or a permit “in the name of the People of the State of Illinois.” 415 ILCS 5/42(f) (2010). The Board notes that its own procedural rules provide that “[t]he Board will *automatically* set for hearing all complaints filed by the Attorney General or a State’s Attorney on behalf of the People of the State of Illinois.” 35 Ill. Adm. Code 103.212(c) (emphasis added). A citizen’s enforcement complaint that is not brought on behalf of the People may be dismissed on the basis that it is duplicative or frivolous. *See* 35 Ill. Adm. Code 101.202 (definitions), 103.212.

The Board finds that the Attorney General has established an unconditional statutory right to intervene in this enforcement proceeding on behalf of the People of the State of Illinois and grants the motion to intervene. 35 Ill. Adm. Code 101.402(c)(1). As an intervenor, the Attorney General “will have all the rights of an original party to the adjudicatory proceeding, except that the Board may limit the rights of the intervenor as justice may require.” 35 Ill. Adm. Code 101.402(e). Such limits may include providing that “the intervenor cannot raise issues that were raised or might more properly have been raised at an earlier stage of the proceeding.” *Id.* In the motion to intervene, the Attorney General cited this language in listing issues she wished to address in a response to the pending motion to dismiss. Mot. at 3-4. Specifically, the Attorney General sought leave to file a response “within 14 days of intervention being granted.” In its order below, the Board grants the leave to file such a response and sets a filing deadline of February 21, 2013. The Board reserves ruling on the pending motions to dismiss and for leave to file a reply.

ORDER

For the reasons stated above, the Board grants the Attorney General’s unopposed motion to intervene in this enforcement proceeding on behalf of the People of the State of Illinois. Having granted the motion, the Board grants the Attorney General’s request for leave to file a response to respondent’s pending motion to dismiss. The Attorney General’s response is due within 14 days, on or before Thursday, February 21, 2013. As noted above, the Board reserves ruling on the pending motions to dismiss and for leave to file a reply.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 7, 2013, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board