

AFFIDAVIT OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on September 5, 2007, she caused to be served a copy of the foregoing upon:

Mr. Christopher Grant Assistant Attorney General Environmental Bureau 69 W. Washington St., Suite 1800 Chicago, IL 60602	Mark LaRose Clarissa Grayson LaRose & Bosco, Ltd. 200 N. LaSalle, Suite 2810 Chicago, IL 60601
Mr. John T. Therriault, Assistant Clerk Illinois Pollution Control Board 100 W. Randolph, Suite 11-500 Chicago, IL 60601 (via electronic filing)	Bradley Halloran Hearing Officer Illinois Pollution Control Board 100 W. Randolph, Suite 11-500 Chicago, IL 60601
Mr. Scott Belt Scott M. Belt & Associates, P.C. 105 East Main Street Suite 206 Morris, IL 60450	Jennifer A. Tomas Office of the Attorney General Environmental Bureau 500 South Second Street Springfield, IL 62706

A copy of the same was enclosed in an envelope in the United States mail at Rockford, Illinois, proper postage prepaid, before the hour of 5:00 p.m., addressed as above.



HINSHAW & CULBERTSON
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(815) 490-4900

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 03-191
)	
COMMUNITY LANDFILL COMPANY, INC.)	
an Illinois corporation, and the CITY OF)	
MORRIS, an Illinois municipal corporation,)	
)	
Respondents.)	

MOTION FOR LEAVE TO FILE AMENDED AFFIRMATIVE DEFENSES

NOW COMES the Respondent, CITY OF MORRIS, by and through its attorneys, HINSHAW & CULBERTSON, LLP, and in support of its Motion for Leave to File Amended Affirmative Defenses states as follows:

1. The City has from the onset of this litigation asserted that it has not conducted waste disposal operations at the Morris Community Landfill, and has strenuously argued that it therefore bears no responsibility for closure/post-closure costs of the Landfill.

2. This Board has, however, held in its Interim Order of February 16, 2006 that the City has conducted waste disposal operations at the Landfill, and has authorized a hearing on a final remedy to be imposed against the Respondents.

3. Although the City adamantly reiterates that it is not liable for the posting of closure/post closure financial assurance, in light of the Board's Interim Order and holding that the City is to be treated as such for purposes of these proceedings, it is incumbent upon the City to respond to the proposed remedy and penalties urged by the State with Amended Affirmative Defenses. The City's Affirmative Defenses to the proposed remedy and penalties include the Illinois Tort Immunity Act, which provides statutory protection for local public entities in actions arising from the operation of government. 745 ILCS 10/1-101.1(a).

4. Section 2-616(a) of the Code of Civil Procedure allows amendments of pleadings on just and reasonable terms at any time before final judgment. 735 ILCS 5/2-616(a) (2004).

5. The most important consideration in whether to allow a requested amendment is whether allowing the amendment furthers the ends of justice. *Savage v. Pho*, 312 Ill. App. 3d 553, 556-57 (5th Dist. 2000). Any doubts as to whether leave to file an amended pleading should be granted should be decided in favor of allowing the amendment. *Id.*

6. The issues raised in the City's Amended Affirmative Defenses have been known by the State since the onset of this controversy, and seek to protect the interests of the taxpayers and residents of a municipality. Moreover, no prejudice will result in the filing of the Amended Affirmative Defenses, and no delay is necessary as a result of the Affirmative Defenses.

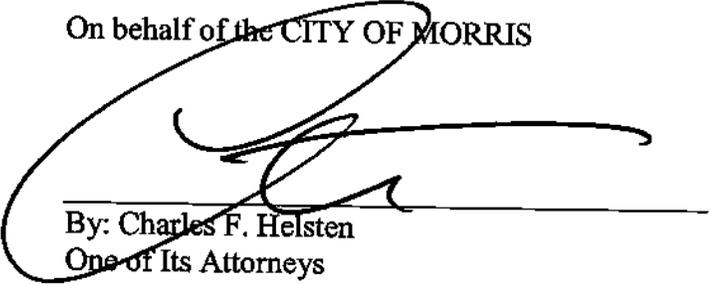
7. The City's Affirmative Defenses are delineated in the attached, "Amended Affirmative Defenses of the City of Morris."

WHEREFORE, the City of Morris respectfully requests that the Board grant leave to file the attached Amended Affirmative Defenses.

Dated: September 5, 2007

Respectfully submitted,

On behalf of the CITY OF MORRIS



By: Charles F. Helsten
One of Its Attorneys

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ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

COMMUNITY LANDFILL COMPANY, INC.,
and CITY OF MORRIS, an Illinois Municipal
Corporation,,

Respondents.

PCB 03-191
(Enforcement – Land)

AMENDED AFFIRMATIVE DEFENSES

NOW COMES Respondent, CITY OF MORRIS, by and through its attorneys, HINSHAW & CULBERTSON LLP, and as and for its Affirmative Defenses, states as follows:

1. The City of Morris neither owned nor conducted a waste disposal operation at the Morris Community Landfill at the time of the alleged violation or at any time thereafter.
2. Pursuant to Section 10/2-102 of the Illinois Tort Immunity Act, the City of Morris is immune from liability for penalties and attorneys fees which are being sought by the State of Illinois. 745 ILCS 10/2-102 (2006).
3. Pursuant to Section 10/2-109 of the Tort Immunity Act, a public entity is not liable for an act or omission of its employee where the employee is not liable. Furthermore, a public employee acting in his scope of employment is not liable for a negligent misrepresentation or the providing of such information either orally, in writing, by computer, or any other electronic transmission. If any employee or agent of the City of Morris indicated at the time of the alleged failure to post financial assurances that the City was the owner or operator of the landfill or obligated to post such financial assurances, such statement was a negligent misrepresentation for which the City is immune from liability. 745 ILCS 10/2-109; 745 ILCS 10/2-210 (2006).

4. The closure and post-closure costs sought by the State of Illinois are not supported by the evidence.

5. The Complaint is barred by the doctrines of laches and estoppel, because the State approved the transfer of the operating and development permits from the City to Community Landfill Company; and because the State failed to compel Community Landfill Company to close Parcel B of the facility in a timely fashion; and because the Agency accepted Frontier bonds and issued a modification permit on August 4, 2000, knowing that Frontier had been delisted.

6. The Frontier insurance bonds complied with all applicable regulations at the time of their issuance and were accepted as such by the Agency.

7. At no time did the City of Morris willfully, knowingly or repeatedly violate any State law, and thus the award of costs and attorneys fees are not allowable.

8. Pursuant to Sections 33(c) and 42(h), the proposed remedy of the State of Illinois is impractical and impossible to be accomplished by the City of Morris, which lacks the ability to pay the same.

9. If any agent of the City of Morris executed a document at the time of the alleged failure to post financial assurances indicating that the City was the owner or operator of Community Landfill, or was obligated to post financial assurances, such act was unauthorized and *ultra vires*, and cannot be the basis for the imposition of any remedy or penalty against the City of Morris.

WHEREFORE, the City of Morris, an Illinois Municipal Corporation, prays that judgment be rendered in its favor and that no remedy be imposed against the City and no order compelling payment or any penalties or attorneys' fees be issued.

Dated: September 5, 2007

Respectfully submitted,

On behalf of the CITY OF MORRIS

/s/ Charles F. Helsten
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One of Its Attorneys

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