

ILLINOIS POLLUTION CONTROL BOARD
April 18, 2013

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 13-28
)	(Enforcement - Water)
ATKINSON LANDFILL CO., an Illinois)	
corporation,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.D. O’Leary):

On December 17, 2012, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint against Atkinson Landfill Co. (ALC). In an order of December 20, 2012, the Board accepted the complaint for hearing. On March 15, 2013, the parties filed an agreed motion for leave to file a first amended complaint, attaching the People’s first amended complaint.

For the reasons below, the Board grants the agreed motion and accepts the People’s first amended complaint for hearing. Consistent with the agreed motion, the Board grants ALC leave to file an answer to, or a motion to strike or dismiss, the first amended complaint on or before May 20, 2013. The Board reserves ruling upon ALC’s pending motion to join the Village of Atkinson and the City of Galva as respondents.

PROCEDURAL HISTORY

As noted, the People’s original complaint was filed on December 17, 2012, and accepted for hearing on December 20, 2012. On January 23, 2013, ALC filed an agreed motion to provide ALC with leave to file a motion for dismissal and a motion for joinder by January 28, 2013. By order of January 28, 2013, the hearing officer granted the agreed motion for leave to file. On January 28, 2013, ALC filed a motion to strike and dismiss the original complaint. Also on January 28, 2013, ALC filed a motion for the joinder of the Village of Atkinson and the City of Galva.

On February 6, 2013, the People filed an agreed motion to provide the following: (1) the People with leave to file responses by March 15, 2013, to ALC’s motion to strike and dismiss and motion for joinder; and (2) ALC with leave to file replies to the People’s responses by April 12, 2013. By order of February 7, 2013, the hearing officer granted the agreed motion for leave to file.

On March 15, 2013, the People filed a response to ALC’s motion for joinder, opposing the motion. ALC has filed no reply. The People filed no response to ALC’s motion to strike and

dismiss, but on March 15, 2013, the People filed an agreed motion for leave to file a first amended complaint (Agr. Mot.), attaching the first amended complaint (1st Am. Comp.). The Board rules upon this agreed motion today.

AGREED MOTION FOR LEAVE TO FILE

The agreed motion for leave to file a first amended complaint states that “[i]n lieu of filing a response” to ALC’s motion to strike and dismiss the original complaint, the People seek to amend their original complaint to do the following:

(a) attach a copy of Water Pollution Control Permit No. 2008-E0-0331 as Exhibit 1; (b) add the word “approximate” to Paragraph 6 of Count I of the Original Complaint; (c) delete Paragraph 7 of Count I of the Original Complaint; (d) delete the alleged violations of Section 12(c) of the [Environmental Protection] Act [(Act)], 415 ILCS 5/12(c) (2010), from the Original Complaint; (e) add allegations to clarify [ALC’s] alleged violations of Sections 12(a) and (b) of the Act, 415 ILCS 5/12(a), (b) (2010); (f) amend Paragraph 17 of Count III of the Original Complaint; and (g) make additional clarifications and correct certain typographical errors. Agr. Mot. at 1-2.

The first amended complaint is attached to the agreed motion. Agr. Mot. Exh. A.

The agreed motion states that ALC has not filed an answer to the original complaint; the parties have not conducted discovery; and ALC will not be prejudiced if the People are granted leave to amend the original complaint now. Agr. Mot. at 2. The agreed motion further provides that ALC, by joining in the motion, does not waive any of the issues raised in ALC’s motion to strike and dismiss the original complaint. *Id.* Finally, the agreed motion proposes that ALC be given “30 days from the granting of this motion to answer or otherwise plead to the First Amended Complaint,” and further that ALC be allowed to “simply adopt” its pending motion to strike or dismiss “as and for its response to the First Amended Complaint by so informing the Board, if it so chooses.” *Id.*

The Board grants the agreed motion for leave to file a first amended complaint and therefore accepts for filing the first amended complaint attached to the agreed motion. In accordance with the agreed motion, ALC may file an answer to, or a motion to strike or dismiss, the first amended complaint on or before May 20, 2013, which is the first business day following the 30th day after the date of this order. *See* 35 Ill. Adm. Code 101.300(a). ALC is permitted to file a document stating that ALC adopts all or part of its motion to strike and dismiss the original complaint as its motion to strike and dismiss the first amended complaint. By joining in the agreed motion for leave to file, ALC did not waive any issues raised in its motion to strike and dismiss the original complaint.

Accordingly, if ALC wishes to assert that the first amended complaint should be stricken or dismissed, ALC must timely file a motion to strike or dismiss the first amended complaint, which motion may take the form of an adoption of ALC’s motion to strike and dismiss the

original complaint. The People may respond to any such motion as provided in the Board's procedural rules. *See* 35 Ill. Adm. Code 101.500(d).

FIRST AMENDED COMPLAINT

The first amended complaint concerns an active municipal solid waste landfill allegedly owned and operated by ALC. The landfill is located at 1378 Commercial Drive in Atkinson, Henry County. 1st Am. Comp. at 2. The first amended complaint contains four counts. In count I, the People allege that by disposing of landfill leachate at the Village of Atkinson Sewage Treatment Plant (Village STP) in excess of "the approximately 12,000 gallons per day limit" imposed by water pollution control permit No. 2008-EO-0331, and "thereby threatening the pass through of untreated wastewater" into Green River, ALC "threatened the discharge of a contaminant into waters of the State which could cause or tend to cause water pollution" in violation of Section 12(a) of the Act (415 ILCS 5/12(a) (2010)). *Id.* at 5. Count II of the first amended complaint alleges that by operating equipment to dispose of wastewater at the Village STP and indirectly to Green River in excess of the limits of permit No. 2008-EO-0331 "and thus without an operating permit" issued by the Illinois Environmental Protection Agency (Agency), ALC violated Section 309.204(a) of the Board's water pollution regulations (35 Ill. Adm. Code 309.204(a)). *Id.* at 7. Also according to count II, ALC's operation of trucks to haul leachate from the landfill in excess of permit No. 2008-EO-0331 limits, "which was disposed of at the Village STP, was capable of causing or contributing to water pollution," thereby violating Section 12(b) of the Act (415 ILCS 5/12(b) (2010)). *Id.*

In count III of the first amended complaint, the People allege that by disposing of landfill leachate at the City of Galva wastewater treatment facility (Galva WWTF) without any permit issued by the Agency, and "thereby threatening the pass through of untreated wastewater" into Edwards River, ALC "threatened the discharge of a contaminant into waters of the State which could cause or tend to cause water pollution" in violation of Section 12(a) of the Act (415 ILCS 5/12(a) (2010)). 1st Am. Comp. at 10. Count IV alleges that by operating equipment to dispose of wastewater indirectly to Edwards River without an operating permit issued by the Agency, ALC violated Section 309.204(a) of the Board's water pollution regulations (35 Ill. Adm. Code 309.204(a)). *Id.* at 11. Also according to count IV, ALC's operation of trucks to haul leachate from the landfill "for disposal at the Galva WWTF without an operating permit, was capable of causing or contributing to water pollution," thereby violating Section 12(b) of the Act (415 ILCS 5/12(b) (2010)). *Id.* at 11-12.

The People ask that the Board order ALC to cease and desist from any further violations of the Act and regulations and pay civil penalties of \$50,000 for each violation and \$10,000 for each day of violation, and that the Board award the People their costs and reasonable attorney fees. 1st Am. Comp. at 5, 8, 11, 12.

The Board accepts the first amended complaint for hearing. *See* 35 Ill. Adm. Code 103.212(c). ALC's failure to file an answer to the first amended complaint by the May 20, 2013 deadline set forth above, may have severe consequences. Generally, if a respondent fails to timely file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in a complaint, the Board will consider the respondent to have admitted

the allegation. *See* 35 Ill. Adm. Code 103.204(d). However, if ALC files a motion to strike or dismiss the first amended complaint by the May 20, 2013 deadline, this 30-day time period for filing an answer will be stayed until the Board disposes of the motion. *See* 35 Ill. Adm. Code 103.204(e).

The Board directs the hearing officer to proceed expeditiously to hearing in the manner described in the Board's order of December 20, 2012. *See* People v. Atkinson Landfill Co., PCB 13-28, slip op. at 2-3 (Dec. 20, 2012).

CONCLUSION

The Board grants the parties' agreed motion for leave to file the People's first amended complaint and accepts the first amended complaint for hearing. By May 20, 2013, ALC may file an answer to, or a motion to strike or dismiss, the first amended complaint. The Board reserves ruling upon ALC's motion to join the Village of Atkinson and the City of Galva as respondents.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 18, 2013, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board