

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
*ex rel.* LISA MADIGAN, Attorney )  
 General of the State of Illinois, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 ATKINSON LANDFILL CO., an )  
 Illinois corporation, )  
 )  
 Respondent. )

PCB No. 13-28  
 (Enforcement-Water)

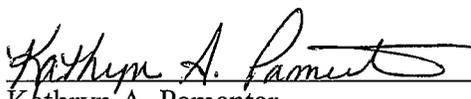
**NOTICE OF FILING**

To: ***Via Regular Mail***  
 Kenneth Anspach, Esq.  
 Anspach Law Office  
 111 West Washington Street  
 Suite 1625  
 Chicago, Illinois 60602

***Via Hand Delivery***  
 Bradley P. Halloran  
 Hearing Officer  
 Illinois Pollution Control Board  
 James R. Thompson Center, Suite 11-500  
 100 W. Randolph Street  
 Chicago, Illinois 60601

PLEASE TAKE NOTICE that on the 15th day of March, 2013, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, filed the attached Complainant's Response to Motion for Joinder, a true and correct copy of which is attached hereto and is hereby served upon you.

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

By:   
 Kathryn A. Pamenter  
 Assistant Attorney General  
 Environmental Bureau  
 69 W. Washington St., 18<sup>th</sup> Floor  
 Chicago, IL 60602  
 (312) 814-0608

DATE: March 15, 2013

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
<i>ex rel.</i> LISA MADIGAN, Attorney	)	
General of the State of Illinois,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13-28
	)	(Enforcement-Water)
ATKINSON LANDFILL CO., an	)	
Illinois corporation,	)	
	)	
Respondent.	)	

**COMPLAINANT’S RESPONSE TO MOTION FOR JOINDER**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois (“People or “Complainant”), and responds to Atkinson Landfill Co.’s (“Respondent”) Motion for Joinder. In support of this response, the People state as follows:

1. On December 17, 2012, Complainant filed a four-count Complaint (the “Original Complaint”) against Atkinson Landfill Co. (“Atkinson”), alleging violations of the Illinois Environmental Protection Act (“Act”) and the Illinois Pollution Control Board’s regulations regarding water pollution (“Board Water Pollution Regulations”).

2. On January 28, 2013, Respondent filed its Motion for Joinder (“Joinder Motion”). Through the Joinder Motion, Respondent moves the Illinois Pollution Control Board (“Board”) to join the Village of Atkinson and the City of Galva as respondents pursuant to Section 2-614(a) of the Illinois Code of Civil Procedure, 735 ILCS 2-614(a) (2010), and Section 101.403 of the General Rules of the Board, 35 Ill. Adm. Code 101.403.

3. Section 2-614(a) of the Illinois Code of Civil Procedure provides that “any plaintiff or plaintiffs may join any causes of action, against any defendant or defendants. . . .”

735 ILCS 5/2-614(a) (2010). The Complainant is not seeking to join any causes of action against any defendant/respondent. As such, Section 2-614(a) of the Illinois Code of Civil Procedure is inapplicable.

4. Section 101.403(a) of the Board's General Rules provides:

(a) The Board, on its own motion or the motion of any party, may add a person as a party to any adjudicatory proceeding if:

- (1) A complete determination of a controversy cannot be had without the presence of the person who is not already a party to the proceeding;
- (2) The person who is not already a party to the proceeding has an interest that the Board's order may affect; or
- (3) It may be necessary for the Board to impose a condition on the person who is not already a party to the proceeding.

35 Ill. Adm. 101.403. Respondent offers no case authority to require Complainant to pursue a cause of action against the Village of Atkinson or the City of Galva.<sup>1</sup> In addition, Respondent offers only bald assertions that (i) the "presence of the Village of Atkinson and the City of Galva would certainly result in a complete determination of the controversy," (ii) "[b]oth the Village of Atkinson and the City of Galva have an interest in the Board's order . . . because, upon information and belief, both the Village STP and the Galva WWTF have permits to accept leachate from ALC" and (iii) "if any condition were to arise out of the instant cause, it must apply equally to the Village of Atkinson and the City of Galva." (Joinder Motion at ¶¶ 6-8 (internal citations omitted)).

5. Contrary to Respondent's contention, adding the Village of Atkinson and the City of Galva as respondents is not warranted under Section 101.403 of the Board's General Rules.

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<sup>1</sup> In fact, Respondent's contention is contrary to its argument that the Attorney General may only file a complaint after the Illinois Environmental Protection Agency satisfies the requirements of Sections 31(a) and (b) of the Act, 415 ILCS 5/31(a), (b) (2010). (See Respondent's Motion to Strike and Dismiss at pp. 5-7.)

Employees of the Village of Atkinson and the City of Galva may be witnesses in this case. Witnesses, though, need not be added as a party to cause a complete determination of the controversy. Respondent's alleged violations of the Act and the Board Water Pollution Regulations can be determined without the Village of Atkinson and the City of Galva being named respondents in the case. In addition, any interest that the Village of Atkinson and the City of Galva may have in any order entered by the Board in this case may be satisfied by forwarding a copy of such order to the municipalities. Finally, this case seeks only the imposition of a civil penalty against Respondent, as the violations have been previously remedied. As a result, no condition will "arise out of the instant cause [that] must be applied equally to the Village of Atkinson and the City of Galva." (*Id.* at ¶ 8.) Therefore, neither the Village of Atkinson nor the City of Galva is a necessary party in this case.

WHEREFORE Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court deny Respondent's Motion for Joinder and grant such other relief as this Court deems proper.

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

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

BY:

  
Kathryn A. Pamentor

Assistant Attorney General  
Environmental Bureau  
69 West Washington Street, 18th Floor  
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(312) 814-0608

**CERTIFICATE OF SERVICE**

I, KATHRYN A. PAMENTER, an Assistant Attorney General, do certify that I caused to be served this 15th day of March, 2013, the attached Notice of Filing and Complainant's Response to Motion for Joinder upon (a) Kenneth Anspach, Esq. by placing a true and correct copy in an envelope addressed as set forth on said Notice of Filing, first class postage prepaid, and depositing same with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m., and (b) Bradley P. Halloran via hand delivery.

  
KATHRYN A. PAMENTER