

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JOHN C. KITCHIN, JR., et al.,)
on behalf of themselves and all others)
similarly situated,)
)
Plaintiffs,)
)
v.)
)
BRIDGETON LANDFILL, LLC,)
et al.,)
)
Defendants.)

No. 4:18 CV 672 CDP

MEMORANDUM AND ORDER

Plaintiffs bring this putative class action seeking damages and injunctive relief for radioactive contamination of their respective properties allegedly caused by neighboring West Lake Landfill, located in North St. Louis County, Missouri. Pending before the Court is third-party defendant Cotter Corporation, N.S.L.’s motion to dismiss defendant Bridgeton Landfill, LLC’s third-party complaint. Because plaintiffs’ recently filed second amended complaint renders Cotter Corporation’s motion to dismiss moot, I will deny the motion as moot.

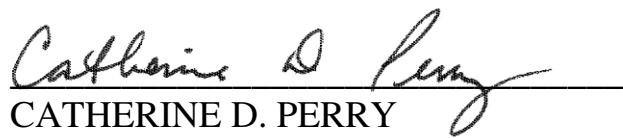
In their original and amended complaints, plaintiffs named Bridgeton Landfill, LLC, Allied Services, Inc., Republic Services, Inc., and Rock Road Industries, Inc., as defendants. On October 4, 2021, with leave of Court, defendant Bridgeton Landfill filed a third-party complaint against Cotter Corporation,

seeking contribution from Cotter Corporation if Bridgeton Landfill was found liable on plaintiffs' claims. On April 11, 2022, Cotter Corporation moved to dismiss the third-party complaint, arguing that plaintiffs could not recover against the defendants on the allegations raised in the amended complaint and thus that Bridgeton Landfill had no claim for contribution against Cotter Corporation. As one of the bases in support of its argument, Cotter Corporation averred that plaintiffs' amended complaint did not attribute any alleged offending conduct to Cotter Corporation or identify Cotter Corporation as a relevant actor in the occurrences at issue.

On February 9, 2023, with leave of Court, plaintiffs filed a second amended complaint that again named Bridgeton Landfill, Allied Services, and Republic Services as defendants. Rock Road Industries is no longer a defendant to the action. Notably, the second amended complaint *added* Cotter Corporation as a defendant, alleging that it engaged in conduct giving rise to plaintiffs' injuries. As the second amended complaint makes direct claims of liability against Cotter Corporation and attributes offending conduct to it, the arguments upon which Cotter Corporation based its motion to dismiss the third-party complaint have been rendered moot. I will therefore deny the motion as moot. *See Samsung Elecs. Am., Inc. v. Yang Kun Chung*, No. 3:15-CV-4108-L, 2020 WL 730522, at *4 (N.D. Tex. Feb. 13, 2020).

Accordingly,

IT IS HEREBY ORDERED that Cotter Corporation, N.S.L.'s Motion to Dismiss Third-Party Complaint [93] is **DENIED AS MOOT**.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 13th day of February, 2023.