

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 COMMUNITY LANDFILL COMPANY, INC.,)
 an Illinois corporation, and)
 the CITY OF MORRIS, an Illinois)
 municipal corporation,)
)
 Respondents.)

PCB No. 03-191
 (Enforcement-Land)

to: Mr. Mark La Rose
 La Rose & Bosco
 200 N. La Salle Street, #2810
 Chicago, IL 60601

Mr. Bradley P. Halloran
 Hearing Officer
 Illinois Pollution
 Control Board
 100 W. Randolph Street
 Chicago IL 60601

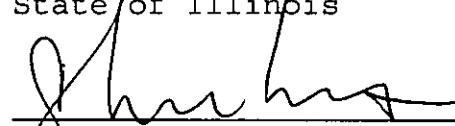
Mr. Charles Helsten
 Hinshaw & Culbertson
 100 Park Avenue
 Rockford IL 61105-1389

NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, October 18, 2005, filed with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing, Complainant's Response to Community Landfill Company's Motion to Strike, a copy of which is attached and herewith served upon you.

Respectfully Submitted,
 PEOPLE OF THE STATE OF ILLINOIS
 ex rel. LISA MADIGAN
 Attorney General of the
 State of Illinois

BY:



CHRISTOPHER GRANT
 Assistant Attorneys General
 Environmental Bureau
 188 W. Randolph St., 20th Flr.
 Chicago, IL 60601
 (312) 814-5388

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COMPLAINANT'S RESPONSE TO COMMUNITY LANDFILL COMPANY'S MOTION TO STRIKE

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, through its attorney, LISA MADIGAN, Attorney General of the State of Illinois, and hereby responds to Respondent's, COMMUNITY LANDFILL COMPANY'S Motion to Strike Portions of Complainant's Motion for Summary Judgment ("CLC Motion"). In support thereof, Complainant states as follows:

I. RESPONDENT CLC'S MOTION TO STRIKE IS UNTIMELY AND SHOULD BE DENIED

1. On July 21, 2005, Complainant filed its Motion for Summary Judgment ("Complainant's Motion"). Fourteen days later, Respondent CLC filed its Motion to extend the time to Respond to Complainant's Motion. On August 18, 2005, Hearing Officer Halloran extended the Response deadline to September 16, 2005. At the request of Respondent CLC, the parties agreed to once again extend the Response date to October 3, 2005. The new date

was recorded in Hearing Officer Halloran's September 18, 2005 Order.

2. On October 3, 2005, CLC filed the instant Motion, along with its Response to Complainant's Motion for Summary Judgment. Complainant asserts that CLC's Motion is untimely filed. CLC's Motion was required to be filed within 14 days, pursuant to 35 Ill. Adm. Code 101.500, or potentially, within 30 days pursuant to 35 Ill. Adm. Code 101.506. Respondent CLC did not request an extension of time to file its Motion to Strike, and in his September 13, 2005 Order, Hearing Officer Halloran only extended the time for Respondent to file responses and the City of Morris' Cross-Motion for Summary Judgment. CLC's Motion is untimely filed and therefore should be denied.

II. COMPLAINANT DOES NOT ALLEGE A NEW VIOLATION, AND DOES NOT NEED TO AMEND ITS COMPLAINT TO OBTAIN INTERIM RELIEF

3. In its Complaint, Complainant alleges that the Respondents conducted a waste disposal operation without adequate financial assurance, and thereby violated Section 21(d)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/21(d)(2)(2004), and 35 Ill. Adm. Code Sections 811.700(f) and 811.712.

4. Without support, Respondent CLC claims that certain facts contained in one of Complainant's affidavits must be alleged in an amended complaint. Respondent refers to Mark Retzlaff's testimony that the dumping of waste and other

materials at the Morris Community Landfill had taken place as late as May 18, 2005 [Affidavit of Mark Retzlaff, *Complainant's Motion, Exhibit I*]. CLC claims that these facts must be alleged in an amended complaint.

5. However, Complainant's Motion does not seek to add any additional violations, or 'missing' factual allegations. Thus Respondent's citation of *People v. Petco Petroleum Group*, PCB 05-66 (May 19, 2005); 2005 WL 12555250, is unhelpful. In that case, the Board granted Complainant's motion to amend its complaint to add seven additional counts, and make corrections in existing counts.

6. Complainant's Motion for Summary Judgement seeks a finding of violation on the allegations in the Complaint, but also specific interim relief. The Board both invites and expects such a request in Motions for Summary Judgement. In accepting complaints for hearing, the Board routinely orders:

"Accordingly, the Board further directs the hearing officer to advise the parties that in summary judgment motions and responses, at hearing and in briefs, each party should consider:

- (1) proposing a remedy for a violation, if any (including whether to impose a civil penalty), and supporting its positions with facts and arguments that address any or all of the Section 33(c) factors;"*

* * *

7. The affidavits and exhibits attached to Complainant's Motion support both a finding of liability against the Respondents based on the allegations in the Complaint, and also the interim relief sought. Complainant does not need to amend its complaint to 'allege' each fact contained in the several affidavits attached. The affidavits are evidence, not allegations. Complainant argues this evidence in its motion. Notably, CLC's response does not contain any counter-affidavit on the issue of ongoing waste disposal.

8. Although Complainant does not now seek to amend its Complaint, it notes that, pursuant to 735 ILCS 5/2-616(c), it is entitled to amend its complaint at any time, including after hearing.

III. THE BOARD IS AUTHORIZED TO ORDER THE INTERIM RELIEF SOUGHT BY COMPLAINANT

9. Without citing any case authority, CLC claims that "...while the Board does have the power to issue a cease and desist order, it may only do so upon issuing a final order". *CLC Motion*, p. 3. However, nothing in the Act prevents the Board from issuing a cease and desist order, or other affirmative relief, after a finding of liability but prior to a hearing on civil penalty.

10. Section 33 of the Act, 415 ILCS 5/33 (2004), provides, in pertinent part:

(a) After due consideration of the written and oral

statements, the testimony and arguments that shall be submitted at the hearing, or upon default in appearance of the respondent on return day specified in the notice, the Board shall issue and enter such final order, or make such final determination, as it shall deem appropriate under the circumstances.

* * *

(b) Such order may include a direction to cease and desist from violations of this Act....

Respondent claims that this language only allows the Board to issue orders dealing with all issues in the case, after hearing. This contention is without merit, and contrary to standard Board procedure.

11. First, CLC's contention conflicts with the very purpose of summary judgment-to avoid the expense and delay of hearing in cases where there is no real dispute. If the Board had to rely on oral testimony and make final determination of all issues prior to entering an order, the Board's summary judgment rules would be meaningless. Clearly the language '...final order, or make such final determination...' assumes that there will be cases where only certain issues are determined, and interim Board findings are made.

12. The Board often grants partial summary judgement prior to hearing on penalty. In *People v. Michael Stringini*, PCB 01-43 (October 16, 2003), the Board found that the Respondent violated certain Sections of the Act, and ordered him to cease and desist from further violations. However a full hearing was not held

until March 23, 2004, and the Board's final order was not issued until January 20, 2005. In *Krautsack v. Patel et al.*, PCB 95-143 (August 21, 1997), the Board granted partial summary judgment, ordered the Respondents to cease and desist from further violations, and ordered a Respondent to remediate the site, but deferred its decision on civil penalty. The matter continued before the Board until a settlement agreement and dismissal were entered on February 26, 1999. Complainant's assertion that the Board may not enter interim relief is without merit.

13. Additionally, appellate courts recognize the Board's broad power to address violations. In *Discovery South Group Ltd. v. Pollution Control Board*, 275 Ill. App. 3d 547 (1st Dist 1995), the Court upheld the Board's technical remedy, noting:

"the legislature has conferred upon the ...Board those powers that are reasonably necessary to accomplish the legislative purpose of the administrative agency; specifically the imposition of monetary penalties for violation of the...Act, and necessarily the power to order compliance with the Act". 275 Ill. App. 3d 547, 560 (quoting *Kaeding v. Pollution Control Board*, 22 Ill. App. 3d 36, 38 (2d Dist. 1974)) (emphasis supplied).

14. In our case, Complainant has shown that the Respondents continue to operate a landfill without compliant financial assurance for closure/post-closure activities. The interim relief requested, including an order for the Respondents to stop accepting materials until in compliance and to obtain compliant financial assurance, is the only way for the Respondents to come into compliance with the Act. Moreover, since the evidence shows

that the violations are continuing, it is the only way for the Board to order the Respondents to 'cease and desist' from the current violations.

15. Respondent CLC filed its Motion to Strike on October 3, 2005, more than forty days after Complainant served its Motion for Summary Judgment. No extension was granted by either agreement or by the hearing officer for filing this Motion, which should therefore be denied as untimely.

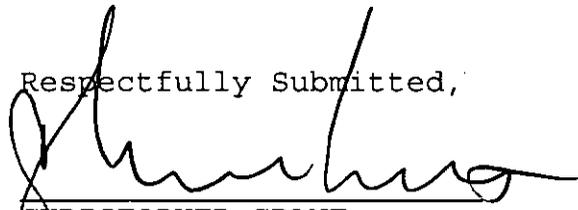
16. Complainant is not obligated to delay resolution of this case by amending its complaint to include evidence attached to its Motion. To the contrary, the Board should order the Respondents to come into compliance on an expedited basis.

17. The Board clearly is authorized to order the interim relief sought in Complainant's Motion without a full hearing.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board deny Respondent COMMUNITY LANDFILL COMPANY's Motion to Strike Portions of Complainant's Motion for Summary Judgment.

Respectfully Submitted,

BY:



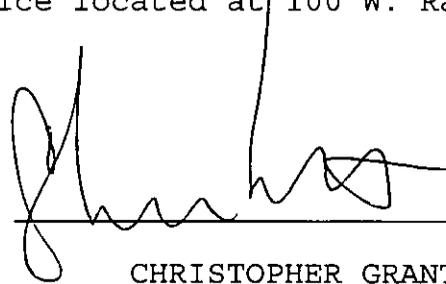
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CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 18th day of October, 2005, the foregoing Complainant's Response to Community Landfill Company's Motion to Strike, and Notice of Filing, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.



CHRISTOPHER GRANT