UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Mangiardi Brothers
Trucking, Inc.

        v.   Civil No. 12-cv-481-JD

Dewey Environmental, LLC,
et al.

O R D E R

     Mangiardi Brothers Trucking, Inc. ("Mangiardi") brought suit

against Dewey Environmental, LLC; Francis Harvey and Sons, Inc.;

Babcock and Wilcox Construction Co., Inc. ("Babcock"); and Berlin

Station, LLC ("Berlin") alleging claims arising out of unpaid

invoices for Mangiardi's hauling of hazardous waste from a

construction site. Babcock and Berlin moved to dismiss the

complaint under Federal Rule of Civil Procedure 12(b)(6).

     On February 25, 2013, fourteen days after Babcock filed its

motion to dismiss and four days after Berlin filed its motion to

dismiss, Mangiardi filed an amended complaint.[1] The amended

complaint addressed some of the issues raised in the motions to

dismiss.

     Under the Federal Rules of Civil Procedure, Mangiardi was

permitted to file its amended complaint as a matter of course

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     [1]On the same day, Mangiardi filed an objection to Babcock's
motion to dismiss.

within twenty-one days "after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed. R. Civ. P. 15(a)(1)(B). Once filed, the amended complaint superseded the original, and "[t]hereafter the earlier complaint is a dead letter and no longer performs any function in the case." Connectu LLC v. Zuckerberg, 522 F.3d 82, 91 (1st Cir. 2008) (internal citation and quotation marks omitted); Kolling v. Am. Power Conversion Corp., 347 F.3d 11, 16 (1st Cir. 2003). As a result, the pending motions to dismiss are moot. See, e.g., Applied Underwriters v. Combined Mgmt. Inc., 2011 WL 1467239, at *1 n.2 (D. Me. Apr. 18, 2011).

<u>Conclusion</u>

Babcock's motion to dismiss the original complaint (document no. 10) and Berlin's motion to dismiss the original complaint (document no. 15) are denied as moot.

SO ORDERED.

Joseph A. DiClerico, Jr.
United States District Judge

March 11, 2013

cc: David Himelfarb, Esquire
     Rebecca S. Kane, Esquire
     Thomas J. Pappas, Esquire