

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB No. 13-28
)
 ATKINSON LANDFILL CO.,)
)
 Respondents.)

OBJECTIONS TO COMPLAINANT'S MOTION FOR LEAVE TO FILE REPLY
TO RESPONDENT'S OBJECTIONS TO COMPLAINANT'S MOTION TO STRIKE
RESPONDENT'S SECTION 2-619(a)(9) MOTION TO DISMISS
AND AFFIDAVITS OF GARY HULL AND ERIK VARDIJAN

Respondent, ATKINSON LANDFILL CO. ("ALC"), has moved the Pollution Control Board (the "Board"), pursuant, *inter alia*, to § 2-615 of the Code of Civil Procedure, 735 ILCS 2-615(a) and § 2-619((a)(9) of the Code of Civil Procedure, 735 ILCS 2-619((a)(9), to strike and dismiss (the "Motion to Dismiss") the First Amended Complaint (the "Complaint") of complainant, PEOPLE OF THE STATE OF ILLINOIS ("the STATE"). The STATE, in response, submitted Complainant's Response to Respondent's Motion to Strike and Dismiss First Amended Complaint ("Complainant's Response"). Complainant's Response is directed only to that portion of the Motion to Dismiss under § 2-615 of the Code of Civil Procedure, 735 ILCS 2-615(a). The STATE also filed a Motion to Strike Respondent's Section 2-619(a)(9) Motion to Dismiss and Affidavits of Gary Hull and Erik Vardijan ("the STATE's Motion to Strike").

ALC filed Objections to Complainant's Motion to Strike Respondent's Section 2-619(a)(9) Motion to Dismiss and Affidavits of Gary Hull and Erik Vardijan ("ALC's Objections to Motion to Strike"). The STATE has now filed Complainant's Motion for Leave to File Reply to Respondent's Objections to Complainant's Motion to Strike Respondent's Section 2-

619(A)(9) Motion to Dismiss and Affidavits of Gary Hull And Erik Vardijan (the "STATE'S Motion for Leave to File Reply") ALC hereby requests that the STATE'S Motion for Leave to File Reply be denied.

I. THE STATE'S MOTION TO STRIKE IS UNAUTHORIZED.

ALC would normally not object to a motion for leave to file reply. However, here, where no authority lay in the first instance for the filing of the STATE'S Motion to Strike, ALC must object to further briefing in that same regard. As set forth in ALC's Objections to Motion to Strike, Part I, at 1-2, the STATE's Motion to Strike was filed under the purported authority of, *inter alia*, 735 ILCS 2-615 and §101.506 of the General Rules of the Pollution Control Board, 35 Ill. Adm. Code 101.506 ("§101.506"). Yet, both 735 ILCS 2-615 and §101.506, only authorize the striking of "*pleadings*." (Emphasis added.) ALC seeks to strike the Motion to Dismiss under § 2-619((a)(9) of the Code of Civil Procedure, 735 ILCS 2-619((a)(9) ("2-619"). Yet, motions are not "*pleadings*." It is well settled in this State that "Section 2-615 applies only to the dismissal of pleadings." *In re Marriage of Sutherland*, 251 Ill. App. 3d 411, 414 (2nd Dist. 1993). The STATE also cites Section 101.500 in purported support of the filing of the STATE's Motion to Strike, which merely allows the filing of "any motion the parties wish to file that is permissible under the Act or other applicable law." Given that the STATE's Motion to Strike is not permissible under 735 ILCS 2-615 and §101.506, Section 101.500 does *not* authorize the filing of a motion that is, itself, impermissible.

Neither the STATE's Motion for Leave to File Reply, nor the proposed Complainant's Reply to Respondent's Objections to Complainant's Motion to Strike Respondent's Section 2-619(A)(9) Motion to Dismiss and Affidavits of Gary Hull And Erik Vardijan ("Proposed Reply") to which it is attached, respond to this issue. If the STATE is not even bothering in its Proposed

Reply to respond to this threshold issue of whether or not it has the authority to move this Board to strike a validly filed motion, then what is the value to this Board of such a memorandum?

The STATE asserts it is purportedly authorized to file the Proposed Reply under §101.500(e) of the General Rules of the Pollution Control Board, 35 Ill. Adm. Code 101.500(e) because it would be "materially prejudiced" if not allowed to do so. Yet, just how "materially prejudiced" can the STATE be if it fails to make the effort to justify the filing of the STATE's Motion to Strike in the first instance? Why should this Board deign to give the Proposed Reply any credence by allowing its filing?

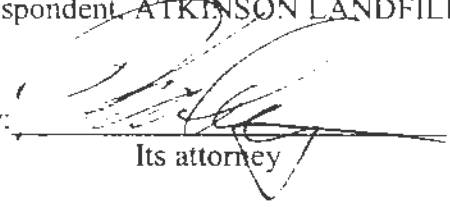
II. ALC HEREBY SPECIFICALLY INCORPORATES HEREIN BY THIS REFERENCE ITS OBJECTIONS TO COMPLAINANT'S MOTION FOR LEAVE TO FILE SURREPLY TO RESPONDENT'S REPLY IN SUPPORT OF MOTION TO STRIKE AND DISMISS FIRST AMENDED COMPLAINT.

Those arguments that the STATE does see fit to make in STATE's Motion for Leave to File Reply and in the Proposed Reply, itself, are a repeat of the arguments set forth in Complainant's Motion for Leave to File Surreply to Respondent's Reply in Support of Motion to Strike and Dismiss First Amended Complaint (the "STATE's Motion for Leave to File Surreply") and in the Proposed Surreply, itself. Also, as in the STATE's Motion for Leave to File Surreply and the Proposed Surreply, itself, the State's Motion for Leave to File Reply fails to disclose that attached to the Proposed Reply is the Affidavit Of Darin LeCrone, to which is attached the purported Application for Permit or Construction Approval WPC-PS-1, both of which are barred. Accordingly, in response thereto, ALC hereby by this reference specifically incorporates herein its Objections to Complainant's Motion for Leave to File Surreply to Respondent's Reply in Support of Motion to Strike and Dismiss First Amended Complaint.

Accordingly, ALC requests that the STATE's Motion for Leave to File Reply be denied.

Respondent, ATKINSON LANDFILL CO.,

By:

A handwritten signature in black ink, appearing to be "K. Anspach", is written over a horizontal line. The signature is somewhat stylized and overlaps the line.

Its attorney

KENNETH ANSPACH, ESQ.
ANSPACH LAW OFFICE
111 West Washington Street
Suite 1625
Chicago, Illinois 60602
(312) 407-7888

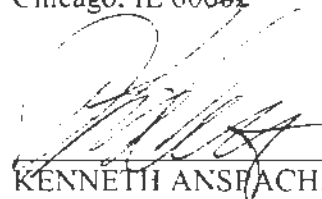
THIS FILING IS SUBMITTED ON RECYCLED PAPER.

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalties of perjury as provided by law pursuant to 735 ILCS 5/1-109, that the attached Objections to Complainant's Motion for Leave to File Reply to Respondent's Objections to Complainant's Motion to Strike Respondent's Section 2-619(A)(9) Motion to Dismiss and Affidavits of Gary Hull And Erik Vardijan was ___ personally delivered, X placed in the U. S. Mail, with first class postage prepaid, ___ sent via facsimile and directed to all parties of record at the address(es) set forth below on or before 5:00 p.m. on the 6th day of August, 2013.

Kathryn A. Pamerter
Assistant Attorney General
Environmental Bureau
69 West Washington Street
18th Floor
Chicago, IL 60602

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, IL 60601



KENNETH ANSPACH, ESQ.
ANSPACH LAW OFFICE
111 West Washington Avenue
Suite 1625
Chicago, Illinois 60602
(312) 407-7888