

ILLINOIS POLLUTION CONTROL BOARD
September 7, 2006

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 06-177
	)	(Enforcement - Public Water Supply)
SHERIDAN SAND & GRAVEL CO.,	)	
	)	
Respondent.	)	
	)	

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

On May 22, 2006, the Office of the Attorney General, on her own motion and at the request of the People of the State of Illinois (complainant), filed a five-count complaint (Comp.) against Sheridan Sand & Gravel Company (respondent). On June 1, 2006, the Board accepted the complaint for hearing. On July 7, 2006, respondent filed a motion to dismiss (Mot.) challenging the legal sufficiency of the complaint. On July 28, 2006, the complainant filed a response in opposition to the motion (Resp.). For the reasons discussed below, the Board denies the motion to dismiss.

BACKGROUND

The complaint concerns respondent's 291.56-acre sand and gravel mine at 2679 North 4201 Road, Sheridan, LaSalle County. Count I of the complaint alleges that respondent violated Section 55(d)(1) of the Environmental Protection Act (Act) (415 ILCS 5/55(d)(1) (2004)) by operating a tire storage facility and failing to register the site with the Illinois Environmental Protection Agency (Agency). Comp. at 3. Count I further alleges that respondent failed to certify the site's compliance with standards, to report the number of tires accumulated, and the vector controls used at the site. Comp. at 4. Finally, Count I alleges that respondent failed to pay the fees required by the Act and Board regulations to the Agency. *Id.*

Count II of the complaint alleges that respondent violated Section 55(e) of the Act (415 ILCS 5/55(e) (2004)) by storing or disposing of used and/or waste tires in violation of the Board's rules. Comp. at 6. Count III also alleges violations of Section 55(e) of the Act as well as violations of the Board's rules at 35 Ill. Adm. Code 848.304(a), (c) and 848.305. Comp. at 7-8. Count III alleges that these violations occurred because respondent failed to maintain and submit annual tire summaries or to maintain records at the site. *Id.*

Count IV alleges that respondent violated Sections 55(d)(1), 55.6(b), and 21(k); of the Act (415 ILCS 5/21(k), 55(d)(1), and 55.6(b) (2004)). Count IV alleges that these violations occurred because respondent was operating a tire storage site that contained more than 50 used tires and respondent failed to pay the required registration fee. Comp. at 9.

Count V alleges that respondent violated Section 55(g) of the Act (415 ILCS 5/55(g) (2004)) by transporting used or waste tires to the site. Comp. at 10.

DISCUSSION

The following paragraphs will first summarize the arguments made by respondent in the motion and then the arguments made by complainant. Next, the Board will enunciate the standard applied when reviewing a motion to dismiss and then discuss the Board's decision.

Motion to Dismiss

Respondent argues that under Counts I and II of the complaint, respondent did not operate a tire storage site and the complaint does not contain allegations that tires were accumulated and not disposed of. Mot. at 2. Respondent argues that because the allegations in Count I refer to both used and waste tires, by definition waste tires cannot be "stored" at the site. *Id.* Further, respondent maintains that the complaint does not allege other factors included in the definition of "storage" and thus Count I should be dismissed.

As to Count II, respondent asserts that the allegations in Count II specifically contradict the allegations in Count I. Mot. at 2. Respondent also maintains that the allegations in Count II are mere conclusions in that the allegations do not state that tires at the site were "generated or received" and that the tires contained water at that time. Mot. at 4-5. Further according to respondents, the allegations that tires were processed at the site specifically contradict the allegations in Count II. Mot. at 5.

Respondent maintains that the allegations of violation of recordkeeping and reporting requirements in Count III do not apply to the respondent and the allegations make that clear. Mot. at 6. Respondent asserts that by definition the recordkeeping and reporting requirements in the Board's rules apply only to sites with more than 500 used or waste tires and the allegation in the complaint is that there are approximately 500 tires at the site. *Id.* Thus, respondent argues Count III fails to allege a violation of the regulations cited. Mot. at 7.

Respondent argues that as with Count I, the allegations of Count II expressly contradict the allegations in Count IV. Mot. at 7. Respondent asserts that the allegations in Count II, that the site includes waste tires, means that the site is not a tire storage facility and if the site is not a tire storage facility no fee is due. *Id.*

Respondent asserts that Count V involving allegations that respondent is a tire transporter are unfinished and incomplete, rendering the allegations unenforceable. Mot. at 7. Respondent argues that the complaint does not include any allegations that the tires were transported in a vehicle and thus by definition, respondent is not a tire transporter. Mot. at 8. Also, according to respondent, the complaint does not allege that more than 20 tires were transported and pursuant to the Section 848.601a of the Board's rules that number of tires is the threshold for a violation to have occurred. Mot. at 8-9.

Response to the Motion to Dismiss

Complainant maintains that the allegations in the complaint are sufficiently pled and are sufficient to state a claim. Resp. at 1. First as to Count I, complainant argues that respondent's argument that the allegations fail to support the definition of "storage" is irrelevant. Complainant asserts that the allegations in Count I are that respondent is operating an unregulated "tire storage site" which is defined in the Act. Resp. at 2. Complainant maintains that the allegation in the complaint do support an alleged violation Section 55(d)(1) of the Act (415 ILCS 5/55(d)(1) (2004)) and that the complaint contains sufficient facts to inform the respondent of the specific allegations that respondent must defend. Resp. at 2.

As to Count II, complainant asserts that Count II is an additional, complementary count and the allegations in Count II do not contradict the allegations of Count I. Resp. at 5. Complainant argues that Count II alleges that waste tires were present at the site in addition to used tires. Resp. at 5-6. Complainant argues that alleging an additional count relating to waste issues is not precluded by the Act or Board rules and therefore, Count II is properly pled. Resp. at 6. Complainant also responds that the allegations are not "conclusions" and are pled properly. Resp. at 6-7.

Complainant asserts that the allegations in Count III are sufficient to support a cause of action against the respondent and respondent's "simplistic challenge" is insufficient in law. Resp. at 9. Complainant maintains that the complaint is to be liberally construed with the purpose of the complaint to reasonably inform the respondent of the nature of the claim. *Id.* Complainant argues that Count III does inform respondent of the facts supporting the claims against the respondent and as such is legally sufficient. *Id.*

Regarding respondents assertion that Count IV, like Count I, is expressly contradict by allegations in Count II, complainant maintains that the argument is without merit. Resp. at 10. Complainant reiterates that the allegations are that respondent is operating a "tire storage site" and has failed to comply with the Act and Board regulations that apply to a "tire storage site". *Id.* Count IV alleges a violation of Sections 55(d)(1), 55.6(b), and 21(k); of the Act (415 ILCS 5/21(k), 55(d)(1), and 55.6(b) (2004)), and complainant maintains that Count IV is sufficiently pled. *Id.*

Complainant also maintains that Count V is pled sufficiently to inform respondent of the facts supporting the claims against the respondent. Resp. at 11. Count V alleges that respondent violated Section 55(g) of the Act (415 ILCS 5/55(g) (2004)) by transporting used or waste tires to the site and the allegations include sufficient facts to apprise respondent of the extent and nature of the alleged violations. Resp. at 12. Complainant asserts that the respondent's objections are unfounded, as the complaint need not set forth the evidence of alleged violation. *Id.* Complainant maintains that the complaint is only required to allege facts, that if proven would support a finding of violation. *Id.*

Standard of Review

The Board's standard for determining motions to dismiss has been well established in case law. See People v. Stein Steel Mills Services, Inc., PCB 02-1 (Nov. 15, 2001); Shelton v. Crown, PCB 96-53 (May 2, 1996); Krautsak v. Patel, PCB 95-143 (June 15, 1995); Miehle v. Chicago Bridge and Iron Co., PCB 93-150 (Nov. 4, 1993). The Board takes all well-pleaded allegations as true in determining a motion to dismiss. Import Sales Inc. v. Continental Bearings Corp., 217 Ill. App. 3d 893, 577 N.E.2d 1205 (1st Dist. 1991); see also Stein Steel, PCB 02-1; Shelton, PCB 96-53; Krautsack, PCB 95-143; Miehle, PCB 93-150. In addition, dismissal of the complaint is proper only if it is clear that no set of facts could be proven that that would entitle complainant to relief. See Stein Steel, PCB 02-1; Shelton, PCB 96-53; Krautsack, PCB 95-143; Miehle, PCB 93-150

Board Discussion

A careful review by the Board of the pleadings establishes that the allegations in the complaint are sufficient to place respondent on notice as to the facts, which if proven, would support a finding of violation. The respondent's arguments attacking the sufficiency of the complaint are overstated and misleading. For example, under the arguments concerning Counts I and II, respondent relies on definitions of terms from the Act, but fails to fully consider the entirety of definitions or the existence of more specific definitions. Thus forming an argument that Counts I and II are mutually exclusive and based on the definition of finite terms, insufficiently pled. The Board is unconvinced by this argument and finds that complaint is sufficiently pled.

Respondent's argument that Count III should be dismissed because the plain language of the rule does not support the rule violation alleged is also without merit. Complainant argues that the complaint is sufficient as pled, and the Board agrees. The arguments raised by respondent may in fact defeat the cause of action; however, the Board finds that complaint is sufficiently pled to allow the complaint to go forward.

Respondent echoes the arguments concerning Counts I and II, in seeking dismissal of Count IV. The Board is still not persuaded by the arguments and finds that the complaint is sufficiently pled.

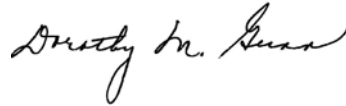
In arguing that dismissal of Count V is appropriate, the respondent alleges that the allegations are unfinished and incomplete, rendering the allegations unenforceable. The complainant asserts that the respondent's objections are unfounded, as the complaint need not set forth the evidence of alleged violation. The Board agrees with the complainant. The complaint must be pled so as to sufficiently inform the respondent of the allegations against the respondent; the complaint need not provide all evidence of the alleged violations. Therefore, the Board finds that the allegations of Count V are sufficiently pled.

CONCLUSION

The Board finds that the complaint has sufficiently stated a cause of action on all five counts of the complaint. Therefore, the Board denies the motion to dismiss.

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 7, 2006, by a vote of 4-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board