

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB NO. 03-191
	)	(Enforcement – Land)
COMMUNITY LANDFILL COMPANY, INC.,	)	
an Illinois corporation, and	)	
the CITY OF MORRIS, an Illinois	)	
municipal corporation,	)	
	)	
Respondent.	)	

NOTICE OF FILING

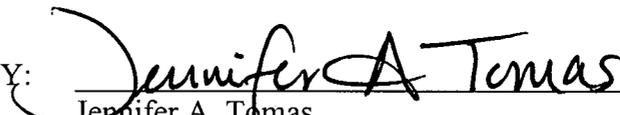
TO: See Attached Service List  
(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following PEOPLE'S OBJECTION TO THE CITY OF MORRIS' MOTION FOR LEAVE TO FILE AMENDED AFFIRMATIVE DEFENSES, a copy of which is attached and hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

BY:   
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 Environmental Bureau  
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DATE: September 6, 2007

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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**CERTIFICATE OF SERVICE**

I, JENNIFER A. TOMAS, an Assistant Attorney General, certify that I caused copies of the foregoing Notice of Filing and People's Objection to the City of Morris' Motion for Leave to File Amended Affirmative Defenses to be served upon the persons listed on said Notice by electronic mail (e-mail) on September 6, 2007.

  
JENNIFER A. TOMAS

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the CITY OF MORRIS, an Illinois	)	
municipal corporation,	)	
	)	
Respondents.	)	

**PEOPLE’S OBJECTION TO RESPONDENT CITY OF MORRIS’  
MOTION FOR LEAVE TO FILE AMENDED AFFIRMATIVE DEFENSES**

NOW COMES the Complainant, People of the State of Illinois (“People”), and objects to the Respondent City of Morris’ (hereinafter the “City”) Motion for Leave to File Amended Affirmative Defenses which was filed with the Illinois Pollution Control Board (“Board”) on September 5, 2007. In support of this Objection, Complainant states as follows:

1. On February 16, 2006, the Board entered an Interim Opinion and Order in this matter finding that the City of Morris and Community Landfill Corporation (“CLC”) violated Section 21(d)(2) of the Act, (415 ILCS 5/21(d)(2) (2004), and Sections 811.700(f) and 811.712(b) of the Board’s regulations. 35 Ill. Adm. Code 811.700(f), 811.712(b). Liability has been established as to the City, and the City’s attempt to affect that finding through inappropriate, untimely affirmative defenses should be denied.

2. On June 1, 2006, in response to CLC and the City’s motions to reconsider the February 16, 2006 Board Order, the Board issued a second Order and upheld the February 16, 2006 Interim Opinion and Order granting summary judgment on the financial assurance

violations.

3. The February 16, 2006 Board Order, which was affirmed by the June 1, 2006 Board Order, resolved the liability issues alleged in the People's one count complaint. The only remaining issue is for the Board to decide the appropriate relief for the violations. Pursuant to the Board's Orders, the evidence at hearing is to address the Sections 33(c) and 42(h) factors as applicable.

4. The City's attempt to file affirmative defenses is untimely and therefore unreasonable in contravention of Section 2-616(a) of the Code of Civil Procedure, 735 ILCS 5/2-616(a) (2006). In determining whether to grant leave to amend pleadings, trial courts consider: (1) whether the proposed amendment would cure the defective pleading, (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment, (3) whether the proposed amendment is timely, and (4) whether previous opportunities to amend the pleading could be identified. *Enzenbacher v. Browning-Ferris Industries of Illinois, Inc.*, 332 Ill. App. 3d 1079, 1086; 774 N.E.2d 858, 863 (2<sup>nd</sup> Dist. 2002). The relief sought by the People in the Complaint and reiterated in the Board's Orders is not new and any affirmative defenses could and should have been filed earlier in the litigation. There is simply no excuse for the City asking the Board on the eve of trial for leave to file affirmative defenses; absolutely nothing has changed since the Board entered its June 1, 2006 Order affirming its Order entered February 16, 2006. The request to file amended affirmative defenses is clearly untimely. Further, granting the City's motion for leave will prejudice the People because trial is scheduled to begin Tuesday, September 11, 2007, and there is no time for the People to respond if the Board grants the request for leave to file. The People should not be punished because the City was tardy in seeking to file

its amended affirmative defenses. Lastly, the City had the opportunity to file amended affirmative defenses since at least June 6, 2006, but waited until September 5, 2007, to file them, again, on the eve of trial.

5. The so-called affirmative defenses that the City seeks leave to file mainly attach to the allegations of the Complaint and do not go to remedy but to liability, i.e., No. 1: denies the City owned or operated the landfill; No. 3: a public entity is not liable for the act or omission of its employee; No. 5: the complaint is barred by laches; No. 6: the City had bonds (financial assurance); No. 9: no agent of the City could obligate the City to post financial assurance. Most of the others do not appear to be affirmative defenses. Since most of the issues raised in the affirmative defenses have already been settled and decided by the Board, the amended affirmative defenses are irrelevant.

WHEREFORE, for the foregoing reasons, the People of the State of Illinois respectfully request that the Board deny the City's request for leave to file its amended affirmative defenses.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

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BY:

  
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