

ILLINOIS POLLUTION CONTROL BOARD

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

Plaintiff, )

v. )

COMMUNITY LANDFILL CO., an Illinois )  
Corporation, and the CITY OF MORRIS, an )  
Illinois Municipal Corporation, )

Defendants.

PCB 03-191  
(Enforcement – Land)

**NOTICE OF FILING**

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on December 6, 2007, we electronically filed with the Clerk of the Illinois Pollution Control Board, City's Motion to Bar Punitive Damages, a copy of which is attached hereto and hereby served upon you.

Dated: December 6, 2007

Respectfully submitted,

On behalf of the CITY OF MORRIS

/s/  
Richard S. Porter  
One of Its Attorneys

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Richard S. Porter  
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ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 03-191
	)	(Enforcement – Land)
COMMUNITY LANDFILL COMPANY, INC.,	)	
and CITY OF MORRIS, an Illinois Municipal	)	
Corporation,,	)	
	)	
Respondents.	)	

**CITY'S MOTION TO BAR PUNITIVE DAMAGES**

NOW COMES Respondent, CITY OF MORRIS, by and through its attorneys, HINSHAW & CULBERTSON LLP, and for its Motion to Bar Punitive Damages, states as follows:

1. On September 5, 2007, the City filed a Motion for Leave to File Amended Affirmative Defenses.
2. The City's Amended Affirmative Defenses raise the affirmative defense of immunity pursuant to the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq*, which bars the imposition of penalties against municipalities. 745 ILCS 10/2-102; *see Boyles v. Greater Peoria Mass Transit Dist.*, 113 Ill.2d 545, 554, 499 N.E.2d 435, 439 (1986) ("In view of the Tort Immunity Act's express prohibition of assessing punitive damages against local governmental entities, we find inherent in the Act a public policy against imposing punitive damage liability on local taxpayers."). The Illinois Supreme Court has explained that punitive damages are those damages which are awarded in order to punish the offender and to deter that party and others from committing similar acts of wrongdoing. *Loitz v. Remington Arms Co.*, 138 Ill.2d 404, 414, 563 N.E.2d 397 (1990). Thus, it is clear that the damages sought by the State for the purpose of punishment or as a deterrent to others constitute punitive damages, which are barred by the Tort Immunity Act. *See Paulson v. County of De*

*Kalb*, 268 Ill.App.3d 78, 83, 644 N.E.2d 37, 40 (2<sup>nd</sup> Dist. 1994) (holding that the Tort Immunity Act barred the imposition of statutorily available treble damages against county-run nursing home).

3. The City has further asserted its immunity pursuant to, *inter alia*, Section 10/2-109 of the Local Government and Governmental Employees Tort Immunity Act, from liability for an act or omission of its employee where the employee is not liable.

4. Given the State's request for punitive damages for the express purpose of punishing the City and deterring other municipalities, the City anticipates that the Board's decision will address the affirmative defense of immunity from punitive damages, and the City therefore reiterates its defense under the Illinois Tort Immunity Act, which remains an important consideration as the Board considers what remedy, if any, should be imposed against the City.

WHEREFORE, the City of Morris, an Illinois Municipal Corporation, prays that the Board find that the Illinois Tort Immunity Act bars the imposition of punitive damages and attorneys fees as against the City.

Dated: December 6, 2007

Respectfully submitted,

On behalf of the CITY OF MORRIS

/s/ Richard S. Porter  
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One of Its Attorneys

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Hinshaw & Culbertson LLP  
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**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 December 6, 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 Assistant Attorney General Environmental Bureau 69 W. Washington Street, Suite 1800 Chicago, IL 60602

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.

/s/  
Joan Lane

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