

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, Illinois 60601

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph, #2001
Chicago, IL 60601

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

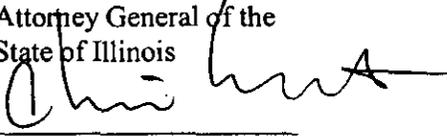
Mr. Scott Belt
105 East Main Street
Suite 206
Morris, Illinois 60450

NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, April 13, 2006, filed with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing, Complainant's Response to the City of Morris' Motion to Reconsider, 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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RESPONSE TO CITY OF MORRIS MOTION TO RECONSIDER

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, through its attorney, LISA MADIGAN, Attorney General of the State of Illinois, and requests that the Illinois Pollution Control Board ("Board") deny Respondent CITY OF MORRIS' Motion to Reconsider. In support thereof, Complainant states as follows:

Standard for Motion to Reconsider

1. In ruling on a motion for reconsideration, the Board only will consider new evidence, a change in law, or errors in the court's previous application of the law. *Grand Pier Center, LLC, et al., v. River East LLC, et al.*, PCB 05-157, 2006, slip op at 1, (citing *Korogluyan v. Chicago Title & Trust Co.*, 213 Ill. App. 3d 622, 627, (1st Dist. 1991)).

2. Respondent City of Morris ("Morris") has not offered new evidence, nor has it alleged a change in the Act or the pertinent Pollution Control Board regulations. Rather, in its Motion to Reconsider ("Motion") and Brief in Support of Motion to Reconsider ("Brief"), Morris challenges the Board's interpretation of the record. Specifically, Morris argues that its

participation in activities at the Morris Community Landfill ("Landfill" or "Site") does not amount to 'conducting a waste disposal operation'. In support, it repeats many of the arguments rejected by the Board in the Board's February 16, 2006 order granting summary judgment ("Order"). Morris argues that it is merely a 'passive owner of real estate', that, in joint litigation with Respondent Community Landfill, it was 'defending itself against claims by the State', and that its financial involvement with the Landfill should not be considered significant. Morris argues for an extremely narrow interpretation of the Act's 'conduct a waste disposal' standard.

3. However, in accordance with Section 2 of the Act, Courts apply a *liberal construction*, to effectuate its purposes. *State Oil Company v. People*, 352 Ill. App. 3d 813, 822 N.E.2d 876, at 882 (2d Dist 2004). Therefore, the Board has correctly determined that the extent of Morris' activities at the Landfill (the "grand sum") is sufficient to constitute operation of the facility, and to find Morris liable for violations of the Act and regulations. (Order, p.14). The record is filled with evidence in support of the Board's finding.

Ownership

4. The Record clearly shows that Morris is not 'the owner of property on which the Landfill is located', but rather the owner of the landfill itself. As owner, it applied for and obtained numerous permits, including those now in place. As owner, it negotiated and contracted with Respondent Community Landfill Company ("CLC"), now the permitted operator. As owner, it also had the right to take legal action against its tenant for breaches of its agreement, or to compel compliance with environmental regulations. Nothing in the record indicates that it has *ever* done so.

5. Ownership of the site of violation has an additional legal significance under Act.

An owner is responsible for a pollution source unless facts establish that the owner lacked to capability to control the property. *Perkinson v. Pollution Control Board*, 187 Ill. App. 3d 689 (3d Dist. 1989). Morris' ownership, permits, and lease provided it with the capacity to control the Landfill.

6. In addition, Subtitle G of the Board regulations contain hundreds of requirements applicable to 'owners or operator' of landfills. The Financial Assurance Regulations are no exception: 35 Ill. Adm. Code, Sections 811.700 through 811.720 all pertain to 'owners or operators'. The sole mechanism for enforcing these requirements is 415 ILCS 5/21(d)(2).

Joint Action/Litigation

7. The record shows that Morris and CLC jointly applied for all permits relevant to this matter. In addition, they jointly litigated against the State in Landfill matters. These actions were not "[d]efense of and/or protection of itself" as stated by Morris (Motion, p.4). In fact, the City of Morris was a *Petitioner*, seeking to reverse the Illinois EPA's denial of an operating permit due to noncompliant financial assurance. The goal of the joint Morris/CLC permit appeal was to continue waste disposal operations at the Landfill.

8. In support of this joint litigation, the City of Morris and CLC amended their contract (*See*: Board Opinion in PCB 01-48/01-49, Complainant's Motion for Summary Judgment, Exhibit D, pp. 26-28). The City of Morris agreed to treat Landfill leachate at a "...significantly reduced cost" (p. 26). Morris also agreed with CLC to jointly post financial assurance for the Landfill (p.27)¹.

¹ Copies of the bonds (exhibit C to Complainant's Motion for Summary Judgment) show that the City of Morris eventually arranged for \$10,081,630 of financial assurance (through noncompliant *Frontier* surety bonds). This represented almost 60% of the total required for

9. Clearly Morris and CLC acted as partners regarding permitting, financial assurance for continued operations, and in challenging the State's attempts to seek compliance. As part of its contribution, the City of Morris subsidized leachate treatment at the Landfill. Also, as noted in Complainant's Motion for Summary Judgment, the City received financial benefits from continued operations in the form of royalties, rents, and free or reduced disposal fees. Moreover, the City had the ability to regulate landfill operations through enforcement of its contract with CLC.²

Discussion

10. Morris argues that it lacked 'discretion' in Landfill decisions (Morris Brief, p.4), although most of these contentions are unsupported by the record³. However, the City's focus on 'day-to-day' operations is misplaced. As the Board determined, one looks to the behavior of a party to determine whether it is an 'operator'. The City's actions throughout the relevant period show continuous involvement in waste disposal-related decisions at the Site. In fact, it is questionable whether the Landfill could have continued operations at all without the City's 1999

continued landfill operations.

² the State believes that the relationship between the City of Morris and Community Landfill Company could be considered a 'joint venture'. The characteristics of a joint venture are: (1) a community of interest in the purpose of the venture, (2) a right to direct and govern the policy and conduct of the other joint venturer, and (3) a right to joint control of the property used in the joint venture. *Crichton v. Golden Rule Insurance Company*, 358 Ill. App. 3d 1137, 1148 (1st Dist. 2005). The City's ownership and lease may have provided a right to govern the 'policy and conduct' at the Landfill.

³ For example, Morris states that it did not design or construct the facility, yet it is undisputed that the City operated the Landfill for several years before contracting with CLC, and joined in all permit applications to modify the Landfill. Also, the City refers to the 1982 lease agreement with CLC, but fails to attach the current version. As shown in the Board decision in PCB 01-48/01-49, the lease has been amended, perhaps many times.

voluntary agreement to subsidize leachate treatment and provide 60% of the Landfill's (noncompliant) financial assurance.

11. The Board's decision in this case properly rejected the City's argument that actual day-to-day activity at the Landfill is required to find 'operator' liability. The Board's decision appropriately applies a liberal construction to 35 Ill. Adm. Code 811.700(f) and 415 ILCS 5/21(d)(2). However, it also avoids an absurd result. If a landfill owner, with significant involvement in the continuation of landfill operations, was deemed to have no status as 'operator', and could therefore avoid regulation under 415 ILCS 5/21(d)(2), it would render meaningless the many obligations assigned to 'owners' in Subtitle G.

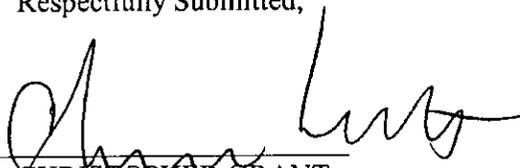
12. Finally, it is just and fair to hold the City of Morris responsible for the violations alleged in this matter. The City arranged for and provided noncompliant Frontier Bonds as financial assurance for continued operations at the Landfill. The City has also jointly litigated the issue of the Bonds' validity, through both the Board and Appellate Court. Having lost, it should not be allowed to distance itself from liability by claiming to be a 'passive landowner'.

13. The Board has correctly applied the relevant provisions of the Act and Subtitle G regulations in this matter, in conformance with the purposes of the Act. Respondent Morris' Motion to Reconsider should be denied, and this case should continue to hearing, as scheduled.

WHEREFORE, Complaint respectfully requests that the Board deny Respondent City of Morris' Motion to Reconsider, order the parties to hearing on June 20, 2006, and order any further relieve that the Board deems appropriate.

Respectfully Submitted,

BY:



CHRISTOPHER GRANT

JENNIFER TOMAS

Assistant Attorneys General

Environmental Bureau

188 W. Randolph St., 20th Flr.

Chicago, Illinois 60601

(312) 814-5388

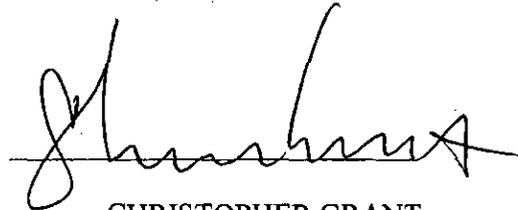
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CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 13th day of April, 2006, the foregoing Response to the City of Morris' Motion to Reconsider, 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