

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

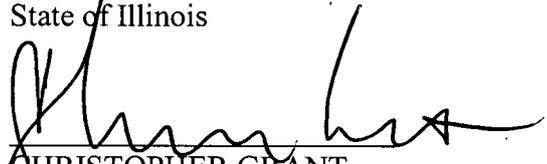
PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 03-191
)	(Enforcement-Land)
COMMUNITY LANDFILL COMPANY, INC.,)	
an Illinois corporation, and)	
the CITY OF MORRIS, an Illinois)	
municipal corporation,)	
)	
Respondents.)	

NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, December 13, 2007, filed with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing, Complainant's Motion to Strike City of Morris' Motion to Bar Punitive Damages, 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
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 Chicago, IL 60602
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PEOPLE OF THE STATE OF ILLINOIS,)	
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MOTION TO STRIKE CITY OF MORRIS' MOTION TO BAR PUNITIVE DAMAGES

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests that the Board strike the City of Morris' ("Morris'") Motion to Bar Punitive Damages as untimely under the Board's Procedural Rules. In support thereof, Complainant states as follows:

1. The Complaint in this matter was filed on April 17, 2003. The City of Morris ("Morris'") filed its answer on June 13, 2003.
2. On February 16, 2006, the Board granted Complainant's Motion for Summary Judgment, finding the Respondents liable for violation of 415 ILCS 5/21(d)(2) (2004), and 35 Ill. Adm. Code Sections 811.700(f) and 811.712.
3. Hearing on the issue of remedy was held in the City of Morris on September 11-12, 2007, and all post-hearing briefs have now been filed with the Board.
4. On December 6, 2007, the City of Morris filed its Motion to Bar Punitive Damages with the Board.

5. Though styled as a 'Motion to Bar', the City's Motion clearly is meant to challenge the legal sufficiency of the Complaint, i.e. to strike the request for a civil penalty in Complainant's prayer for relief. As such, the City's Motion is untimely. Section 101.506 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.506 provides, as follows:

All Motions to strike, dismiss, or challenge the sufficiency of any pleading filed with the Board must be filed within 30 days after the service of the challenged document, unless the Board determines that material prejudice would result.

6. The City's Motion was required to be filed, if at all, no later than 30 days following service of the Complaint, and is now time barred.

7. Moreover, Complainant is not seeking punitive damages from the Respondents, and therefore no material prejudice can result if the Board strikes the City's Motion as untimely. Civil penalties assessed under the Act are not 'damages', but rather administrative sanctions. *Environmental Protection Agency v. City of Champaign*. PCB 1971-051 (September 16, 1971), 1971 WL 4357 (slip op. at 1). The purpose of civil penalties is remedial and not punitive. *People v. Bentronics Corporation*, PCB 1997-020 (October 17, 1996), 1996 WL 633410 (slip op. at 4) (citing *Modine Manufacturing Co. v. IPCB*, 193 Ill. App. 3d 643 (2d Dist. 1990)).¹

8. In the event that the Board denies this Motion to Strike, Complainant requests that the Board grant it 14 days to respond to the City's Motion.

¹Punitive damages are available under Sections 55.3(h) and 22.2(k) of the Act, 415 ILCS 5/55.3(h) and 5/22.2(k) (2006). Complainant is not seeking punitive damages under these Sections, but rather civil penalties pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board strike and dismiss Respondent CITY OF MORRIS' Motion to Bar Punitive Damages.

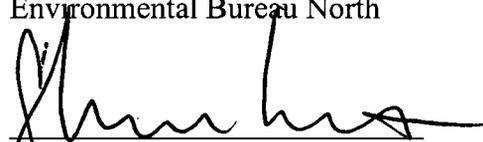
RESPECTFULLY SUBMITTED

PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN,
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

ROSEMARIE CAZEAU, Chief
Environmental Bureau North

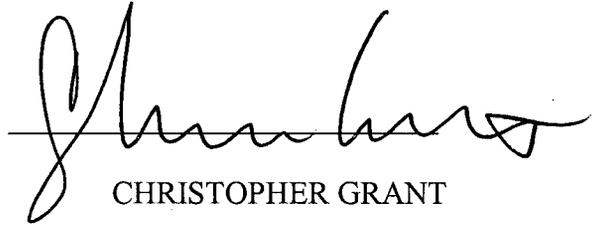
BY:



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CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 13th day of December, 2007, the foregoing Motion to Strike City of Morris' Motion to Bar Punitive Damages, and Notice of Filing, upon the persons listed below, by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.



CHRISTOPHER GRANT

Service List

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200 N. La Salle Street, #2810
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