

ILLINOIS POLLUTION CONTROL BOARD
September 9, 2021

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. In a May 21, 2020 opinion and order, the Board denied Morris’s request for dismissal. On August 28, 2020, the People filed a motion to file an amended complaint and voluntarily dismiss CLC from this proceeding. Morris filed its response in opposition to both motions on September 11, 2020. Subsequently, the People filed a motion to file a reply and replied to Morris’s combined responses.

The Board grants the motion to amend the complaint. Also, in reviewing the issues raised by Morris, the Board finds that Morris’ arguments challenging the sufficiency, and legality of the amended complaint are without merit.

In this opinion and order, the Board first reviews the procedural history of this case and summarizes the People’s complaint and amended complaint. The Board then addresses the arguments on the motion to amend.

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. The People then filed a motion in opposition.

On May 21, 2020, the Board granted Morris' motion for leave to reply and denied Morris's motion to dismiss.

On August 28, 2020, the People filed its Motion to file an amended complaint and a motion to voluntarily dismiss CLC. On September 11, 2020, Morris filed its response in opposition to the People's motion. The People then filed a motion for leave to file reply in support of its motions.

The Board grants the People's motion to reply and accepts the reply into the record.

On August 30, 2021, the People filed a motion for leave to file surreply and proposed surreply in support of its motion to file first amended complaint. For administrative economy the Board denies the motion, but reminds the parties that they are free to make these arguments in the future.

COMPLAINT AND AMENDED COMPLAINT

The People's original 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 II—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)).

In the amended complaint (Am. Comp.), the People retain violations alleged in the original complaint but update alleged facts to reflect Morris's additional groundwater testing. Mot. at 5. Additionally, the amended complaint adds new allegations of ongoing violations at the landfill. *Id.* The new violations include: (1) failure to complete closure of Parcel A of the landfill; (2) failure to initiate and complete closure of Parcel A of the landfill; and (3) other operating and reporting violations. *Id.*

DISCUSSION

Morris responds to the People with several arguments opposing the motion to amend. As pointed out in the People's reply, many of the arguments raised by Morris challenge the sufficiency of the allegations in the complaint, and are more properly raised in a motion to dismiss. Nonetheless, because the arguments are fully briefed, the Board will first address Morris' arguments opposing the motion to amend before turning to arguments challenging the sufficiency of the allegations. After considering these arguments, the Board accepts the amended complaint. Further, the Board is unconvinced by Morris' remaining arguments challenging the sufficiency of the complaint.

Motion To Amend The Complaint

The Board addresses each argument made by Morris, starting with the actual challenge to the motion to amend. The Board will then address the arguments Morris raises concerning its ownership or operator status, and then the legal challenges to the allegations in the complaint.

No Absolute Right to Amend

The People correctly note that the Board's standard practices allow for a complaint to be amended. *Id.* In People v. Sheridan Sand & Gravel, the Board stated that its "own practice is to allow amendments to complaints and petitions filed with the Board." See Reply at 3-4, *citing* People v. Sheridan Sand & Gravel, PCB 06-177 (Jan. 26, 2007). Further, the Board will allow amendment to add *new* violations "on just and reasonable terms." Reply at 4, *citing* People v. Petco Petroleum Corporation, PCB 05-66 (May 19, 2005).

In contrast, Morris argues that the People do not have the absolute and unlimited right to amend. Resp. at 4. Instead, Morris claims that when it is apparent after amendments that no cause of action can be stated, leave to amend should be denied. *Id.* *citing* Ruklick v. Julius Schmid, Inc., 169 Ill. App. 3d 1098, 1113 (1998). Morris asserts that courts may dismiss a cause of action if it's clear that there are no facts that would entitle the plaintiff to relief. *Id.* Here, Morris argues that the People's proposed violations alleged in Counts I to III and Counts VIII to XIII fail to state a cause of action and thus cannot withstand a motion to dismiss. *Id.* Therefore, Morris argues that under *res judicata* and collateral estoppel the People are barred from enforcing the violations from the 2013 violation notice. *Id.* Additionally, Morris argues that the claims are barred because there is pending declaratory judgment involving the same claims in Circuit Court of Grundy County.

Discussion. As will be discussed below, the Board is not convinced by Morris' arguments that the amended complaint could not withstand a motion to dismiss. The Board reviewed the amended complaint and finds that the amended complaint meets the requirements of the Act and Board regulations. Therefore, the Board accepts the amended complaint.

Morris Not an Owner/Operator

Morris asserts that the allegations in the amended complaint arise out of allegations that Morris is the operator of the Community Landfill. Resp. at 4. Morris asserts that in People v. Cmty Landfill Co. and City of Morris, PCB 03-191, the State alleged that Morris was conducting waste disposal operations and had a duty to provide financial assurances to pay for closure and post-closure care. Resp. at 4. Morris notes that the Appellate Court found that Morris was not "the owner or operator of the landfill" and had no responsibility to pay for closure or post-closure care of the facility. *Id.* citing City of Morris v. Cmty Landfill Co., 2011 IL App (3d) 090847, ¶54. Morris states that despite this opinion, the People issued a violation notice in 2013 alleging the Morris was the owner of the facility. Resp. at 2.

The People argue that Morris relies on the Third District's decision from City of Morris v. Cmty. Landfill Co., 2011 IL App (3d) 090847, while ignoring a prior Third District decision in Cmty Landfill Co. and City of Morris v. PCB, 331 Ill. App. 3d 1056, 1058 (3rd Dist. 2002), wherein the Court stated that the "landfill is owned by the City of Morris." Reply at 5. The 2002 decision was issued twenty years after Morris entered its lease with Community Landfill Company (CLC), a lease which Morris now incredibly argues transferred ownership of the landfill. *Id.*

The People note that the 2011 decision reversed the Board's Order issued on June 18, 2009 in PCB 03-191, and was issued based on a factual record accurate only through October 2007. Reply at 5. That opinion dealt with the narrow issue of liability for posting financial assurance for landfill closure and was issued on a record during the time that CLC remained in existence and was the permitted operator of the landfill. *Id.* at 6. However, the People assert that by the time the Third District issued its 2011 opinion, CLC dissolved. *Id.* Thus, the facts and the applicable law has changed, and the People deny that the 2011 decision provides any defense to the alleged ongoing violations alleged against Morris. *Id.* The People maintain that the 2011 Appellate Court decision does not provide a bar to filing the amended complaint. *Id.*

Discussion. In PCB 03-191, the Board found that Morris was an operator and responsible for financial assurance. In the court's review of PCB 03-191, the court noted that the Board specifically found that the City was not involved in day-to-day operations of the landfill. 2011 IL App (3d) 090847 ¶28, citing City of Morris, PCB 03-191 at 13. The court stated:

That finding is the test for determining if an entity is "conducting waste operations," not litigation activities, financial support or minor amounts of leachate treatment. The Board erred in finding that the City was conducting a waste disposal operation and responsible for obtaining financial assurance. The Board's order granting summary judgment in favor of the State and against the City was improper. *Id.*

The issue of ownership of the landfill and Morris was not discussed, except to note that Morris owns the land on which the landfill was located. *Id.* at ¶2. By contrast, in 2001 Morris was acknowledged as the owner of the landfill. *See Cmty Landfill Co. and City of Morris v. IEPA*, PCB 01-170 (Dec. 6, 2001), affirmed *Cmty Landfill v. PCB*, 221 Ill. App. 3d 1056 (May 15, 2002). Morris participated in the proceeding and did not deny that it was the owner. Therefore, given that CLC has dissolved, the Board finds that the liability of Morris as the owner or operator is not settled by case law and is an appropriate issue to be litigated in this proceeding.

Legal Challenges

Morris argues that the People's claims are barred for several legal reasons including (1) *res judicata*; (2) collateral estoppel; (3) laches; (4) the People's proposed violations are pending in another venue; (5) the claims are barred by the statute of limitations; (6) the amendments of 415 ILCS 5/21.1 does not create liability to the Morris; and (7) the People are barred by 735 ILCS 5/13-217 because the People did not re-file the lawsuit within one year of voluntary dismissal. Resp. at 5 – 15.

The People argue that the issues Morris raises in its response, including *res judicata*, collateral estoppel, "laches", an inapplicable "statute of limitations" claim, and other matters, are not legal issues related to allowing filing the State's First Amended Complaint. Reply at 6. Further, the People argue that the Board rules make it clear that the claims made by Morris regarding any potential defects in the amended complaint must be raised by motion, after the People's amended complaint is on file. *Id.* at 7; *see* 35 Ill. Adm. Code 101.100(b), 101.506. The People also assert that even if Morris raises these purported defenses once the People's amended complaint is accepted, the arguments are still without merit. *Id.*

As noted above, the Board agrees that the legal arguments challenging the sufficiency of the claims in the complaint are more appropriately the subject of a motion to dismiss. However, as the issues are fully briefed, the Board will discuss each below.

Res judicata/Collateral Estoppel. The Board is unconvinced that either the doctrine of *res judicata* or collateral estoppel bars the claims alleged in the amended complaint. Here, Morris argues that the court determined that Morris was neither the "owner" nor the "operator" of the landfill and that decision is *res judicata* and relatedly bars this case because of collateral estoppel. Resp. at 5-6.

The People disagree noting that *res judicata* and collateral estoppel bar a party from relitigating matters already determined by a court. *Id.*, citing *Schuttler v. Ruark*, 225 Ill. App. 3d 678, 682 (2d Dist. 1992). The People argue that neither *res judicata* nor collateral estoppel applies if claims arise based on new facts or conditions. *Id.* at 8, citing *Schuttler*.

As discussed above, the court in the 2011 case disagreed with a Board finding that Morris was the operator, but did not reach a decision on the ownership of the landfill. So, the question is one that can be litigated in this proceeding. Further, the facts have changed, CLC no longer

exists, but the issues at the landfill do continue. Therefore, the Board finds that neither doctrine of *res judicata* or collateral estoppel prevent the allegations in the amended complaint from going forward and being litigated by the parties in this proceeding.

Laches. This case is not barred by laches. Laches “is an equitable doctrine which precludes the assertion of a claim by a litigant whose unreasonable delay in raising that claim has prejudiced the opposing party.” Reply at 9, quoting People v. Panhandle Eastern Pipe Line Co., PCB 99-191, slip op. at 19 (Nov. 15, 2001). Morris previously argued to the Board that the People had not been diligent in prosecuting its case. See People v. City of Morris, PCB 11-50 (May 11, 2020). The Board found that the “People’s level of involvement does not rise to the threshold of ‘inexcusable delay’ or ‘lack of diligence’.” *Id.* at 5. The Board sees nothing new in Morris’ arguments to alter its May 11, 2020 decision. The People pursued allegations at this site for several years, and Morris has been an active party to many of those proceedings. Therefore, the Board sees no unreasonable delay in raising claims on the part of the People, and laches does not apply.

Section 2-619(a)(3). The Board’s procedural rules state that

Except when the Board's procedural rules provide otherwise, the Code of Civil Procedure [735 ILCS 5] and the Supreme Court Rules [Ill. S. Ct. Rules] do not apply to proceedings before the Board. 35 Ill. Adm. Code 101.100(b).

The Board’s procedural rules specifically address the issue of duplicative complaints. See 35 Ill. Adm. Code 103.212.¹ Morris argues that the Board should look to Section 2-619(a)(3) of the Code of Civil procedure, 735 ILCS 5/2-619(a)(3), to deny the People’s motion, because Morris has a pending declaratory judgment action (Resp. at 10). Morris is incorrect. The Board reviews allegations that a complaint is duplicative under the Act and the Board’s rules, not the Code of Civil procedures. And in any case, the Board is unconvinced that the two cases are duplicative.

The 5-year statute of limitations. Morris argues that the alleged violations are based on inspections from 2010, and are thus barred based on the Board’s decision in Union Oil Company of California v. Barge-Way Oil Company, Inc., PCB 98-169 (Jan. 7, 1999). The People argue that the five-year statute of limitations does not apply here as Morris mistakenly relies on Union Oil. Reply at 11. In Union Oil, the Board stated that it “has consistently held that a statute of limitations bar will not preclude any action seeking enforcement of the Act, if brought by the State on behalf of the public’s interest.” *Id.*; see also Pielet Bros. Trading, Inc. v. PCB, 110 Ill. App. 3d 752, 758 (5th Dist. 1982). The People argue that the case at hand does involve public interest, because there is a strong public interest in a healthful environment, and the Attorney General has the duty and authority, as the State’s chief legal officer, to represent the People of the State of Illinois for the protection of that interest. *Id.*; see also Pioneer Processing, Inc. v. EPA, 102 Ill.2d 119, 137 (1984); see also ILL. Const.1970, art. 11, § 2 (“Each person has the right to a healthful environment.”).

¹ Although Board procedural rules generally refer to citizen enforcement matters the Board reviews complaints brought by the People in a similar way.

The Board finds that the statute of limitations as it was applied in Union Oil does not apply in this case. The Board agrees with the People that this case involves a strong public interest.

Section 21.1 of the Act. The arguments by the parties on the applicability of amendments to Section 21.1 of the Act (415 ILCS 5/21.1 (2020)) center on the issue of whether Morris is an owner. Morris again relies on the 2011 case, and the People disagree over the applicability of the case. For the reasons discussed above, the Board finds that Section 21.1 of the Act may be applicable and should be litigated in this proceeding.

Grundy County Circuit Court (Case No. 06-CH-18). As with the challenges based on whether this case is duplicative, the Board will look to its procedural rules to determine whether or not a case may be brought. Based on a review of the Board's rules, the Board finds that the actions in Grundy County Circuit Court do not bar proceeding with the amended complaint.

Motion to Voluntarily Dismiss CLC

In a separate motion, the People also seek to dismiss CLC as a respondent. *Id.* The People argue that CLC has been a dissolved corporation since 2010. *Id.* Further, even if CLC was a viable corporation, it has no right to access the property. *Id.* The People also argue that the 2013 Violation Notice made no mention of CLC at the landfill. *Id.* Thus, the People argue that dismissing CLC as a party would "streamline this matter and result in a resolution of the alleged violations." Mot. at 6. Morris argues that CLC is a necessary party to this complaint and should not be dismissed. Resp. at 15. Morris maintains that a complete resolution of these matters is not possible without CLC.

The Board appreciates the situation Morris may be in with CLC being a dissolved corporation; however, the potential liability of Morris is not mitigated by CLC. Morris may argue and even present evidence to demonstrate that Morris was not and is not liable for violations. Those may include evidence regarding CLC. However, CLC need not be a party to resolve issues against Morris.

Based on these factors, the Board grants the People's motion to dismiss CLC.

IT IS SO ORDERED.

Board Member J. Van Wie abstains.

I, Timothy J. Fox, Acting Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 9, 2021 by a vote of 3-0.



Timothy J. Fox, Acting Clerk
Illinois Pollution Control Board