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

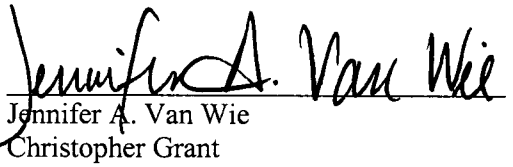
TO: See Attached Service List
(VIA ELECTRONIC FILING)

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 COMPLAINANT'S RESPONSE TO COMMUNITY LANDFILL COMPANY, INC.'S MOTION FOR RECONSIDERATION OF THE ILLINOIS POLLUTION CONTROL BOARD'S ORDER DATED JUNE 18, 2009, 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: 

Jennifer A. Van Wie
Christopher Grant
Assistant Attorneys General
Environmental Bureau
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-0609
(312) 814-5388

DATE: August 26, 2009

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601

City of Morris
c/o Mr. Richard Porter
Hinshaw & Culbertson
100 Park Avenue
Rockford, Illinois 61101

Mr. Scott Belt
Scott Belt & Associates
105 E. Main Street
Suite 206
Morris, Illinois 60450

Community Landfill Co.
c/o Mr. Mark LaRose
LaRose & Bosco
200 N. La Salle Street, Suite 2810
Chicago, Illinois 60601

Community Landfill Co.
c/o Ms. Clarissa Cutler
Attorney at Law
155 North Michigan, Suite 375
Chicago, Illinois 60601

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COMPLAINANT'S RESPONSE TO COMMUNITY LANDFILL COMPANY, INC.'S MOTION FOR RECONSIDERATION OF THE ILLINOIS POLLUTION CONTROL BOARD'S ORDER DATED JUNE 18, 2009

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by Lisa Madigan, Attorney General for the State of Illinois, pursuant to Section 101.520 of the Illinois Pollution Control Board ("Board") General Rules Regulations, 35 Ill. Adm. Code 101.520, hereby responds to Respondent, Community Landfill Company, Inc.'s ("CLC"), Motion for Reconsideration of the Board's Order dated June 18, 2009 and Memorandum in support thereof. In support of its response, Complainant states as follows:

I. INTRODUCTION

This response is filed pursuant to Section 101.520(b) of the Board General Rules Regulations, 35 Ill. Adm. Code 101.520(b), which allows for any response to a motion for reconsideration to be filed within 14 days after the filing of the motion. Respondent CLC filed its Motion for Reconsideration with the Board on July 27, 2009. Complainant timely filed a Motion to Extend Time to Respond to CLC's Motion for Reconsideration on August 5, 2009, a week before its response was due. On August 25, 2009, the Board granted Complainant's Motion to Extend.

On February 16, 2006, the Board granted summary judgment in favor of the Complainant. The only issue presented at the hearing held from September 10 -12, 2007 was remedy. Therefore, the Board should not be reconsidering liability, only the relief granted in the Board's June 18, 2009.

Complainant requests the Board to uphold its June 18, 2009 Order in its entirety and order CLC to come into compliance with the Illinois Environmental Protection Act ("Act") and Board regulations forthwith.

II. STANDARD FOR RECONSIDERATION

In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law, to conclude that the Board's decision was in error. 35 Ill. Adm. Code 101.902; see also Grand Pier Center, LLC, et al., v. River East LLC, *et al.*, PCB 05-157, 2006 WL 707676 at *1 (March 2, 2006). In Citizen's Against Regional Landfill v. County Board of Whiteside County, PCB 92-156, slip op. at 2 (Mar. 11, 1993), the Board observed that "the intended purpose of a motion for reconsideration is to bring to the [Board's] attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the [Board's] previous application of existing law." Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1991).

Respondent CLC brought its Motion for Reconsideration of the June 18, 2009 Order to "bring the Board's attention to errors in the Board's application of existing law." (CLC Motion for Reconsideration at 2). CLC did not claim any newly discovered evidence not available at the time of hearing or changes in the law as a basis for its Motion for Reconsideration.

III. CLC'S FACTUAL SUMMATION MISREPRESENTS THE PROCEDURAL HISTORY OF THIS MATTER

As CLC notes in its Motion for Reconsideration, "the underlying facts of this matter have been the subject of extensive litigation". (CLC Motion for Reconsideration at 2). Complainant agrees. The Board had ample opportunity to take notice of the detailed factual history of this case via the Complainant's Complaint, Respondents Answers to the Complaint, the parties' Motions for Summary Judgment, two (2) days of hearing testimony, and the parties' post-hearing briefs. And it has done so, as evidenced in its February 16, 2006 Interim Order and re-iterated in its June 18, 2009 Order.

Additionally, most of these "facts" were argued before the Board and Appellate Court in CLC's permit appeal (PCB 01-170), and were incorporated by reference pursuant to 35 Ill. Adm. Code 101.306. At the 2007 hearing in this matter, CLC only chose to call one witness in its case – Edward Pruim, who merely testified to the poor financial condition of CLC. CLC's self-serving recitation of prior testimony, not subject to cross-examination, as "facts" in its Motion for Reconsideration should be seen for what it is and disregarded by the Board in its entirety.

IV. ON FEBRUARY 16, 2006, THE BOARD CORRECTLY RULED IN FAVOR OF COMPLAINANT THAT NO GENUINE ISSUE OF MATERIAL FACT EXISTED REGARDING THE LANDFILL'S FINANCIAL ASSURANCE AND CORRECTLY APPLIED OFFENSIVE COLLATERAL ESTOPPEL

As a preliminary matter, Complainant objects to CLC's presentation of a Motion for Reconsideration of the February 16, 2006 Board Order. CLC filed a Motion for Reconsideration of the February 16, 2006 Order on March 31, 2006. That Motion was later denied by the Board on June 1, 2006. There is no Board regulation that allows for the additional reconsideration of a Board Order. Liability has already been determined and CLC cannot get another proverbial 'bite at the apple'.

Alternatively, if the Board does decide to consider CLC's motion as to the February 16, 2006 Board Order, the Complainant responds as follows:

A. The Board Correctly Ruled in Complainant's Favor that the Respondents Violated the Act and Board Regulations Related to the Financial Assurance of the Landfill

Respondent CLC relies on the Illinois EPA's claims on the Frontier bonds, the hearing testimony of Blake Harris, and a letter from Illinois EPA employee Beverly Anderson for its assertion that genuine facts do exist to preclude the prior finding of summary judgment. (CLC Motion for Reconsideration at 16). However, as previously stated, summary judgment was granted in Complainant's favor in 2006. The issue of liability is therefore closed and not ripe for further debate.

1. State Claim on the Frontier Bonds and Blake Harris's Testimony at Hearing

At hearing, Mr. Harris made the distinction between the compliance of the bonds as financial assurance and the validity of the bonds as a monetary instrument. (9/11/07 Trial Transcript, pp. 144-147). Any confusion among Illinois EPA staff as to the Frontier bonds being compliant financial assurance was resolved by the Appellate Court in 2002. Respondent steadfastly refuses to acknowledge that the Appellate Court found the Frontier bonds to be non-compliant financial assurance in 2002.

2. January 27, 2004 Letter by Agency Employee Beverly Anderson/Johnson to Frontier

Respondent CLC refers to a letter sent from Beverly Anderson/Johnson (CLC uses different last names interchangeably) to Frontier. (CLC Motion for Reconsideration at 16-17). CLC attached this letter to its response to Complainant's Motion for Summary Judgment. (CLC Motion for Reconsideration at 16-17). Therefore, the Board had this evidence for consideration

when it granted Summary Judgment to Complainant. This is not new evidence. And even if it were, CLC's Motion for Reconsideration of the February 16, 2006 Board Order was denied over three (3) years ago.

Additionally, CLC did not call Ms. Anderson/Johnson to testify at trial. If CLC thought Ms. Anderson/Johnson's letter was so definitive to the issue of the compliance of the Frontier bonds, then why did they not call on Ms. Anderson/Johnson at hearing? That would've allowed the Complainant to cross-examine her on the issue and gotten the issue before the Board to consider in its evaluation of the 33(c) and 42(h) factors. But rather than do that, CLC chose to unilaterally provide this "new evidence" in its Motion for Reconsideration despite it being available long before the hearing date. The Complainant cannot cross examine a letter and requests that the Board disregard this "new evidence" outright.

B. The Board Properly Applied Offensive Collateral Estoppel Regarding the Frontier Bonds as Compliant Financial Assurance

Respondent again turns to the testimony of Blake Harris and the January 27, 2004 Letter of Ms. Beverly Anderson/Johnson to justify its position that offensive collateral estoppel was incorrectly applied to the issue of the Frontier bonds. (CLC Motion for Reconsideration at 17). Complainant reiterates its previous arguments that this issue was definitely decided by the Appellate Court in 2002, Mr. Harris's testimony was taken out of context, and Ms. Anderson was not presented at hearing where Complainant could cross-examine the veracity of her statements.

Complainant request the Board uphold its February 16, 2006 Order finding summary judgment in favor of Complainant, which correctly applied offensive collateral estoppel to the issue of the compliance of the Frontier bonds.

V. THE BOARD HAS THE AUTHORITY TO ORDER RESPONDENT CLC TO CEASE AND DESIST FROM VIOLATIONS OF THE ILLINOIS ENVIRONMENTAL PROTECTION ACT AND BOARD REGULATIONS AND TO TAKE SUCH ACTIONS NECESSARY TO STOP THE VIOLATION

Without any support, Respondent CLC claims that Section 33 does not authorize the "affirmative" relief sought by the Complainant and ordered by the Board. (CLC Motion for Reconsideration at 8). CLC claims that the Board did not have the authority to order the Respondents to post financial assurance, submit revised cost estimates, and cease accepting wastes at the Landfill. *Id.* However, the Board clearly had the authority to order that the violations be corrected. Moreover, the "affirmative" relief requested by Complainant is essentially a request for an order to cease and desist from violations of the Act and Board regulations, and must be upheld.

Section 33(a) and (b) of the Act, 415 ILCS 5/33(a) and (b) (2008), provide broad authority to issue orders – "the Board shall issue and enter such final order, as it shall deem appropriate under the circumstances." 415 ILCS 5/33(a) (2008). Such orders may include a direction to cease and desist from violations of the Act and regulations. 415 ILCS 5/33(b) (2008). Clearly, the Board has the authority to order whatever actions are necessary to stop the Respondents from continuing to violate the Act and Board regulations. Otherwise, CLC could continue to violate the Act and Board regulations, which is contrary to the stated purpose of the Act found at Section 2. 415 ILCS 5/2 (2008).

The Supreme Court of Illinois in City of Waukegan v. Pollution Control Board, 57 Ill.2d 170, 311 N.E.2d 146 (1974), held that the legislature has conferred upon the Illinois Pollution Control Board those powers that are reasonably necessary to accomplish the legislative purpose of the administrative agency; specifically the imposition of monetary 'penalties' for violation of the Environmental Protection Act, and necessarily the power to order compliance with the Act.

Kaeding v. Pollution Control Bd. 22 Ill.App.3d 36, 38, 316 N.E.2d 788, 790 (2nd Dist. 1974). The Board has the inherent authority to do all that is reasonably necessary to execute its statutory power under the Act. People v. Archer Daniels Midland, 140 Ill. App. 3d 823, 489 N.E. 2d 882 (3d Dist. 1986).

Here, the Board ordered CLC to post financial assurance, provide updated cost estimates, upgrade financial assurance for closure and post closure, and cease from accepting additional waste. (June 18, 2009 Board Order at 42-44). Respondents were required to take these actions under the Act, Board regulations, and Respondents' Significant Modification Permits regardless of the Board's June 18, 2009 Order. The Board has executed its authority in similar landfill cases. In People v. John Prior and Industrial Salvage, Inc., PCB 93-248, the Board ordered the Respondents to post financial assurance, complete closure of two landfills, remove and relocate improperly disposed waste, and take extensive action to correct conditions which posed a threat to the environment. PCB 93-248 (July 7, 1995); See also People v. Wayne Berger *et al.*, PCB 94-373 (May 6, 1999) (order to perform closure of landfill).

The Board's inherent authority to order that violations be corrected is an important part of the overall enforcement mechanism in the Act. Board orders are directly enforceable in Circuit Court pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2008). The Circuit Court has no discretion in enforcing Board Orders, and challenges to the appropriateness of the Board's ordered relief must be taken directly to the Appellate Court. The Board does not need the power of injunctive relief, as its orders are expressly enforceable by injunction pursuant to Section 33(d) of the Act, 415 ILCS 5/33(d) (2008).

A. Requirement to Post Financial Assurance

In its June 18, 2009 Order, the Board found Respondents in violation of Section 811.711(f) of the Board regulations, 35 Ill. Adm. Code 811.700(f). (June 18, 2009 Board Order at 42). Section 811.700(f) requires the Respondents to comply with the financial assurance requirements of Part 811. Section 811.701(a) requires owners or operators to maintain financial assurance equal or greater than the current cost estimate calculated pursuant to Section 811.704 at all times. 35 Ill. Adm. Code 811.701(a). In its June 18, 2009 Order, the Board required CLC, jointly and severally with the City of Morris, to post financial assurance in the amount of $17,427,366.00. (June 18, 2009 Board Order at 42-43). This amount corresponds to the most recent Illinois EPA-approved cost estimate calculated pursuant to Section 811.704.

B. Requirement to Submit Revised Cost Estimate

Section 811.705(d) requires the owner or operator of a MSWLF unit to adjust the cost estimates of closure, postclosure, and corrective action for inflation on an annual basis during specified time periods. 35 Ill. Adm. Code 811.705(d). Respondents have not submitted updated cost estimates for the Landfill since 1999, yet are required to do so on a yearly basis pursuant to Section 811.700 and 811.705. (35 Ill. Adm. Code 811.701 and 811.705(d)).

Section 811.701(b) requires the owner or operator to increase the total amount of financial assurance so as to equal the current cost estimate within 90 days after specified occurrences. 35 Ill. Adm. Code 811.701(b). Additionally, 811.701(c) requires the owner or operator of a MSWLF unit to annually make adjustments for inflation if required pursuant to Section 811.704(k)(2) or 811.705(d). 35 Ill. Adm. Code 811.701(c).

C. Requirement to Cease Accepting Wastes

In its June 18, 2009 Order, the Board found Respondents in violation of Section

21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2006) and the above-referenced regulations. (June 18, 2009 Board Order at 42). Section 21(d)(2) prohibits Respondents from conducting any waste-storage, waste-treatment, or waste-disposal operation in violation of any regulations or standards adopted by the Board under the Act. *Id.* As detailed above, Respondent CLC has not complied with the Board regulations pertaining to financial assurance, therefore violating Section 21(d)(2) of the Act. The Board appropriately ordered CLC to stop immediately stop accepting any additional waste at the Site and from further violations of the Act and Board's regulations.

D. The Board's Authority to Enter a Cease and Desist Order under Section 33(b) of the Act is not Injunctive Relief

The Board's requirements to post financial assurance, submit revised cost estimates, upgrade financial assurance for closure and post closure, and cease accepting wastes at the Landfill are not injunctive relief but an order to come into compliance with Part 811 of the Board regulations and Section 21(d)(2) of the Act. (June 18, 2009 Board Order at 42-43). This authority is clearly within the Board's power under Section 33(b) of the Act to order Respondents to cease and desist from violations of the Act and regulations adopted under the Act, and achieve compliance with the Act and Board regulations. The Board is prohibiting Respondent CLC from continuing a particular course of conduct, that being the violations of the financial assurance requirements of Part 811 and Section 21(d)(2) of the Act.

Complainant requests the Board uphold its authority to order Respondents to cease and desist from violating the Act and Board regulations and to bring its site back into compliance.

VI. THE BOARD-ORDERED DEADLINE FOR COMPLIANCE WITH THE FINANCIAL ASSURANCE REGULATIONS IS APPROPRIATE AND SHOULD STAND

Respondent CLC argues in the alternative that revised cost estimates should be allowed

to be submitted prior to the posting of financial assurance. (CLC Motion for Reconsideration at 8). Complainant heartily disagrees. This request should be seen for what it truly is – another delay tactic in posting financial assurance for the Landfill. Both Respondents have had ample opportunity to submit revised cost estimates to the Illinois EPA. The most recent revised cost estimate was submitted to the Illinois EPA in July 2007 and rejected by the Illinois EPA in October 2007. Since then, neither Respondent has submitted a revised cost estimate to the Illinois EPA for review. Respondents have failed to comply with the Board regulations requiring submission of an annual revised cost estimate (Section 811.705(d)) and increase in the total amount of financial assurance so as to equal the current cost estimate within 90 days (Section 811.701(b)). Respondents should not gain the benefit of additional time for their non-compliance. Complainant requests the Board uphold its deadlines for submitting financial assurance, revised cost estimate and for upgrading financial assurance, accordingly.

As Respondent CLC joins in those portions of Respondent City of Morris's brief requesting reconsideration of the timing of submitting financial assurance and cost estimate, the Complainant incorporates by reference its response to the City's argument herein.

VI. THE BOARD CORRECTLY APPLIED THE LAW TO SECTIONS 33(c) AND 42(h) IN RENDERING A CIVIL PENALTY AGAINST CLC

A. Section 33(c)(iv) – the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source

Respondent CLC argues that the Board misapplied the law under Section 33(c)(iv) of the Act by dismissing certain facts and not applying the technical practicality and economic reasonableness standard to CLC specifically. (CLC Motion for Reconsideration at 9-10). CLC has provided no legal authority for this position. CLC additionally requests the Board determine that a civil penalty is not justified or alternatively, significantly reduce the penalty. (CLC

Motion for Reconsideration at 11). Complainant argues that even taking into account CLC's factual argument and applying the standard to CLC specifically, this factor weighs in favor of a higher civil penalty and the current penalty should be upheld.

1. The Financial Assurance Requirements are Technically Feasible and Economically Reasonable

Since 2002, when the Appellate Court definitively determined the Frontier bonds to be noncompliant financial assurance, CLC has not replaced it. By the time the CLC investigated replacing the deficient Frontier Bonds, closure of Parcel B of the Landfill was already several years overdue. (Complainant Post-Hearing Brief at 12). It is unsurprising that prospective financial assurance providers would require CLC to post a substantial amount of collateral. *Id.* The Landfill had to be properly closed at some point and CLC simply failed to retain sufficient capital from their Landfill operations to assure the Landfill's ultimate closure. *Id.* Their failure to properly conserve resources for the inevitable closure of the Landfill should not be considered a defense, and the Board should find that compliance was feasible. *Id.*

Meeting the financial assurance requirements was also economically reasonable for CLC. The regulations place all of the cost of closure and post closure care on those with a direct financial stake in the landfill. (Complainant Post-Hearing Brief at 12). Requiring such assurance from owners and operators is inherently reasonable and avoids a negative incentive to hoard income while avoiding long-term responsibility. *Id.* Illinois taxpayers should never have to assume a risk that they must fund closure and maintenance of a Landfill that they neither owned nor operated. *Id.* The regulations put the Respondents on-notice that they would be required to ensure the cost of closure, and to guarantee that future maintenance issues would be addressed. (Complainant Post-Hearing Brief at 12-13). These are requirements to which all

landfills located in Illinois subject to the 811 regulations must comply. Earnings from Landfill operations should have been retained for this purpose. (Complainant Post-Hearing Brief at 13).

Economic reasonableness is not determined based on whether a particular entity can "afford" the cost of compliance. When Frontier was delisted from the approved list of sureties in 2000, a total of thirty (30) landfills in Illinois were using Frontier Insurance Company surety bonds for financial assurance. (Complainant Post-Hearing Brief at 10). All of these landfills were sent notices of violation that advised the landfills that the bonds had become noncompliant and requested that substitute financial assurance be provided. Of these thirty (30) facilities, twenty eight (28) subsequently replaced their Frontier Bonds with compliant financial assurance. *Id.* Of the two (2) landfills that took no action, one went out of business and the other is the Morris Community Landfill. *Id.* Twenty-eight (28) other landfills were able to provide substitute financial assurance, thus making it both technically feasible and economically reasonable for CLC to do so. Yet, rather than attempting to find substitute financial assurance at this point, CLC continued to futilely fight the issue of whether the Frontier bonds were compliant. In any event, it is certainly economically reasonable for CLC, like all other permitted landfills, to obtain the requisite financial assurance.

As for the landfill generating any income, CLC claims it has been unable to generate income since the Agency refuses to grant it an operating permit. (CLC Motion for Reconsideration at 10, 13, and 15). As attested to by Mr. Retzlaff at hearing (9/11/07 Trial Transcript, pp. 58 – 74) and in the attached affidavit (see Affidavit of Mark Retzlaff, attached hereto and incorporated herein as Exhibit A), CLC has continued to accept wastes at the Landfill despite being unpermitted to do so. Complainant assumes CLC is accepting these wastes for a fee. CLC's claim of poverty to obtain financial assurance while illegally accepting wastes at a

landfill in violation of the Act and Board regulations and blaming the Illinois EPA for failing to issue it an operating permit condoning its bad behavior reeks of hypocrisy.

3. Civil Penalty

In Chicago Magnesium Casting Company v. Illinois Pollution Control Board, the Court found the following:

> The petitioner interprets Section 33 to mean that, if it is not technically practicable or economically reasonable to reduce or eliminate the pollution, there can be no violation. Such an interpretation would mean that a government would be powerless to restrict pollution regardless of its severity, even if it endangered lives so long as it was economically unreasonable or technically impracticable for an individual to continue to operate without polluting. This is a dangerous principle and manifestly unacceptable. We agree, rather, with the Agency's position that economic reasonableness and technical practicability are but two factors to be considered by the Board in determining whether or not the Act has been violated.

Chicago Magnesium Casting Company v. Illinois Pollution Control Board, 22 Ill. App. 3d 489, 493, 317 N.E.2d 689. 692 (1st Dist. 1973). Based on the foregoing, even assuming arguendo it was technically impracticable and economically unreasonable for CLC to comply with the landfill permitting and financial assurance system requirments, mitigation of this factor alone would not nullify the civil penalty in its entirety. The Board has all of the Section 33(c) and 42(h) factors to consider in crafting a civil penalty.

Respondent CLC has requested in several sections of its brief that the Board determine a civil penalty is not justified based on a single 33(c) or 42(h) factor. (CLC Motion for Reconsideration at 11, 13, and 15). Complainant reiterates that the Board has all of the Section 33(c) and 42(h) factors to consider in crafting a civil penalty in response to those requests.

Complainant argues that the Board properly applied Section 33(c)(iv) to the Respondent CLC and should uphold its finding as an aggravating factor necessitating a civil penalty.

B. Section 42(h)(2) – the presence or absence of due diligence on the part of the respondent in attempting to comply with the requirements of the Act and regulations thereunder or to secure relief therefrom as provided by the Act

Respondent CLC claims it was diligent in seeking financial assurance. (CLC Motion for Reconsideration at 13). "Due Diligence" is "[t]he diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or discharge an obligation." Black's Law Dictionary 468 (7th ed. 1999). Complainant cannot fathom given this set of facts how Respondent CLC can make this argument in good faith.

Respondent CLC again gives the Board a recitation of "facts" that it alleges were overlooked. (CLC Motion for Reconsideration at 11-13). These "facts" were reviewed and rejected by both the Board and Appellate Court in CLC's permit appeal (PCB 01-170). The only fact that matters is that since 2002, CLC has known, because the Appellate Court specifically found, that the Frontier bonds were non-compliant financial assurance. Since that date, no substitute financial assurance has been provided by CLC. What CLC might have done if the bonds were compliant or if its permit was not denied by the Illinois EPA is wholly irrelevant. The fact is the Frontier bonds were deemed non-compliant and no substitute financial assurance has ever been tendered.

Respondent CLC's claim of diligence is also undercut by the fact that twenty-eight (28) other landfills were able to supply substitute financial assurance when Frontier was delisted. (Complainant Post-Hearing Brief at 10). Twenty-eight (28) other landfills were diligent in replacing non-compliant financial assurance. Even after litigating the issue to the Appellate Court and losing, CLC still did not act diligently and submit substitute financial assurance. CLC claims it now has to put up 70 – 80% of the bond value. (CLC Motion for Reconsideration at 13). Complainant sees this problem as one of CLC's own making.

Section 42(h)(2) requires due diligence on the part of Respondent CLC to come into compliance with the Act and Board regulations. See People v. ESG Watts, Inc. (1998 WL 83678 at *6-7). Under this set of facts, CLC has done absolutely nothing short of an utter lack of due diligence in attempting to comply with the financial assurance regulations under Section 811. Complainant requests this factor remain in strong aggravation of a civil penalty and the Board's June 18, 2009 Order be upheld.

C. Section 42(h)(3) – any economic benefits accrued by the respondent because of delay in compliance with requirements

CLC claims it realized absolutely no economic benefit due to any delayed compliance. (CLC Motion for Reconsideration at 13). They allege that Blake Harris testified the bonds were valid through 2006 and that the Landfill has not been able to accept wastes. (CLC Motion for Reconsideration at 13-14). Complainant finds Respondent CLC's argument disingenuous at best.

1. The Testimony of Blake Harris

Respondent CLC claims that the Board ignored Blake Harris's testimony that the Frontier Bonds were valid through 2006. (CLC Motion for Reconsideration at 13). However, CLC plucks this statement out of 61 pages of testimony to support its position. In looking at Mr. Harris's testimony as a whole, it is obvious that he believed the bonds were non-compliant as financial assurance (9/11/07 Trial Transcript, pp. 126, 130, 173-174) but valid on their face as a monetary instrument (9/11/07 Trial Transcript, pp.144-147). CLC's mischaracterization of Mr. Harris's testimony to support the argument that CLC was providing compliant financial assurance through 2006 therefore must fail.

Once Mr. Harris's testimony is looked at in its entirety, it is obvious that compliant financial assurance was not supplied by Respondent CLC since at least 2000. Complainant

requests that the Board uphold its civil penalty determination that CLC was gaining an economic benefit from November 16, 2000 (when the violation notice was sent to CLC alerting them of Frontier's delisting) to September 11, 2007 and dismiss CLC's attempt to revise Mr. Harris's testimony to meet its needs.

2. CLC's "inability" to accept wastes

Respondent CLC claims its inability to accept waste has resulted in no economic benefit to CLC. (CLC Motion to Reconsider at 15). However, CLC had been accepting wastes at the Landfill (See 9/11/07 Trial Transcript, pp. 58 – 74) and has continued to do so up to at least April 29, 2009. (See Exhibit A). Again, it is unfathomable that CLC would be accepting these wastes, albeit illegally, free of charge.

Complainant requests the Board disregard CLC's claims that it has not derived any economic benefit due to delayed compliance. The testimony of Mr. Harris and testimony and affidavit of Mr. Retzlaff support the Complainant's position that CLC has indeed gained an economic benefit from its non-compliance... and continues to do so even after hearing on this matter in 2007. Complainant requests the Board uphold the civil penalty detailed in its June 18, 2009 Order.

D. Claim on Frontier Bonds

CLC claims that if the Board allows the Agency to make a claim on the Frontier bonds and collect a civil penalty, it will be allowed to recover twice from the same allegation. (CLC Motion for Reconsideration at 16). The issue here is that providing compliant financial assurance does not act as a "recovery" by the State. Financial assurance is required to ensure that the landfill owner/operator has the financial ability to close the landfill in compliance with the Act and Board regulations in order to protect the public health and the environment. A civil

penalty, on the other hand, serves a completely different purpose, which is spelled out in Section 33 and 42 of the Act; those monies do, however, go to the State of Illinois. Respondent CLC's characterization of a "double recovery" completely misrepresents the function of the statutory provisions.

At hearing, Mr. Harris testified that the collateral put up for the Frontier bonds may be the only money that State may be able to collect if it becomes necessary for the State to close the landfill. (9/11/07 Trial Transcript, pp. 144-147). Additionally, the Board admitted Complainant's testimony regarding the Frontier bond settlement offer of $400,000. (June 18, 2009 Board Order at 19 – 22). This $400,000 settlement amount is far short of the current cost estimate of $17.4 MM required for closure / post closure care of the Landfill. Finally, the Board has already specifically stated that "this sum (the $17.4 MM) may be reduced by any amount IEPA has or will receive from its claim against the Frontier bonds." (June 19, 2009 Board Order at 35). There is no double recovery for the Complainant.

Complainant requests that the Board reject CLC's contention that any claims made on the Frontier bonds would somehow result in a "double recovery" for the State.

VII. CONCLUSION

Based on the foregoing, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board:

1. Deny Respondent CLC's Motion for Reconsideration on the merits;
2. Uphold the Board's June 16, 2009 Order requiring Respondents to:
    a. post financial assurance in the amount of $17,427,366.00;
    b. provide updated cost estimates for closure/post closure care;
    c. upgrade financial assurance for closure and post closure care; and

d. cease and desist from accepting any additional waste at the Site, further violations of the Act and the Boards regulations;

3. Uphold the Board's June 16, 2009 Order requiring CLC to pay a civil penalty of $1,059,534.70; and

4. Uphold the Board's February 16, 2006 Order finding summary judgment in favor of Complainant.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY: Jennifer A. Van Wie

JENNIFER A. VAN WIE
CHRISTOPHER GRANT
Assistant Attorneys General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-0609
(312) 814-5388

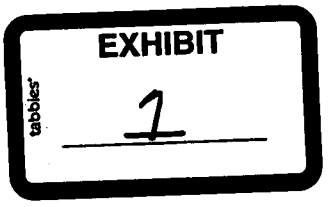
AFFIDAVIT

I, MARK RETZLAFF, being first duly sworn upon oath, depose and state:

1. I am employed by the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, ("Illinois EPA") as an Environmental Protection Specialist in the Field Operations Section, Bureau of Land. My office is located at 9511 W. Harrison Street, Des Plaines, Illinois. Under the direction of my supervisors, I am responsible for the investigation of potential land pollution violations.

2. One of my duties in the Field Operations Section is to conduct inspections of sanitary landfills to determine compliance with the Illinois Environmental Protection Act ("Act"), Illinois EPA and Illinois Pollution Control Board regulations, and the terms and conditions of Illinois EPA-issued landfill permits.

3. Community Landfill Company is the permitted operator of the Morris Community Landfill, located in Morris, Grundy County, Illinois("Landfill"). The Landfill is divided into two parts, with "Parcel A", on the east side of Ashley Road, and "Parcel B" on the west side of Ashley Road. The permitted owner of the Landfill is the City of Morris.



4. Since 2002, I have been responsible for inspecting the Morris Community Landfill. I have personally inspected the Landfill on at least 15 occasions.

5. On September 11, 2007, I testified at hearing in this matter. Included in my testimony were my observations of continued dumping of general refuse and sludge from the City of Morris water treatment plant on June 26, 2007, and additional general refuse observed on August 29, 2007.

6. On June 24, 2008, I inspected the Landfill and observed freshly dumped waste on parcel A. The waste consisted of asphalt shingles, street sweepings, and assorted debris.

7. On April 29, 2009, I again inspected the Landfill. Upon arriving I met with James Pelnarsh, Site Manager for Community Landfill Company.

8. On April 29, 2009, Mr. Pelnarsh told me that the Landfill was accepting contaminated soils from an excavation project at Columbia College in Chicago. I reviewed the records for this dumping and noted that between February 17, 2009 and April 23, 2009, the Landfill had accepted at least 194 truckloads of contaminated soil from this project.

9. Mr. Pelnarsh showed me a copy of a manifest for loads from the Columbia College excavation project which had been

disposed at the Landfill on April 23, 2009. I was able to determine from the manifest that the material being dumped was "special waste" as that term is defined in the Board's waste disposal regulations.

10. On April 29, 2009, Mr. Pelnarsh told me that the City of Morris was continuing to dump waste at the Landfill. He described the City waste as consisting of wastewater treatment sludge, ditch cleanout waste, and street sweepings.

11. On April 29, 2009, I inspected Parcel A of the Landfill, and observed that the elevation was substantially higher than I had observed on June 24, 2008. I also observed an active dumping area with approximate dimensions 150' by 100'. In this area I observed a variety of waste, including wastewater treatment sludge, wood demolition debris, shingles, carpeting, tires, plastic, and other waste which appeared to be partially burned and was consistent with fire-related debris.

12. On April 29, 2009, I observed a City of Morris truck (No. 329) come to Parcel B and dump a load of material.

13. I have personal and direct knowledge of the facts stated herein, and if called as a witness at a hearing in this matter, could competently testify thereto.

FURTHER AFFIANT SAYETH NOT.

MARK RETZLAFF

Subscribed and sworn before me
this 1st day of June, 2009

Notary Public

OFFICIAL SEAL
DARLENE F. ARMSTRONG-BARNES
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES
NOVEMBER 15, 2010

CERTIFICATE OF SERVICE

I, JENNIFER A. VAN WIE, an Assistant Attorney General, certify that I caused to be served by Electronic Filing and First Class United States Mail, the foregoing Notice of Filing and Complainant's Response to Community Landfill Company, Inc.'s Motion for Reconsideration of the Illinois Pollution Control Board's Order dated June 18, 2009, to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601 on August 27, 2009.

Jennifer A. Van Wie

JENNIFER A. VAN WIE