

ILLINOIS POLLUTION CONTROL BOARD  
May 21, 2020

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 11-50
	)	(Enforcement – Land, Water)
THE CITY OF MORRIS, an Illinois municipal	)	
corporation, and COMMUNITY LANDFILL	)	
COMPANY, INC., a dissolved Illinois	)	
corporation,	)	
	)	
Respondents.	)	

OPINION AND ORDER OF THE BOARD (by A. Palivos):

On February 18, 2011, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint against the City of Morris (Morris), and Community Landfill Company (CLC), (collectively, respondents). The complaint concerns a special waste and municipal solid waste landfill owned by Morris located at 1501 Ashley Road, Morris, in Grundy County.

On February 20, 2020 Morris filed a motion to dismiss for want of prosecution. For the reasons discussed below, the Board denies Morris’ request for dismissal.

In this opinion and order, the Board first reviews the procedural history of this case and summarizes the People’s complaint. The Board then summarizes Morris’ motion to dismiss for want of prosecution. The Board next considers the People’s response to Morris’ motion. The Board also considers Morris’ Motion for leave to file a reply brief in support of its motion to dismiss. The Board then reaches its conclusion and issues its order.

**PROCEDURAL BACKGROUND**

On February 18, 2011, the People filed its complaint alleging violations of respondent’s Illinois EPA-issued permits. On June 1, 2011, Morris filed its answer and affirmative defenses.

After a series of conferences with the Board’s Hearing Officer spanning nine years, Morris filed a motion to dismiss for want of prosecution on February 20, 2020. On March 9, 2020, the People filed its response. Morris then filed a motion for leave to file reply in support of its motion to dismiss for want of prosecution. The People then filed a motion in opposition.

The Board grants Morris’ motion to file a reply and accepts the reply into the record. The People requested that if the motion was granted, it be allowed to file a sur reply. Based on the

Board's review of the reply and the discussion below, the Board denies this request as unnecessary.

### **COMPLAINT**

The complaint alleges that respondents violated various conditions of their landfill permit resulting in the following violations:

**Count I**—Respondents violated Conditions VIII.10, VIII.12, and VIII.17 of the 2007 Parcel A Permit by failing to collect samples, perform testing, and report results to the Illinois EPA at any time from July 15, 2007 to the date of filing the complaint. By violating permit conditions respondents also violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2018));

**Count I**—Respondents violated Condition VIII.27 of the 2007 Parcel A Permit by failing to conduct a groundwater monitoring assessment of wells designated for contaminants specified in Condition VII.27 of the 2007 Parcel A Permit and by failing to submit the results in a significant modification application by October 15, 2007. By violating the permit conditions respondents also violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2018));

**Count III**—Respondents violated Conditions VII.10, VII.12, and VII.17 of the 2007 Parcel B Permit by failing to collect samples, perform testing, and report results to Illinois EPA at any time from July 15, 2007 to the date of filing the complaint. By violating permit conditions respondents also violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2018)); and

**Count IV**—Respondents violated Condition VII.26 of the 2007 Parcel B Permit by failing to conduct groundwater monitoring assessment of the wells designated and for contaminants specified in Condition VII.26 of the 2007 Parcel B Permit. By violating permit conditions respondents also violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2018)).

### **MORRIS' MOTION TO DISMISS FOR WANT OF PROSECUTION**

Morris alleges that subsequent to filing the complaint and responsive pleadings, a period of 1-year elapsed during which the People did not move the enforcement action forward. Morris specifically cites to six Hearing Officer (HO) orders dated between August 30, 2011 and June 28, 2012. Morris alleges that the People intended to file a motion for summary judgment and that a proposed discovery schedule would be discussed. However, no motion for summary judgment was filed, no discovery schedule was entered, and no discovery was issued.

Morris next cites to four HO orders dated between November 15, 2012 and June 27, 2013. Morris alleges that in these HO orders, the People stated it was having internal discussions

regarding consolidating the present action with other alleged violations and moving the matter to Circuit Court. However, the matter was never moved to Circuit Court.

Morris further alleges that during the July 24, 2013 status conference, the People stated it intended to proceed with the present matter. Morris argues that these assertions continued in status conferences from August 22, 2013 to October 30, 2013. Moreover, Morris argues that the people did not issue discovery requests and did nothing to move the matter forward on its merits.

Morris also states that for two years, beginning with the August 14, 2014 status conference, the People again contemplated filing a complaint in Circuit Court regarding similar alleged violations and would voluntarily dismiss the present action.

Furthermore, though Morris admits that settlement discussions took place from September of 2016 through September of 2019, Morris argues that the settlement discussions were based upon a Consent Order that was never entered during the three-year settlement negotiations.

Finally, Morris asserts that during the December 17, 2019 status conference, the People stated that it awaited approval of a complaint to soon be filed in Circuit Court. However, no circuit court filing has been made and no dismissal order has been entered.

Despite comprehensive factual assertions, Morris' motion presents little legal argument. Morris cites to People v. Kruger stating standard in Illinois to dismiss a case for want of prosecution as "inexcusable delay and lack of diligence" and argue that the People's actions fall under the purview of dismissal for want of prosecution. 2015 IL App (4th) 131080. Moreover, Morris states that a determination of "whether there has been a lack of prosecution which justifies a dismissal rests with the sound discretion of the trial court (in this case the Board), and that determination will not be disturbed unless it is shown to be an abuse of discretion." Mot. at 4 citing Elward v. Mancuso Chevrolet, Inc., 122 Ill. App. 2d 421, 426 (1st Dist. 1970).

### **THE PEOPLE'S RESPONSE TO MORRIS' MOTION TO DISMISS**

The people assert that during the pendency of this case, Illinois EPA issued a new Violation Notice to Morris alleging additional violations at the Landfill. Resp. at 2. These new allegations include Morris' "failure: to close the Landfill, construct final cover, collect and treat leachate, conduct groundwater monitoring, obtain a permit, keep records, provide financial assurance in accordance with the newly revised 415 ILCS 5/21.1, and other violations." *Id.*

Since 2013, the People allege that they have engaged in extensive negotiations with Morris to resolve all Landfill related violations. *Id.* at 2-3. The People further allege that negotiations continued through 2019 stating that "Morris' filing of its Motion to Dismiss is the first time that Morris has informed the people or the Board that it is no longer willing to discuss amicable settlement of the violations alleged in this case, or the numerous additional violations identified in the Illinois EPA's 2013 Violation Notice." *Id.* at 3.

The People also argue that Morris did not complain of delayed litigation in any HO orders and included a summary of HO orders through the years. Resp. at 4. The People also contend that it deferred active litigation at Morris' request following the 2013 IEPA Violation Notice. *Id.*

In fact, the People allege that settlement discussions were ongoing until 2019. In June 2019, the People advised Morris' counsel of its final decision on a technical remedy for violations in this case and additional violations. Morris' counsel then advised that they were seeking decision on the proposal from the Morris City Council. *Id.* citing June 11, 2019, September 25, 2019, and December 17, 2019 HO Orders. However, Morris never advised Complainant or the Board that Morris ever considered or rejected the final settlement demand. *Id.* Rather, Morris filed its Motion to Dismiss for Want of Prosecution.

### **MORRIS' REPLY BREIF IN SUPPORT OF MOTION TO DISMISS FOR WANT OF PROSEUCION**

Morris first reasserts its argument that the People have not conducted discovery, filed motions, requested hearings, or taken action to prosecute alleged claims. Rep. Brief at 2. Morris then reasserts that the People continuously considered pursuing a claim in Circuit Court.

Next, Morris argues that the People misrepresented Morris' ownership of the property. However, the Board is not persuaded that questions of ownership and financial assurances are relevant when considering the motion to dismiss for want of prosecution.

Finally, Morris argues that the People's "new-found reliance upon the 2013 Violation Notice... and the negotiations related to such are irrelevant to the present cause of action." Rep. Brief at 3. Morris further argues that the statute of limitation bars pursuit of these new claims. The Board is not persuaded by this argument. The People do not argue substantive aspects of the 2013 Violation Notice. Rather, the 2013 Violation Notice, and subsequent negotiations, provide evidence of a showing of good faith to reach a settlement agreement between the parties throughout pendency of this case.

### **BOARD DISCUSSION**

#### **Standard of Review**

The Board's procedural rules do not provide a standard for dismissal for want of prosecution. However, Illinois courts have stated that motion to dismiss for want of prosecution may be granted for "inexcusable delay and lack of diligence." People v. Kruger, 2015 IL App (4th) 131080 citing City of Crystal Lake v. Sak, 52 Ill.App.3d 684, 688, (1977). Furthermore, the determination of whether to dismiss a case for want of prosecution rests with the sole discretion of the trial court and is governed by the particular facts of the case. *Id.* citing Department of Revenue v. Steinkopf, 160 Ill.App.3d 1008, 1018 (1987).

Some courts have held that dismissal is only proper where a Plaintiff "manifests an intention to thwart the progress of the action to a conclusion." City of Crystal Lake, 52 Ill. App. 3d at 688. However, other courts have held that setting aside a dismissal for want of prosecution

should only occur if a three-part test is met: (1) a satisfactory explanation of the apparent delay has been given; (2) there has been no intentional or willful disregard of the directions of the court; and (3) it does not appear that further postponement of the controversy on its merits would result in prejudice or hardship to the parties. In Re Marriage of Dague, 136 Ill. App. 3d 297, 299 (1985).

### **Ruling on the Motion to Dismiss for Want of Prosecution**

The Board finds that the record is insufficient to dismiss this case for want of prosecution. Though specific facts are disputed by the parties, the record in this case is clear: the People's level of involvement does not rise to the threshold of "inexcusable delay" or "lack of diligence" required to support a motion to dismiss for want of prosecution.

This case also meets the three-part test stated in In Re Marriage of Dague to set aside a dismissal for want of prosecution. 136 Ill. App. 3d at 299. First, there is a satisfactory explanation of the apparent delay because the parties have been continuously working towards settlement. Second, there has been no intentional or willful disregard for the directions of the Board. Finally, it does not appear that further postponement of the controversy on its merits would result in prejudice or hardship to the parties.

In weighing the first factor, during pendency of this matter, Morris has not once raised the issue of delay or tried to expeditiously resolve this case. Morris' reply argues that the People have not requested discovery, filed interrogatories, or moved this matter to Circuit Court. While the Board recognizes that these are signs of due process; under these circumstances, the Board is not persuaded that this argument weighs in favor of dismissal of this case. It is also clear that the parties have been negotiating towards a settlement since at least 2016. In fact, counsel for Morris referenced circulating a settlement agreement in a HO order dated September 29, 2016. Furthermore, it is extensively documented in HO orders from 2016 to present that the parties' settlement negotiations were ongoing. Since 2013, the People and Morris have negotiated to resolve all disputes between the parties. These negotiations included both violations alleged in this Board case and violations alleged against Morris in the Illinois EPA's 2013 Violation Notice. Additionally, attempting to reach a settlement does not rise to the level of "inexcusable delay" or "lack of diligence" required to dismiss this case for want of prosecution.

In weighing the second factor, neither the motion nor the reply credibly argues that the people have intentionally or willfully disregarded the Board or its hearing officer. The Board is not persuaded that this factor weighs in favor of dismissal.

The Board finds that the third factor weighs in favor of the People. While Morris' position to date is clear, they have not alleged any sort of future prejudice. Furthermore, granting the motion to dismiss at this stage would be prejudicial to the People because the People would be deprived of litigating the case because extensive and good faith settlement negotiations simply did not yield an agreement.

Moreover, the Board encourages settlements. People v. Professional Swine Management Co. et al., PCB 10-84 (January 1, 2017) (citing People v. Archer Daniels Midland Corp., 140 Ill.

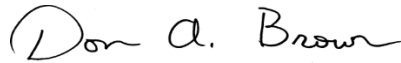
App. 3d, 823, 825). In this case, the People worked extensively with Morris to reach a settlement agreement. The Board agrees with the People's assertion that "aggressively litigating this matter, while settlement discussions of this case and the additional violations were ongoing, would have been wasteful of public resources." Resp. at 9-10. Furthermore, the People did not "manifest an intent to thwart the progress of action to a conclusion" as required by City of Crystal Lake, 52 Ill. App. 3d at 688.

Furthermore, although Board has reviewed arguments in Morris' reply brief, it is not persuaded that arguments in the reply require dismissal for want of prosecution.

Based on these reasons, the Board denies the motion to dismiss for want of prosecution.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 21, 2020, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk  
Illinois Pollution Control Board