

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:

PETITION OF MAXIMUM INVESTMENTS, LLC) )  
FOR AN ADJUSTED STANDARD FROM ) )  
35 ILL INOIS ADMINISTRATIVE CODE ) )  
740.210(A)3 FOR THE STONEY CREEK ) )  
LANDFILL IN PALOS HILLS, IL ) )

AS-09-02

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MAR 30 2009

STATE OF ILLINOIS  
Pollution Control Board

ORIGINAL

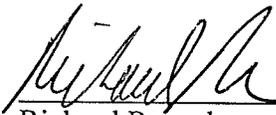
Certificate of Service

I, the undersigned, certify that I have served the attached Brief re Adjusted Standard, by depositing in the US Postal Service first class postage prepaid on March 26, 2009, upon the following persons:

Pollution Control Board, Clerk  
100 W Randolph  
Thompson Center, Suite 11-500  
Chicago, IL 60601-3218

Division of Legal Counsel  
Illinois EPA  
1021 N Grand Ave East  
PO Box 19276  
Springfield, IL 61794-9276

Mr. Brad Halloran  
Pollution Control Board  
100 W Randolph  
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Chicago, IL 60601-3218

  
Richard Rosenbaum

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**BRIEF RE ADJUSTED STANDARD**

On February 5, 2009, the Board entered an order requesting a brief by the parties regarding the statutory requirements for the Site Remediation Program as they relate to the petition. A briefing schedule was set by the hearing officer on February 26, 2009.

Background

On December 21, 2007, Petitioner acquired the tax lien (Exhibit 1) on the subject property for the years 1987 through 2005, real estate taxes having not been paid since at least 1987. According to documents obtained from the Illinois Environmental Protection Agency, the property had been used as a construction debris landfill operated by Richard and Bessie Lenz and closed in approximately 1971. The City of Palos Hills owns an adjacent 12 acres that was previously part of the landfill.

According to the Illinois EPA, Mr. Lenz filed for bankruptcy and was deceased prior to 1990(Exhibit 2). Bessie Lenz is believed to also be deceased but is still listed as the owner of record by the Cook County Recorder and Treasurer.

On January 14, 2008, Peitioner submitted a request to the IEPA requesting a release from liability as a prospective purchaser under 415/ILCS5/22.2b. Petitioner was directed by the Agency to apply for the Site Remediation Program (Exhibit 3).

Statutory Requirements

Section 415 ILCS 5/58.7.b.1.f provides that the applicant for the Site Remediation Program “demonstrate, if necessary, authority to act on behalf of or in lieu of the owner or operator.” Section 415 ILCS 5/22.2b.a provides that a prospective purchaser of real property may request a release of liability if, among other things, “the person requests, in writing, that the Agency provide review and evaluation services.” There are no regulations defining the level of review and evaluation services to be performed or the application requirements.

## Argument

The subject property has been abandoned for over 20 years and the last known owners are deceased. Petitioner is the holder of a tax lien on the property that supercedes all other possible lienholders. Petitioner's lienholder status permits it to act "in lieu of the owner" in the circumstances, where the last known owners are deceased and the property has been abandoned in excess of 20 years.

In the alternative, the Board can specify "review and evaluation" services to be performed by the Agency, different from the Site Remediation Program, that would enable the Petitioner to obtain the release of liability that is the ultimate goal of this Petition. Section 415 ILCS 5/22.2b.e specifically provides that "the Agency may adopt regulations relating to this Section. The regulations may include....Requirements and procedures for a response action plan."

Failure to adopt one of these alternatives would mean the property will forever remain abandoned and off the tax rolls which would be contrary to the intent of both statutory provisions. Petitioner is unwilling to move forward with perfecting title without obtaining the release and it is unlikely that any future lienholder would either given the potential liability for acts of prior owners.

Wherefore, Petitioner respectfully requests that the Board grant the Adjusted Standard by recognizing Petitioner's right to act in lieu of the owner in applying for the Site Remediation Program or in the alternative adopt a standard for review and evaluation services to be used in applying for a prospective purchasers release of liability that would enable Petitioner to make such application.

  
Llewellyn Kennedy  
Weil & Associates  
60 Revere Drive  
Suite 888  
Northbrook, IL 60062

847-509-0015

STATE OF ILLINOIS )  
 ) SS CERTIFICATE NO. 07S-0000413  
COUNTY OF C O O K )

CERTIFICATE OF PURCHASE  
FOR GENERAL TAXES TWO OR MORE YEARS DELINQUENT,  
PURSUANT TO SECTIONS 21-145 AND 21-260 OF THE ILLINOIS  
PROPERTY TAX CODE

I, DAVID D. ORR, County Clerk in and for the County and State aforesaid, DO HEREBY CERTIFY THAT MAXIMUM INV LLC did, on the day hereinafter set forth, purchase at public auction at the courthouse in Chicago, the property designated by the permanent real estate index number hereinafter set forth, situated in said County, said property being delinquent in the principal sum and for the tax years hereinafter set forth together with statutory penalties, interest and costs thereon, and paid as purchase money on said property the sum hereinafter set forth, such sum being the highest bid for cash received at the auction of such property pursuant to Sections 21-145 and 21-260 of the Illinois Property Tax Code.

VOLUME 151 PERMANENT INDEX NUMBER 23-14-400-026-0000

|                            |           |                                                       |
|----------------------------|-----------|-------------------------------------------------------|
| TAX YEARS DELINQUENT       | 87-05     |                                                       |
| TOTAL PRINCIPAL AMOUNT DUE | 36,412.49 | plus statutory penalties, interest and costs thereon. |
| DATE OF SALE               | 12-21-07  | AMOUNT OF SUCCESSFUL BID                              |
|                            |           | 250.00                                                |
| STATUTORY TREASURER FEES   |           | 190.00                                                |
| STATUTORY CLERK FEES       |           | 30.00                                                 |
|                            | TOTAL     | 470.00                                                |

The aforesaid purchaser having complied with the provisions of law applicable to such sales so as to be entitled to a certificate of purchase, on FEBRUARY 21, 2008, the Circuit Court of Cook County entered an order confirming the sale of the aforesaid property.

If the aforesaid property is not redeemed in the manner and within the time provided by law, said purchaser, his heirs or assigns shall be entitled, upon application and compliance with the Illinois Property Tax Code, to receive a deed to said property; provided, that unless the holder of this certificate shall take out said deed and file the same for record within one year after the time for redemption expires, the said certificate or deed, and the sale on which it is based, shall, from and after the expiration of such one year, be absolutely null.

WITNESS my hand and the official seal at CHICAGO in said County this 10TH day of MARCH, A.D. 2008.

countersigned:

*Mania Pappas*

*David D. Orr, 1*



County Treasurer and Ex-Officio Collector  
of Cook County

County Clerk of Cook County





# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 Mary A. Gade, Director

Date: July 16, 1998

To: Bureau of Land File

From: John Sherrill

Re: 0312400004/Cook County  
Palos Hills/Stony Park West  
Superfund/Technical Reports

## Site Description

The Stony Park site consists of approximately 19.5 acres of undeveloped land located in the City of Palos Hills. The site is located just north of Stony Creek and approximately one-hundred feet west of Roberts Road, on the southerly edge of 107th Street. The site has homes immediately north of it and is occasionally used for walking (i.e., local residents walking their dogs).

## History

The site was reported a former, 16 acre landfill from before 1969 through 1971. It appears the landfill consists primarily of construction and demolition debris, that includes cinders, concrete, asphalt, bricks, wood, gravel, tree limbs and grass. According to a August 3, 1970 Illinois EPA inspection report, hazardous materials were not deposited on site. A February 1970 Ill. Dept. of Public Health permit application states the type of refuse is "concrete, bricks, ashes, building rubbish and other like dry materials." An Attorney General complaint was filed January 6, 1972 [Illinois EPA v. Bessie and Richard Lenz and Charles Lenz Disposal Company], for violations of 21(a) [operate a refuse disposal facility in such as manner as to cause or allow the open dumping of garbage], etc., and operating a refuse disposal facility without first obtaining a 21(e) permit. It appears that disposal activities ceased in late 1971.

A November 7, 1973 letter from C. E. Clark (Illinois EPA) to Richard Lenz stated that he had failed to comply with a Illinois Pollution Control Board order for final cover. An August 12, 1974 letter from C. E. Clark to Richard Lenz stated that the site is "satisfactorily closed and covered, but that site problems relating to leachate, surface dumping and erosion may develop in the future and should be corrected promptly."

Palos Hills (City) bought the property in 1976. From 1976 to 1985, under the City's oversight, clay, sand and gravel were used to build up the site's low topography. This resulted in the entire site being covered with approximately three to four feet of clay. The cover reduced infiltration on the site. The site is graded level and has good topsoil and a permanent stand of grass that is maintained by the city. During the summer of 1994, the Palo Hills applied additional cover material. There is no ponded water at the site.

During Illinois EPA inspections from 1974 to 1985, leachate seeps were observed to be flowing from the site into Stony Creek. The last major seeps were reported on February 24, 1988 by an Illinois EPA inspection, benzene was detected at 60 ug/l. On May 2, 1994, three small seeps were observed on the north bank of Stony Creek, toward the west end of the site. The Metropolitan Water Reclamation District of Greater Chicago (MWRDGC) inspected the site on July 27, 1994 and found the leachate discharges had been excavated and capped with clay. No seeps have been observed since 1994.

A May 25, 1988 meeting was held with Palos Hills city officials, the AGO and Illinois EPA officials. On February 10, 1989 the Illinois EPA recommended Palo Hills perform a Remedial Investigation. The site was listed on the former state SRAPL list on April 9, 1990. The Illinois EPA drafted a 4(q) Notice, but it was never issued due to funding limitations. Three Illinois EPA letters, dated April 17, 1990, state the site was listed on SRAPL; addressed to Mr. Charles Lenz; a letter to Mr. Gerald Bennett, Mayor; and a letter to Mr. William Murphy of the Palos Hills Park District. Mr. Lenz is deceased and had filed for bankruptcy. A meeting was held May 4, 1990 with Illinois EPA officials, Don Gimbel, State Representative Zickus, Mayor Bennett and other city officials to discuss the site.

In 1994, USEPA removed the site from USEPA's CERCLIS list.

On February 10, 1995 Nancy Rhodes wrote a letter to State Representative Zickus (47th District) stating "the City of Palos Hills is working with the IEPA's voluntary cleanup program to determine if there is a groundwater problem that must be addressed." On June 9, 1995, Nancy Rhodes wrote a letter to Representative Zickus discouraging any utility excavations or intrusive construction activities.

#### Environmental Investigations

A February 1980 soil boring report by Testing Service Corporation stated "with a surface cover of silty clay of over four feet for four out of the five soil boring locations, we should not expect large quantities of water to percolate into the underlying fill. Also, due to some slope of the ground surface, water from rainfall and snow melt will run off to the creek without entering the landfill proper."

A September 25, 1987 limited investigation report was conducted by E & E, Inc. In 1988, Huff & Huff, Inc., installed four groundwater monitoring wells and collected sediment samples from Stony Creek. Laboratory results for both the sediment and groundwater indicated the presence of benzene, semivolatiles, and PNAs.

On August 12, 1988 TurnKey Environmental Consultants, Inc., on behalf of Huff & Huff Inc., collected air samples from ten locations. The samples were analyzed for benzene and vinyl chloride. All sample results were below detection limits (benzene 0.05 ppm and vinyl chloride 0.09 ppm) and were analyzed according to the NIOSH Manual of Analytical Methods. The sample pump's duration was from 155 to 176 minutes at each location. OCS reviewed the air data and while they were unconvinced of the NIOSH method, since it is for quantifying chemicals in the workplace, the results were non-detect for both benzene and vinyl chloride.

In May 1994, the Illinois EPA collected three soil samples along Stony Creek where it appeared leachate was coming from the north bank of Stony Creek. Four groundwater samples were collected and analyzed. Groundwater analysis indicated 3.8 mg/L of benzene (Class II objective is 0.025 mg/L), 0.79 mg/L of vinyl chloride (Class II objective is 0.01 mg/L) and 0.110 mg/L of naphthalene (Class II objective is 0.039 mg/L). VOCs, SVOCs and small concentrations of pesticides and PCBs were detected in the soil samples collected along the creek bank. Metal concentrations of the groundwater and seeps appear to be indicative of background conditions. Note, the recharge of the monitoring wells is slow, on the order of 6-hours to collect a sample, after purging approximately 2.5 gallons. There appears to be limited groundwater movement.

In March and April of 1998, a site investigation was performed by Graef, Anhalt, Schloemer and Associates, Inc., (GAS) under contract to the City of Palo Hills. The investigation and report was conducted by an Illinois licensed P.E. and registered geologist. GAS completed twenty-five (25) test pits. Each test pit was excavated to the water table or a depth of ten feet bgs. Soils samples were collected for VOCs, SVOCs and pesticides/PCBs. Visual observations were documented. It was reported the dumped material did not appear to be in contact with the water table; however, some decomposition was evident and moisture was present in some pits. It appears that contact with water does occur, likely during spring flooding. GAS evaluated impacts to Stony Creek using the flow rate of the Stony Creek, seepage of groundwater into the creek and the 96-hour Median Tolerance Level for surface water. It was determined that the chemicals of concern at the site would have to exceed their solubility concentrations to impact the creek. The solubility concentrations are not exceeded. The report concludes that a three foot clay cap extends over most of the site. The report recommends a deed restriction be recorded that: requires the cap to remain in place; the prohibits the use of the shallow groundwater; and the north bank of the Stony Creek be periodically monitored for seeps and off-gas, and any seeps be remediated as appropriate with bentonite.

Groundwater Class and Geology: Class II. The top two to seven feet consists primarily of clay, brought to the site by the City. According to Berg et al. (1984) the site falls on a boundary of B1[sand and gravel at the surface, less than 20 feet thick] and C1[permeable bedrock between 20 and 50 feet deep and overlain by more than 20 feet of till]. The depth to bedrock is approximately 30 to 50 feet deep. Shallow groundwater on the site flows towards Stony Creek which is a tributary of the Cal-Sag channel. Stony Creek generally flows southwest 1.5 miles to join the Calumet Sag Channel. The slope of the creek is minimal and flow reversals do occur.

The site is located in the flood plain of Stony Creek. Due to the site being filled-in during the 1970s and 1980s, it is approximately 10 feet higher than virgin flood-plain ground to the north.

Conclusions and Applicable Engineered Barriers and Institutional Controls

The thickness of the clay cap exceeds the cover requirements by Rule 5.07 of the *Rules and Regulations for Refuse Disposal Sites and Facilities*, in force prior to July 1973 (IDPH, 1966) and 35 Ill. Adm Code Section 807.305, in force since July 1973. The ingestion and inhalation routes can be excluded as pathways because of the city maintaining a minimum three foot of cover over the site. There were past allegations that a few homes immediately adjacent to, and north of the site may have been built over the northern limits of the fill, but this has not been substantiated.

No seeps have been observed during the last several years. The groundwater is not used as a water supply and the city intends to record a deed restriction to prohibit the use of the site's groundwater. Five compounds were detected in soil samples from one or more samples that exceed Tier 1 migration to Class II groundwater objectives, benzene, 1,2-dichloroethane, tetrachloroethylene, dibenzofuran, benzo(a) anthracene, benzo(b)fluoranthene, benzo(a)pyrene, indeno (1,2,3-c,d) pyrene, and naphthalene. The PNAs appear to result from burnt wood that was historically buried at the site. However, the PNAs do not appear to be impacting groundwater. The volatile compounds are impacting the groundwater beneath the site as detected in the three monitoring wells on the south side of the site, confirming that groundwater flow is towards Stony Creek. The groundwater well monitoring well on the north side of the site detected no contamination.

A deed restriction should be recorded that: requires the cap remain in place; prohibits any excavation beneath the cap; prohibits the use of the shallow groundwater; and requires the north bank of the Stony Creek be periodically monitored for seeps and off-gas, and any seeps be remediated as appropriate with bentonite.

cc: Stan Black  
Lawrence Eastep  
Cliff Gould  
Tom Walters  
Geoff Sutton



# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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March 12, 2008

Mr. Richard Rosenbaum  
Maximum Investments, LLC  
9437 Karlov  
Skokie, IL 60076

Re: 0312400004 – Cook County  
Stoney Park West  
General Correspondence

Dear Mr. Rosenbaum:

This is in response to your letter of January 14, 2008, in which you requested that the Illinois EPA perform a review and evaluation for this property. Further, you cited to Section 22.2b of the Environmental Protection Act (415 ILCS 5/22.2b). The limit of liability for prospective purchasers is only available for those who, in addition to other requirements, perform an approve response action. I recommend that you consider follow up through the Agency's Site Remediation Program. Information may be found on the Agency's website ([www.epa.state.il.us](http://www.epa.state.il.us)).

Sincerely,

William D. Ingersoll, Manager  
Enforcement Programs

Exh. 3