

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CONGRESS DEVELOPMENT
COMPANY,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

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APR 12 2013

STATE OF ILLINOIS
Pollution Control Board

PCB 13- 57
(Permit Appeal - Land)



ORIGINAL

NOTICE OF FILING

John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

PLEASE TAKE NOTICE that today I filed with the Illinois Pollution Control Board a Petition for Review of Denial of Request for Higher Operating Values and Entry of Appearance for Russell R. Eggert, copies of which are hereby served upon you.

Dated: April 12, 2013

Respectfully Submitted,

By:

Russell R. Eggert
LATHROP & GAGE LLP
155 N. Wacker Drive
Suite 3050
Chicago, Illinois 60606
312.920.3300 (Telephone)
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Attorneys for Petitioner Congress
Development Company

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

CONGRESS DEVELOPMENT COMPANY,)
)
Petitioner,)
)
vs.)
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Respondent.)

PCB 13- ~~57~~ 57

(Permit Appeal – Air)

 ORIGINAL

APPEARANCE

Lathrop & Gage hereby enters its appearance on behalf of Plaintiff CONGRESS
DEVELOPMENT COMPANY in the above captioned case.

Respectfully submitted,

CONGRESS DEVELOPMENT COMPANY

By: 

Russell R. Eggert
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

CONGRESS DEVELOPMENT COMPANY,)
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Petitioner,)
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vs.)
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ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Respondent.)

PCB 13- ~~13~~59

(Permit Appeal – Air)



ORIGINAL

**PETITION FOR REVIEW OF DENIAL OF
REQUEST FOR HIGHER OPERATING VALUES**

Petitioner, CONGRESS DEVELOPMENT COMPANY (“Congress”) requests review, pursuant to 415 ILCS 5/40(a) and 35 Ill. Adm. Code 105.302(c) of the March 12, 2013 Decision (“Decision”) by Respondent ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“IEPA” or “Agency”) to deny Congress’s request for alternate operating parameters and procedures for certain active landfill gas extraction collectors pursuant to 35 Ill. Adm. Code Part 220 and 40 C.F.R. Part 63, Subpart AAAA. (A copy of the Agency’s denial letter is attached as Exhibit A). As set forth in more detail in the following paragraphs, the sole basis for IEPA’s denial of Congress’s request was a misreading of the Final Consent Order entered by the Circuit Court of Cook County in *People v. Congress Development Company, et al.*, No. 06 CH 1438 on August 17, 2010. (A copy of that Final Consent Order is attached as Exhibit B). Congress asks the Board to reverse IEPA’s decision, to remand the matter to IEPA for proper consideration, and to grant such further relief as the law and the facts justify.

Parties and Jurisdiction

1. Petitioner Congress Development Company is an Illinois general partnership with

its sole place of business in Hillside, Illinois. Congress owns a facility that was utilized as a municipal solid waste landfill from 1980 to 2008. While the facility has been closed since December 31, 2008, it continues to generate landfill gas, which has to be collected and burned.

2. Respondent Illinois Environmental Protection Agency is an administrative agency created by statute. See 415 ILCS 5/4 (a).

3. The Illinois statutes that confer jurisdiction to review the Decision are ambiguous and not entirely consistent, and could arguably be read to vest jurisdiction in either the Board or in the Circuit Court. As a result, and out of an abundance of caution, Congress is simultaneously filing both this case and a Complaint For Judicial Review in the Circuit Court of Cook County.

(A copy of that Complaint is attached as Exhibit C).

a. On the one hand, the Request sought Agency approval of certain changes in requirements contained in a Clean Air Act Program Permit that IEPA had previously issued to Congress. As such, jurisdiction to review the Decision would be vested in the Board, see 415 ILCS 5/40(a) and 35 Ill. Adm. Code 105.302(a). Although certain officials at IEPA have stated that the Board does not have jurisdiction to review their decision to deny the Request (and some Agency officials have gone so far as to opine that the Decision is entirely unreviewable in any forum whatsoever), Congress believes that the better reading of the relevant jurisdictional provisions makes the Board the proper forum.

b. But if the Board does not have jurisdiction, the Circuit Court of Cook County does under the Administrative Review Law, 735 ILCS 5/3-104. Congress is filing this case simultaneously with its Complaint in the Circuit Court so that it can be certain that it will obtain review of the Agency's Decision somewhere.

4. This case has its roots in (a) certain characteristics of the Congress landfill which result in the production of landfill gas that displays temperatures, pressures and chemical composition that is not typical, and (b) a provision contained in the Final Consent Decree in *People v. Congress Development Company, supra*.

5. The Congress landfill contains an area of waste, deep within one portion of the facility, that is hotter and under greater pressure than is typical in landfills (and that is even different from the characteristics of other areas of the Congress landfill itself). This characteristic of the Congress landfill has been the subject of literally dozens of meetings among Congress, the Agency, and the Illinois Attorney General's office since 2007. During the pendency of *People v. Congress Development Company*, and pursuant to an interlocutory injunction that the Court entered, Congress prepared a study of the area of high temperatures and pressures and submitted it for review to the Agency and the Illinois Attorney General's office. Among other things, that study concluded that the area of high temperature and pressure, while so deep within the landfill that it did not pose any risk to the integrity of the final cover on the top of the landfill, was likely to continue for the indefinite future. The study also concluded that the area of high temperature and pressure could be managed though the use of appropriate engineering controls, but that the temperatures and pressures could not be reduced at the source, other than by the passage of time.

6. In recognition of this phenomenon at the Congress landfill, the Final Consent Decree gave Congress until June 30, 2013 to demonstrate that it was in compliance with certain regulations that govern the temperature, pressure, and chemical composition of landfill gas. Specifically, Paragraph I (page 28) set forth a series of deadlines by which Congress was required to meet enumerated requirements at the landfill. As relevant for this case, subparagraph

6 required that Congress meet specified regulatory limits on the temperature, pressure, nitrogen and oxygen content of the landfill gas that it collects:

Congress was required to “achieve the following objectives by the deadlines specified below, subject to Section IX of this Consent Order (Enforcement and Modification of the Consent Order); approval of request(s) for modification of the objectives and deadlines will not be unreasonably withheld: *** 6. By June 30, 2013, the Landfill shall be in compliance with the Board Air Pollution Regulations found at 35 Ill. Adm. Code Part 220 and 40 C.F.R. 63, Subpart AAAA.”

7. Part 220 and 40 C.F.R. 63, Subpart AAAA in turn require the owner or operator of a landfill to do either of two things in order to be in compliance. In the first instance, the owner or operator can show that the gas collection wells meet specified limits on temperature, pressure, nitrogen and oxygen: if the gas collection wells meet those limits, or “default values,” the facility is in compliance. Alternatively, the owner or operator “may establish a higher operating temperature, nitrogen, or oxygen value at a particular well.” 35 Ill. Adm. Code 220.250 (c). Given the physical impossibility of meeting the default values, Congress chose to comply by using the latter alternative.

8. Well before Congress submitted the formal Request, Illinois EPA was fully aware that Congress would seek alternate operating parameters. Pursuant to Paragraph V M (page 35) of the Final Consent Decree, Congress met with the Agency and the Illinois Attorney General’s office on a regular basis between August, 2010 and February, 2013. At those meetings Congress regularly apprised both the Agency and the Attorney General’s office that the high temperatures and pressures at the landfill were continuing, and that it therefore would file a request for alternate parameters in February, 2013. Consistent with its statements, and consistent with both the Final Consent Order and 35 Ill. Adm. Code 220.250, Congress submitted the Request

(formally, a Request for Alternate Operating Parameters and Procedures for Active Landfill Gas Extraction Collectors) to the Agency on February 28, 2013.

9. On March 12, 2013 the Agency denied the Request. The stated reason for the denial, in its entirety, was the following: “Circuit Court Order No. 06 CH 1438 requires Congress [to] be in compliance with 35 Ill. Adm. Code Part 220, and 40 C.F.R. 63, Subpart AAA, by June, 2013. The Illinois EPA cannot grant alternate operating parameters and procedures outside the requirements of these regulations[,] effectively circumventing the Compliance Schedule in this Order. As such the Illinois EPA is denying your request.”

10. The Agency’s rationale is erroneous as a matter of law, for at least three reasons:

a. The Request did not seek anything “outside the requirements” of Part 220 or 40 C.F.R. 63, Subpart AAAA, because those very regulations envision the prospect that a landfill owner or operator can seek alternate operating parameters pursuant to section 220.250. Illinois EPA’s interpretation effectively reads that section out of Part 220. The Agency’s reading of Part 220 is erroneous as a matter of law.

b. Nor did the Request seek to “circumvent” anything in the Final Consent Order. The very Paragraph that contains the June 30, 2013 deadline itself contemplates that Congress could seek modification of any of the objectives or deadlines, and requires that “approval of request(s) for modification of the objectives or deadlines will not be unreasonably withheld.” The Agency’s refusal even to consider the substance of the Request on the merits was unreasonable within the meaning of the Final Consent Order, and erroneous as a matter of law.

c. Finally, and alternatively, Section IX B of the Final Consent Order (p. 40) provides that “[t]he parties to the Consent Order may, by mutual written consent, extend

any compliance dates or modify the terms of this Consent Order without leave of this Court.” The Agency’s claim that it is powerless even to consider the Request is inconsistent with this provision and is erroneous as a matter of law.

WHEREFORE, Congress Development Company asks the Board to reverse IEPA’s March 12, 2013 Denial of the Request, to remand the matter back to IEPA for proper consideration, and to grant such further relief as the law and the facts justify.

Respectfully submitted,

CONGRESS DEVELOPMENT COMPANY

By: 
One of Its attorneys

Lathrop & Gage LLP
155 N. Wacker Drive
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Chicago, Illinois 60606
Phone: (312) 920-3300
Fax: (312) 920-3301

Firm ID: 46500

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 12th day of April, 2013, a true and correct copy PETITION FOR REVIEW OF DENIAL OF REQUEST FOR HIGHER OPERATING VALUES was served by electronic mail and United States mail on the following:

John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

RECEIVED
CLERK'S OFFICE
APR 12 2013
STATE OF ILLINOIS
Pollution Control Board

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

By:



Russell R. Eggert
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-2829
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, ILLINOIS 60601 - (312) 814-6026

PAT QUINN, GOVERNOR

JOHN J. KIM,

DIRECTOR

MAR 12 2013

Tamara Sands
Project Manager
Cornerstone Environmental Group, LLC
400 Quadrangle Drive, Suite E
Bolingbrook, Illinois 60440

**RE: Congress Development Company – Hillside Landfill
I.D. 031123ABP
Request for Alternate Operating Parameters and Procedures for
Active Landfill Gas Extraction Collectors**

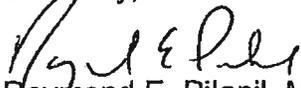
Dear Ms. Sands:

The Illinois Environmental Protection Agency (Illinois EPA) received your letter, dated February 28, 2013, submitted on behalf of Congress Development Company – Hillside Landfill (Congress), requesting alternate operating parameters and procedures for several active landfill gas extraction collectors. Currently 119 of the 197 collectors in the landfill's interior gas collection control system exhibit exceedances of 35 Ill. Adm. Code Part 220, and 40 CFR 63, Subpart AAAA, operational standards.

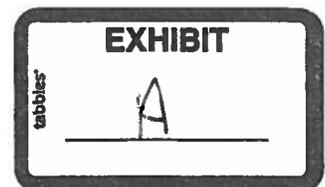
Circuit Court Order No. 06 CH 1438 requires Congress be in compliance with 35 Ill. Adm. Code Part 220, and 40 CFR 63, Subpart AAAA, by June, 2013. The Illinois EPA cannot grant alternate operating parameters and procedures outside the requirements of these regulations effectively circumventing the Compliance Schedule in this Order. As such the Illinois EPA is denying your request.

Questions regarding this matter should be directed to Yasmine Keppner-Bauman of my staff at 217/524-0908.

Sincerely,


Raymond E. Pilapil, Manager
Compliance Section
Bureau of Air

REP: ykb



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

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

Plaintiff,

-vs-

CONGRESS DEVELOPMENT COMPANY,
A general partnership, JOHN SEXTON
SAND & GRAVEL CORP., an Illinois
Corporation d/b/a Congress Development
Company, ALLIED WASTE
TRANSPORTATION, INC.
a Delaware corporation, and HARRY
HENDERSON, not individually, but solely
as Receiver,

Defendants.

No. 06 CH 1438

FINAL CONSENT ORDER WITH DEFENDANTS
CONGRESS DEVELOPMENT COMPANY, JOHN SEXTON SAND & GRAVEL CORP.
AND ALLIED WASTE TRANSPORTATION, INC.

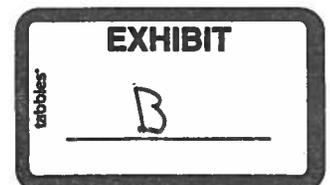


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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

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

Plaintiff,

-vs-

CONGRESS DEVELOPMENT CO.,
A general partnership, JOHN SEXTON
SAND & GRAVEL CORP., an Illinois
Corporation d/b/a Congress Development
Company, ALLIED WASTE
TRANSPORTATION, INC.
a Delaware corporation, and HARRY
HENDERSON, not individually, but solely
as Receiver,

Defendants.

No. 06 CH 1438

FINAL CONSENT ORDER WITH DEFENDANTS
CONGRESS DEVELOPMENT CO., JOHN SEXTON SAND & GRAVEL CORP. AND
ALLIED WASTE TRANSPORTATION, INC.

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (“Illinois EPA”), and Defendants, Congress Development Co. (“Congress”), John Sexton Sand & Gravel Corp. (“Sexton”), and Allied Waste Transportation, Inc. (“Allied”) (collectively, the “Congress Defendants”) (“Parties to the Consent Order”), have agreed to the making of this Final Consent Order (“Consent Order”). The Court enters this Consent Order pursuant to agreement of the Parties to the Consent Order without any findings of fact or conclusions of law except as expressly provided herein.

I. INTRODUCTION

This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Court's entry of the Consent Order and issuance of any injunctive relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding except as expressly provided herein. It is the intent of the Parties to this Consent Order that it be a final judgment on the merits of this matter.

A. Parties to the Consent Order

1. On January 20, 2006, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, filed a Verified Complaint for Injunctive Relief and Civil Penalties against Defendants CONGRESS DEVELOPMENT COMPANY, JOHN SEXTON SAND & GRAVEL CORP., ALLIED WASTE TRANSPORTATION, INC. and HARRY HENDERSON, which alleged certain violations of law at the municipal solid waste Landfill located at 4100 West Frontage Road, Hillside, Illinois, commonly known as the Congress Landfill or the Hillside Landfill (the "Landfill").
2. On April 28, 2006, Plaintiff filed its First Amended Complaint, adding new allegations of violations of the Illinois Environmental Protection Act ("Act") (found at 415 ILCS 5/1 *et seq.*), and adding Sexton and Allied Waste Transportation, Inc., as Defendants.
3. On August 16, 2010, Plaintiff filed its Second Amended Complaint ("Complaint"), adding new allegations of violations of the Act.
4. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2008).
5. At all times relevant to the Complaint, Defendant Congress Development Company is a general partnership with offices located at 4415 W. Harrison Street, Hillside,

Illinois. The general partners of Congress are John Sexton Sand & Gravel Corp. and Allied Waste Transportation, Inc.

6. At all times relevant to the Complaint, Defendant John Sexton Sand & Gravel Corp. is an Illinois corporation authorized to transact business in the State of Illinois.

7. At all times relevant to the Complaint, Defendant Allied Waste Transportation, Inc. is a Delaware corporation authorized to transact business in the State of Illinois.

B. Site Description.

Congress owns, Sexton operated from 1980 until 2007, and Allied has operated since 2007, for purposes of this Site Description, a municipal solid waste (“MSW”) Landfill located at 4100 West Frontage Road, Hillside (Cook County), Illinois. At the Landfill, Congress owns, Sexton operated from 1980 until 2007, and Allied has operated since 2007, for purposes of this Site Description, certain landfill gas wells, landfill gas collection and control equipment, landfill gas control devices, and a leachate management system. The Landfill is subject to several permits issued by the Illinois EPA, including permits issued by Bureaus of Air, Land and Water. The Landfill is also subject to permits issued by the Metropolitan Water Reclamation District of Greater Chicago (“MWRD”)

C. Allegations of Non-Compliance

Plaintiff contends that the Congress Defendants have violated the following provisions of the Act and Illinois Pollution Control Board (“Board”) Regulations:

Count I: AIR POLLUTION ASSOCIATED WITH LANDFILL GAS EMISSIONS, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a), and 35 Ill. Adm. Code 201.141.

Count II: AIR POLLUTION FROM LEACHATE AND GAS RELEASE, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a), and 35 Ill. Adm. Code 201.141.

- Count III: CAUSING OR ALLOWING LANDFILL GAS MIGRATION, in violation of Sections 9(a) and 39.5(6)(a) of the Act, 415 ILCS 5/9(a) and 39.5(6)(a), and 35 Ill. Adm. Code 220.220(a)(3).
- Count IV: FAILURE TO OPERATE LANDFILL GAS CONTROL SYSTEM WITHIN ESTABLISHED PARAMETERS, in violation of Section 9(a) and 39.5(6)(a) of the Act, 415 ILCS 5/9(a) and 39.5(6)(a), and Ill. Adm. Code 220.230(a) and (b), 220.250(a), (b), (c), (d), (f), and (g).
- Count V: FAILURE TO CONDUCT LANDFILL GAS MONITORING, in violation of Sections 9(a) and (b) and 39.5(6)(a) of the Act, 415 ILCS 5/9(a) and (b) and 39.5(6)(a), 35 Ill. Adm. Code 220.270(a)(1) and (2), 220.270(b)(1) and (b)(2) and 220.270(c)(1) and (c)(2).
- Count VI: VIOLATION OF FLARE SYSTEM PERMITS, in violation of Sections 9(b) and 9.1(d) of the Act, 415 ILCS 5/9(b) and 9.1(d), and 40 C.F.R 60.18(c)(3)(iii) and 60.18(c)(5).
- Count VII: VIOLATION OF LAND PERMIT, in violation of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1).
- Count VIII: FAILURE TO SUBMIT CONSTRUCTION COMPLETION REPORT, in violation of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1).
- Count IX: VIOLATION OF LEACHATE LEVEL, in violation of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1), and Special Condition VI.2 of the Land Permit.
- Count X: VIOLATION OF WASTE DISPOSAL REGULATIONS, in violation of Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2), and 35 Ill. Adm. Code 811.311(a)(1) and 811.311(d)(2).
- Count XI: FAILURE TO CONSTRUCT GAS COLLECTION SYSTEM TO WITHSTAND ALL LANDFILL OPERATING CONDITIONS, in violation of Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2), and 35 Ill. Adm. Code 811.311(d)(6).
- Count XII: FAILURE TO DESIGN LEACHATE COLLECTION SYSTEM TO FUNCTION FOR ENTIRE DESIGN PERIOD, in violation of Section 21(d)(2) of the Act, and 35 Ill. Adm. Code 811.308(a) and 811.309(a).
- Count XIII: FAILURE TO OBTAIN CONSTRUCTION PERMIT, in violation of Section 9(b) of the Act, 415 ILCS 5/9(b), and 35 Ill. Adm. Code 201.142.

- Count XIV: DISCHARGING POLLUTANTS INTO A PUBLICALLY OWNED TREATMENT WORKS, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a), and 35 Ill. Adm. Code 307.1101(b)(12).
- Count XV: WATER POLLUTION, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a).
- Count XVI: CREATING A WATER POLLUTION HAZARD, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d).
- Count XVII: VIOLATION OF SEWER CONNECTION PERMIT, in violation of Section 12(b) of the Act, 415 ILCS 5/12(b).
- Count XVIII: FAILURE TO HAVE CERTIFIED OPERATOR, in violation of Section 1004 of the Solid Waste Site Operator Certification Law, 225 ILCS 230/1004.

D. Additional Allegations of Non-Compliance

Additionally, Plaintiff contends that the Congress Defendants have violated the following provisions of the Act and Congress Defendants' Land Permit:

Violation of Groundwater Provisions
Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2008), and Special Conditions VII.14 and VII.15 of the Land Permit.

E. Non-Admission of Violations

The Congress Defendants deny the violations alleged in the Complaint filed in this matter and referenced above.

F. Compliance Activities to Date

1. On January 26, 2006, the Court entered an Agreed Preliminary Injunction Order between Plaintiff and the Congress Defendants ("Agreed Preliminary Injunction Order"). The Agreed Preliminary Injunction Order required the Congress Defendants to take certain actions, according to a schedule contained in the Agreed Preliminary Injunction Order, to address the alleged hazards created by the uncontrolled release of Landfill gas at or from the Landfill. The Parties to the Consent Order agree that the tasks set forth in Paragraph 2 of the Second Supplemental Agreed Preliminary Injunction Order With Defendants Congress Development

Company, John Sexton Sand & Gravel Corp., and Allied Waste Transportation, Inc., entered by the Court on January 10, 2007 (“Second Preliminary Injunction”) are incorporated herein and were completed.

2. On April 4, 2006, the Court entered an Agreed Order Supplementing Agreed Preliminary Injunction and Order between Plaintiff and Congress Defendants (“First Supplemental Order”). The First Supplemental Order requires the Congress Defendants to take additional specified actions, according to a schedule contained in the First Supplemental Order, to address alleged hazards relating to subsurface migration of landfill gas beyond the borders of the Landfill that were discovered after entry of the Agreed Preliminary Injunction Order. The Parties to the Consent Order agree that the tasks set forth in Paragraph 3 of the Second Preliminary Injunction are incorporated herein and were completed.

3. On January 10, 2007, the Court entered the Second Agreed Preliminary Injunction. Since entry of the Second Preliminary Injunction, the Congress Defendants have accomplished the following:

- a. Installation of 55 acres of an impermeable final cover system consisting of over 900 geomembrane panels (over 10 miles of seaming);
- b. Installation of a slip liner system at the perimeter of the Landfill;
- c. Within the past year, achieved significant reduction in both reported odor complaints and surface emissions exceedances;
- d. Installation of gas collection system consisting of 126 vertical gas extraction wells; 55 acres of horizontal gas collection layer, over two miles of horizontal gas collection piping, 21 landfill gas condensate sumps, and over four miles of landfill gas header lines;

- e. Installation of over 1.2 miles of landfill gas perimeter toe trench collectors, including 28 risers and 13 liquid removal sumps;
- f. Installation of over 2,900 lineal feet of landfill gas sideseal collectors, including 14 risers and two dual contained liquid removal sumps;
- g. Installation of leachate management system consisting of 26 vertical extraction wells and 19 leachate piezometers;
- h. Installation of a perimeter pipe gallery that included installation of over 1.2 miles of landfill gas piping, 2.4 miles of dual contained leachate piping and 1.2 miles of compressed air conveyance piping;
- i. Installation and operation of a new 4,000 scfm enclosed flare;
- j. Placement of over 266,000 cubic yards of protective cover over the 55 acre Landfill footprint;
- k. Development and implementation of a settlement monitoring program consisting of over 190 settlement plates with bi-weekly monitoring; as of the date of this Consent Order over 7,000 settlement readings have been taken;
- l. Installation of eight temperature probe locations, with over 80 data readings every 15 minutes, 24 hours per day, seven days per week;
- m. Investigation into potential mechanisms that could contribute to the heat and pressure conditions observed at the Landfill;
- n. Installation of nine pressure transducers to monitor pressure within the waste mass; and
- o. Installation and operation of a leachate pretreatment plant that is designed to treat up to 125,000 gallons per day.

4. As of June 14, 2010, Congress Defendants employed a certified operator at the Landfill.

5. Congress Defendants remediated leachate releases alleged in the Complaint.

G. Purpose

1. The primary purpose of this Consent Order is to provide the framework and requirements for the Congress Defendants to achieve and maintain compliance at the Landfill with the Act, 415 ILCS 5/1 *et seq.*; the Board regulations; and all of the terms and conditions of permits issued pursuant to the Act for the Landfill; and to provide for the payment of a civil penalty. The framework and requirements for achieving compliance are set forth in Section V (Future Work). The parties envision that certain approved work plans or portions thereof may be included in permit applications in the future, as appropriate and as approved by the Plaintiff.

2. This Consent Order is a final resolution of all disputes between Plaintiff and the Congress Defendants alleged in the Complaint with respect to the Landfill. This Consent Order is not intended to and does not adjudicate the claims or defenses of any party (present or future) in any other lawsuit. Furthermore, this Consent Order shall not be construed to impair or affect the Order entered by this Court on March 12, 2007, in the *Village of Hillside v. Congress Development Company, et al., case No. 06 CH 5718*.

3. Except as specifically set forth to the contrary in Section I.F.1 and 2 and Section V.J of this Consent Order, all prior Orders and Injunctions entered in this matter are hereby vacated.

II. APPLICABILITY

A. This Consent Order shall apply to and be binding upon the Parties to the Consent Order. The Congress Defendants waive as a defense to any enforcement action taken pursuant to this

Consent Order the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order. This Consent Order may be used by the Plaintiff against the Congress Defendants in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2008).

B. No change in ownership, corporate status or operator of the Landfill shall in any way alter the responsibilities of the Congress Defendants under this Consent Order. In the event that the Congress Defendants propose to sell or transfer any real property or operations subject to this Consent Order, the Congress Defendants shall notify the Plaintiff thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Congress Defendants shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Congress Defendants landfill access and all cooperation necessary for Congress Defendants to perform to completion any compliance obligation(s) required by this Consent Order. The Congress Defendants shall provide a copy of this Consent Order to any such successor in interest and the Congress Defendants shall continue to be bound by and remain liable for performance of all obligations under this Consent Order.

III. JUDGMENT ORDER

This Court has jurisdiction of the subject matter herein and of the Parties to the Consent Order and, having considered the stipulated facts and being advised in the premises, finds the relief set forth in the following sections appropriate, and

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

IV. PENALTIES AND COSTS

A. Civil Penalty

The Congress Defendants are jointly and severally liable for a civil penalty and shall pay a civil penalty of One Million Dollars (\$1,000,000.00) which is a sufficient penalty to address past conduct that was the subject matter of the Complaint filed in this matter and additional allegations of noncompliance set forth in Section I.D herein, and to deter further violations. Payment shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF") and tendered at time of entry of the Consent Order. The case name and case number shall appear on the face of the certified check or money order.

B. Stipulated Penalties, Interest and Default

1. If the Congress Defendants fail to complete any activity or fail to comply with any response or reporting requirement by the date specified in this Consent Order, the Congress Defendants shall provide notice to the Plaintiff of each failure to comply with this Consent Order and shall pay stipulated penalties in the amount of \$300.00 per violation per day until such time that compliance is achieved. The Plaintiff may make a demand for stipulated penalties upon the Congress Defendants for their noncompliance with this Consent Order. However, failure by the Plaintiff to make this demand shall not relieve the Congress Defendants of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date the Congress Defendants know or should have known of the noncompliance with any provision of this Consent Order.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Congress Defendants not paid within the time prescribed herein. Interest on unpaid

penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

3. The stipulated penalties shall be enforceable by the Plaintiff and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Consent Order.

C. State Costs

1. As to Illinois EPA. Congress Defendants shall pay the sum of One Hundred Thousand Dollars (\$100,000) to Illinois EPA for costs incurred up to entry of this Consent Order related to this case. Payment shall be made in the form of a certified check or money order made payable to the "Illinois Environmental Protection Agency" designated for deposit in the "Hazardous Waste Fund" and tendered at time of entry of the Consent Order. The case name and case number shall appear on the face of the certified check or money order.

2. As to Illinois EPA Community Relations Costs. Congress Defendants shall reimburse the Illinois EPA for future costs incurred related to implementation of a Community Relations Plan required in Section V.C.4 in an amount up to and not to exceed Twenty-Five Thousand Dollars (\$25,000.00). After Congress Defendants have paid \$25,000.00 related to Illinois EPA's community relations costs, at the written request of the Plaintiff, the Parties to the Consent Order shall discuss the continuing need for community relations work on this project. If the Parties to the Consent Order cannot agree whether there is a continuing need for Illinois EPA's community relations work relating to the Landfill, any party may petition the Court regarding the continuing need for Illinois EPA's community relations work, with notice to the other Parties to the Consent Order and opportunity to respond. On a quarterly basis, the Illinois

EPA shall send Congress Defendants a statement requiring payment that includes its standard cost documentation. Congress Defendants shall remit payment due and owing under this paragraph within thirty (30) days after receipt of such invoice, in the same manner as provided in Section IV.D herein. Failure to submit quarterly invoices does not preclude Illinois EPA from obtaining these costs from Congress Defendants.

3. As to the Illinois Attorney General. Congress Defendants shall pay the sum of One Hundred Thousand Dollars (\$100,000) to the Illinois Attorney General for costs incurred up to entry of this Consent Order related to this case. Payment shall be made in the form of a certified check or money order made payable to the "Illinois Attorney General State Projects and Court Ordered Distribution Fund (801 Fund)" for subsequent expenditure as authorized by the Attorney General, and tendered at time of entry of the Consent Order. The case name and case number shall appear on the face of the certified check or money order.

D. Payment Procedures

All payments required by Section IV.B. (Stipulated Penalties, Interest and Default) of this Consent Order shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). All payments required by Paragraph IV.C.2 (State Costs - As to Illinois EPA Community Relations Costs) of this Consent Order shall be made by certified check or money order made payable to the "Illinois EPA" designated for deposit in the "Hazardous Waste Fund". Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The case name and case number shall appear on the face of the certified check or money order.

A copy of the certified check or money order and any transmittal letter shall be sent to:

Illinois Attorney General's Office
Chief, Environmental Bureau
69 West Washington St., 18th Flr.
Chicago, Illinois 60602

The Congress Defendants' federal tax identification numbers ("FEIN") are as follows:

For Congress: 36-3083505

For Sexton: 36-2408013

For Allied: 52-2044848

V. FUTURE WORK

The Future Work required to be performed jointly and severally by the Congress Defendants under this Consent Order is set forth in this Section V (Future Work). The Landfill Compliance Plan and all plans required therein shall be submitted to the Plaintiff for review and approval unless otherwise specifically required herein.

A. Landfill Compliance Plan

1. Within 45 days after entry of this Consent Order, Congress Defendants shall submit a Landfill Compliance Plan that shall take into account the current status of the Landfill and other modifications and improvements made since entry of the Second Supplemental Agreed Preliminary Injunction and Order.

2. This Consent Order is not a permit. Defendants shall obtain all necessary permits required by applicable statutes and regulations.

3. The Landfill Compliance Plan should recognize and address site-specific challenges and potential problems based on past experience and an engineering understanding of the environment within the Landfill. The Landfill Compliance Plan shall include separate Work

Plans to address the following areas set forth below: Landfill Settlement, Landfill Gas and Air Quality, Landfill Monitoring and Corrective Action Plan (LMCAP), Leachate, Surface Water, Groundwater and Systems Identification.

B. Landfill Settlement Plan

1. Settlement Monitoring and Remedial Actions Program: The Landfill Settlement Plan shall include a settlement monitoring program that will describe the monitoring procedures (including evaluation and maintenance of settlement plates), monitoring schedule, data collection and evaluation of settlement of the Landfill and the impact of that settlement on the integrity and strength of the final cover system. The evaluation shall consider the impact of differential settlement within the waste mass and between the waste mass and relatively stationary points (e.g., wells, adjacent land mass) upon the slip liner performance, stress and strains on geosynthetics, cap grading, piping crossing and drainage. The settlement monitoring program shall also describe the procedures for assessing impacts of settlement on the Landfill's appurtenant environmental control systems, including stress and strain on the Landfill gas and leachate conveyance piping and wells. The settlement monitoring program shall also describe contingent remedial actions to address settlement with specific identification of thresholds where preventative maintenance actions should be taken prior to failure of engineered systems. These thresholds shall be established based on an assessment of the environmental control systems to continue to operate effectively with settlement.

2. Landfill Final Cover Replacement: To address the areas on the Landfill where settlement has occurred and may occur, and/or where geomembrane failure has occurred or may occur, a new final cover system is or will be required.

By October 31, 2012, Congress Defendants shall install a new geomembrane liner covered with 2 feet of protective soil in areas of significant differential settlement including over the perimeter of the landfill west of the 850 Easting line. This cover shall extend from an anchor trench outside the waste boundary to at least 50 feet inside the waste boundary. Additionally, any areas of the landfill with obvious geomembrane failure, e.g. gas and/or leachate venting from the surface that is not caused by a failure of the GCCS or leachate collection system, shall be covered with a new geomembrane and 2 feet of protective soil. The minimum area of said patches shall be at least 20 feet beyond the failure in each direction. The new geomembrane shall be extrusion welded to the existing geomembrane whenever the soil covering the seam is less than 5 feet thick. A gas collection system shall be installed under any new geomembrane liner as technically and regulatorily appropriate and as approved by the Plaintiff.

The Landfill gas and leachate collection, conveyance and control system shall continue to be operated throughout any construction period to the maximum extent practicable.

Additionally, Congress Defendants shall review the integrity of the liner at least semi-annually. Any areas of the liner that have failed shall be patched in accordance with the requirements of this section.

No later than December 31, 2020, Congress Defendants shall install a replacement of the final cover system on the western part of the landfill to the 800 Easting line, any additional areas east of Easting 800 that have been or will be filled with soil that would be considered waste; and, any other areas that engineering analysis indicates is necessary, in accordance with 35 Ill. Adm. Code Part 811.

C. Landfill Gas and Air Quality Plan

The Landfill Gas and Air Quality Work Plan shall contain several sections as follows:

1. Gas Collection And Control System (“GCCS”): This section shall include a description of the routine operations, monitoring, inspection and maintenance of the gas collection and control system; well field monitoring and tuning; and recordkeeping and reporting. Inspection, maintenance and recordkeeping activities shall include the perimeter gas probes; any other gas migration monitoring devices; gas extraction wells; gas well boots; control devices; blowers and motors; condensate management system (including the pump stations, knock-out pots, and valves); and conveyance piping components of the gas collection and control system. This section shall include a procedure for an ongoing assessment of the GCCS and assurance of the system’s adequacy and compatibility for the environmental conditions (i.e., temperature, pressure, chemical concentrations) at the Landfill. Design criteria and minimum design standards and specifications for materials and devices to be used for maintaining the GCCS shall be established. This section shall outline the standard operating procedures for Operation and Maintenance (“O&M”) activities to be performed and quality control procedures used to document construction and maintenance activities. This section shall include a schedule to remedy all deficiencies identified during assessment and monitoring activities.

2. Gas Collection Operating Standards: This section shall include a plan to monitor and adjust oxygen, pressure and temperature levels within the gas collection and control system to conform to all applicable regulations under 35 Ill. Adm. Code Part 220 and 40 CFR 63 Subpart AAAA.

This section shall include monthly surface emission monitoring on the western one-third, and quarterly surface emission monitoring as specified in 35 Ill. Adm. Code Part 220 for the remainder of the Landfill, unless more frequent monitoring is required by the Plaintiff.

This section shall include plans for the investigation of the following conditions: surging wells; unusual levels of liquid in the Landfill; leaks or damage at wellhead assemblies; blocked or otherwise restricted conveyance piping that may prevent the flow of landfill gas at design flow rates; or any other conditions that compromise the GCCS.

This section shall include checklists of appropriate corrective actions to be implemented when oxygen, temperature or pressure levels exceed applicable limits for the site (oxygen greater than 5%, temperature greater than 55 degrees Celsius and any positive pressure or if surface methane exceeds 500 ppm above background levels as required by 35 Ill. Adm. Code Part 220). The Parties to this Consent Order recognize that certain gas collection wells do not meet the pressure, oxygen, and temperature values specified in 35 Ill. Adm. Code Part 220 as of the date of entry of this Consent Order. The Parties to this Consent Order contemplate that there may be individual gas collection wells for which the Congress Defendants may seek higher operating values from the Illinois EPA pursuant to 35 Ill. Adm. Code 220.250(c). This section shall identify any alternative operating parameters approved by the Illinois EPA, if applicable, for each individual gas collection well and will define when additional subsurface collectors are needed in accordance with the regulations in 35 Ill. Adm. Code Part 220.

3. Gas Migration & Monitoring: This section shall include a procedure for assessing applied vacuum, flow and gas quality around the perimeter of the site in the slant well system during normal operating conditions. This section shall describe additions or changes sufficient to prevent landfill gas migration into the gas probes, based upon field verification of the available vacuum for the slant well system and improvements to the system.

This section shall include a description of the routine monitoring, maintenance, recordkeeping, and reporting procedures for the pipe gallery and slant well system; provide a

procedure for returning noncompliant wells back into compliance; and provide for corrective actions if landfill gas is detected in off-site structures or monitoring devices.

4. Community Relations Plan with Odor Complaint Protocol

Congress Defendants shall prepare and maintain a community relations plan (“CRP”) consistent with 35 Ill. Adm. Code Part 1600, Appendix A. The CRP shall include a protocol to provide the public with the opportunity to contact the Landfill/Congress Defendants via telephone to report odor complaints related to landfill activities seven (7) days a week, twenty-four (24) hours per day. The protocol shall identify a process to provide notice of the complaint call-in information to the public in an identified geographic area. Congress Defendants shall reimburse Illinois EPA for costs incurred related to the CRP in accordance with Section IV.C.2 of this Consent Order.

5. Odor Monitoring Plan:

a. Congress Defendants shall develop and maintain an Odor Monitoring Plan (“OMP”) for monitoring and inspecting Landfill operations that result in odors in quantities and of such characteristics and duration as to cause unreasonable interference with the enjoyment of life or property such that an odor nuisance exists.

b. Routine monitoring shall be conducted monthly unless otherwise specified herein.

c. The OMP shall include the following:

i. A list of the potential odor sources at the Landfill (e.g., wells, piping components, tanks, flares, etc.);

ii. A determination of potential odor sources or landfill activities that are the most likely to result in odor complaints;

iii. At a minimum, the control strategies that are contained in the applicable air pollution control permits;

iv. A plan to respond to all odor complaints or significant odor events as soon as possible but no later than within eight (8) hours of identifying a possible odor nuisance or of being notified of or receiving an odor complaint that is associated with emissions from the Landfill. The plan shall include implementation of odor monitoring and a commitment to implement the control strategies in the plan;

v. Inspection and maintenance in accordance with manufacturer's written instructions for the Landfill's potential odor sources and control equipment; and

vi. The OMP shall include odor observation points established as close to the perimeter or property line of the Landfill as possible. Each point shall be approximately equidistant apart with at least eight (8) points of observation per cardinal direction (i.e., North, South, East, and West) along the perimeter. In addition, the plan shall include additional monitoring along the Landfill face, around the GCCS components, and around other possible sources of odors.

d. Routine monitoring shall be conducted using olfactory senses.

e. Upon determination that the Landfill is undergoing an odor nuisance event as described in subparagraph 5.a. herein, the procedures and protocols in Section V.C.5.c. (iii) and (iv) of the OMP shall be implemented. The odor monitoring required herein shall be performed at least weekly. If after one month it is determined that the Landfill is no longer undergoing an odor nuisance event or upon written approval by the Plaintiff, the monitoring may revert back to the monthly schedule.

f. Upon written request of the Plaintiff, the Congress Defendants shall have the odor from the Landfill tested as specified in this paragraph. The testing shall be conducted according to a field olfactometer or laboratory olfactometer and the testing standard ASTM E679-91 and prEN13725, using an “Odor Intensity Referencing Scale” (OIRS) and the testing standard ASTM E544-99, or other approved alternative. The testing shall be conducted within 48 hours of the request or on a date agreed to by the Parties to this Order. The Congress Defendants shall notify the Plaintiff at least 24 hours in advance of the date and time of the test, in order to allow the Plaintiff to witness testing if desired. This notification shall include the name of the testing service, if a testing service is used. The Congress Defendants shall submit a written test report within 30 days after the date of the testing. The report shall include the date and time of testing; description of observation conditions; raw data; and conclusions and recommendations.

D. Landfill Monitoring and Corrective Action Plan

Congress Defendants shall submit for review and comment a Landfill Monitoring and Corrective Action Plan (“LMCAP”) as further described herein. The LMCAP shall describe a monitoring, inspection and corrective action program that will be used to mitigate conditions or events that threaten the integrity of the Landfill, the leachate collection, storage and treatment system, gas probes, or the GCCS. The Illinois EPA, Bureau of Land, must be notified and any necessary permits obtained before changes to landfill components (*e.g.*, landfill cap) are made.

Congress Defendants shall review and adjust the LMCAP, as needed, on at least an annual basis. Changes in landfill operation and management; additions to or modifications of the Landfill; expansion of property boundaries of the Site; or changes in local, State or federal regulations may require review and adjustment of the LMCAP. Additionally, Congress

Defendants shall also revise the LMCAP to address any new event that threatens the integrity of the Landfill or GCCS or to address landfill operations that result in odors in quantities of and such characteristics and duration as to unreasonably interfere with the enjoyment of life and property such that an odor nuisance exists, when such events or operations are not included in the current LMCAP, within 45 days of identifying the event.

1. LMCAP Content. The LMCAP, at a minimum, shall contain plans for monitoring and inspecting conditions that pose a threat to the Landfill, with appropriate corrective action procedures. These include, but are not limited to, the following:

- a. A landfill cover integrity and repair plan, as required by 35 Ill. Adm. Code 220.240(c)(5);
- b. The OMP required in Section V.C.5 above;
- c. A Hot Spot Monitoring Plan as required by Section V.D.3, below, including a program to identify and mitigate high temperature events, landfill fires, subsurface oxidation events, pyrolysis, and any other high temperature exothermic event; and
- d. Inspection and maintenance procedures in accordance with manufacturer's written instructions and site specific standard operating procedures ("SOPs") for the Landfill and monitoring and control equipment.

The LMCAP shall include both first and second order monitoring and inspection procedures. At a minimum, the first order procedures shall include detection methods incorporating sight, sound, and/or smell and any monitoring required by applicable regulations (including well gas and Landfill surface methane monitoring). Second order procedures shall include measurement of parameters specified within the LMCAP or by Plaintiff, and other investigative procedures. These include but are not limited to thermal imagery; measurement of

temperature, pressure, chemical concentrations (including total reduced sulfur (“TRS”), hydrogen sulfide and carbon monoxide); or other parameter monitoring, as appropriate. The LMCAP shall also include both first and second order corrective action plans. First order corrective actions are those procedures implemented within 24 to 48 hours of determining that corrective action is warranted (including application of additional cover and cover repair, filling in of settlement areas, GCCS adjustments and repairs, and application of odor mitigation tarps or foams). Second order corrective actions are long term corrective action procedures (such as installation of additional wells, piping or controls; long term investigation and monitoring, etc.).

2. Routine Monitoring Schedule. Routine monitoring shall be performed at least monthly.

3. Hot Spot Monitoring Plan.

a. At a minimum, the Hot Spot Monitoring Plan shall contain protocols for detection, investigation, and corrective action for the following conditions:

i. Substantial Landfill settlement over a short period of time that is not indicative of subsurface erosion (taking into account the Landfill Settlement Plan data required in Section V.B.);

ii. Cracks or fissures in the Landfill cover, dying or stressed vegetation, odors, or other parameters indicative of a Landfill cover or cap breach;

iii. Visual emissions of smoke or vapor from the Landfill or detection of a smoldering odor emanating from the gas collection system or Landfill;

iv. Elevated levels of CO in excess of 100 parts per million (ppm);

v. Combustion residue in the GCCS components;

vi. Increase in Landfill gas temperature in the gas collection system (above 140°F);

vii. Subsurface temperatures in excess of 170°F; and

viii. Melting or failure of GCCS components due to elevated temperature.

b. Landfill observations shall be performed along the Landfill gas surface scan route required under 35 Ill. Adm. Code Part 220. The Hot Spot Monitoring Plan shall include provisions for monitoring those areas excluded from the surface methane scan pursuant to 35 Ill. Adm. Code Part 220 (i.e., those areas with steep slopes or other dangerous areas shall not be excluded from at least visual monitoring) and in the course of normal Landfill operations.

4. Upon determination that the Landfill is undergoing a high temperature event that has not been detected or reported prior to the date of entry of this Consent Order or that occurs on or after the date of the entry of this Consent Order, the procedures and protocols in Sections V.D.1.c and V.D.3 herein shall be implemented. Landfill monitoring required herein shall be performed at least semi-monthly. If after three (3) months it is determined that the Landfill is no longer undergoing a high temperature event, or as agreed upon in writing by the Parties to the Consent Order, monitoring may revert back to the monthly routine schedule.

5. Air Recordkeeping. The Congress Defendants shall collect and maintain the following records as part of the LMCAP:

a. An updated copy of the most current LMCAP.

b. At a minimum, all monitoring performed pursuant to the LMCAP and any corrective action taken to control surface or subsurface Landfill fire/oxidation events or odor events, including,

- i. The date of each event or observation, and whether it was determined that it was necessary to implement any corrective actions under the LMCAP;
- ii. The date corrective actions were implemented;
- iii. A summary (including weather conditions, complainant, and odor description) of all odor nuisance complaints received by Congress Defendants, or a statement in the OMP file that no odor nuisance complaints were received during the monitoring period; and
- iv. A log recording incidents when corrective actions were not carried out as scheduled or were not fully implemented and incidents when additional corrective actions were carried out, with a description and explanation of each such incident. This log shall address any adjustments to the scheduling of corrective actions made by the Congress Defendants due to weather conditions that either acted to reduce or increase the level of odor.

c. Information for the monitoring observations conducted pursuant to the Hot Spot Monitoring Plan or the OMP.

- i. Congress Defendants shall keep records for all observations made for the Landfill. For each occasion on which observations are made, the records shall include the date, time, identity of the observer, a description of the observation that was made, whether or not the Landfill was operating normally, and whether or not corrective action was necessary and subsequently initiated; and

- ii. Congress Defendants shall keep records for all testing of the Landfill's potential odor sources that Congress Defendants conduct or that were conducted on Congress Defendants' behalf by individuals qualified to conduct such testing. For each occasion on which testing is conducted, the records shall include the items required for the written reports required by those conditions (including date, time, identity of the tester, a description of the test

conducted, whether or not corrective action was necessary and subsequently initiated, and other relevant information).

6. Air Reporting for Identified Incidents. Congress Defendants shall comply with the following reporting requirements:

a. All high temperature events that have not been detected or reported prior to the date of entry of this Consent order or that occur on or after the date of entry of this Consent Order and are detected pursuant to the LMCAP shall be reported to the Plaintiff by telephone or facsimile (fax) within 24 hours of the event. The telephone report shall be followed by a written report to the Plaintiff within seven (7) days. The report shall include a description of conditions at the Landfill that may be indicative of a surface or subsurface Landfill fire/oxidation event; planned follow-up (i.e., additional sampling or monitoring); planned corrective action, if warranted; and copies of all records indicating temperature, methane, oxygen, carbon dioxide, and carbon monoxide levels in gas collection wells surrounding the area of the suspected surface or subsurface fire/oxidation event.

b. Odor complaints received by Congress Defendants or odor events monitored by the Congress Defendants that could not be mitigated by the control strategies specified in the OMP shall be reported to the Plaintiff by telephone or fax within 24 hours.

c. Reports shall be made pursuant to the Notification provision set forth in Section XI. herein and pursuant to applicable permits.

E. Leachate Plan

The Leachate Plan shall contain several sections as further set forth below.

1. Leachate Management System: This section shall include a description of the routine leachate monitoring activities, including measurement of liquid levels at leachate

piezometers and analysis of leachate chemical composition from samples collected from leachate piezometers; leachate collection and treatment operations; and inspection and maintenance of system components including extraction wells; conveyance lines; manholes; vaults; tanks; pumps; and lift stations. This section shall establish a minimum inspection and maintenance schedule for all leachate pumps and conveyance lines. Pumps shall be installed and maintained in all leachate extraction wells (“LE”-series wells) and operated as needed to eliminate and avoid “surging” conditions within these wells, except as provided in any Bureau of Land permit. This section shall outline a procedure for semi-annually assessing and locating areas of excessive head loss within the leachate conveyance system due to clogging or narrowing of the conveyance lines, and semi-annually assessing the adequacy of the pumps to convey the leachate through the conveyance system (as configured at the time of the assessment).

2. Landfill Leachate Levels: This section shall include a detailed plan of action to be implemented to lower the leachate levels in the Landfill as approved in Illinois EPA, Bureau of Land, Permit Modification No. 33, Log No. 2007-384, issued November 14, 2008, and Permit Modification No. 41, Log Nos. 2009-569 and 2009-577, issued April 7, 2010, as modified by Section V.I of this Consent Order (Compliance Schedule). This section shall include a description of the processes by which the Congress Defendants shall remove leachate from the Landfill, including pumping rates, pump distribution, leachate storage, increased leachate discharge, and the amount of gallons per day of planned leachate removal over time.

3. Sewer Discharge Monitoring: This section shall include a plan for submittal to the MWRD and the Plaintiff for monitoring the sewer system for explosive concentrations of gases.

F. Surface Water Plan

Surface Water Management System: This Surface Water Plan shall include a description of the routine inspection and maintenance activities for the landfill surface water conveyance and detention structures, as well as the monitoring and reporting activities required under the Landfill's National Pollutant Discharge Elimination System ("NPDES") permit and Storm Water Pollution Prevention Plan ("SWPPP"). The Surface Water Plan shall describe in detail the corrective actions to be taken during extreme precipitation events. Congress Defendants shall initiate corrective actions to mitigate any releases immediately upon occurrence of any release and simultaneously notify the Plaintiff as set forth in Section XI (Notice) of this Consent Order.

G. Groundwater Plan

Groundwater Monitoring System: This Groundwater Plan shall include a description of the network of groundwater monitoring wells already installed; wells proposed for use in the determination of the rate and extent of groundwater contamination; assessment monitoring activities; routine detection monitoring and reporting; and inspection and maintenance of monitoring wells.

Congress Defendants shall initiate the corrective action measures assessment (CAMA) as detailed in 35 Ill. Adm. Code 811.324. A public meeting shall be held after the submittal of the CAMA to discuss the results of the CAMA and gather comments. The Congress Defendants shall submit to the Illinois EPA an application for significant modification to the Land permit that includes any public comments along with the selected remedy and how it meets the standards set forth in 35 Ill. Adm. Code 811.325 and 811.326, in accordance with the Compliance Schedule herein (Section V.I.8).

H. Systems Identification Plan

The Landfill Compliance Plan shall include a procedure for quarterly inspecting all GCCS and leachate management components and relabeling such that the identification is clearly visible and correctly labeled.

I. Compliance Schedule

Defendants shall achieve the following objectives by the deadlines specified below, subject to Section IX. of this Consent Order (Enforcement and Modification of the Consent Order); approval of request(s) for modification of the objectives or deadlines will not be unreasonably withheld:

1. By December 31, 2010, the average liquid level within the Landfill shall be no more than twenty (20) feet above the surrounding groundwater potentiometric surface.
2. By December 31, 2011, the average liquid level within the Landfill shall be no more than ten (10) feet above the surrounding groundwater potentiometric surface.
3. By December 31, 2012, the average liquid level in the landfill shall be at or below the surrounding groundwater potentiometric surface.
4. By December 31, 2013, the average liquid level within the Landfill shall be no less than ten (10) feet below the surrounding groundwater potentiometric surface.
5. By December 31, 2014, the average liquid level within the Landfill shall be no less than twenty (20) feet below the surrounding groundwater potentiometric surface.
6. By June 30, 2013, the Landfill shall be in compliance with the Board Air Pollution Regulations found at 35 Ill. Adm. Code Part 220 and 40 CFR 63, Subpart AAAA.

7. By June 30, 2012, there shall be no methane detections greater than 50% of the Lower Explosive Limit (“LEL”) in the landfill gas monitoring probes outside the waste boundaries and no methane detections greater than 10% of the LEL in off-site structures.

8. By September 15, 2010, Congress Defendants shall submit to the Illinois EPA a report describing the results of the CAMA pursuant to 35 Ill. Adm. Code 811.324(e). By December 14, 2010, the Congress Defendants shall submit to the Illinois EPA an application for significant modification to the Land permit that includes any public comments along with the selected remedy and how it meets the standards set forth in 35 Ill. Adm. Code 811.325 and 811.326.

9. By December 31, 2020, Congress Defendants shall complete construction of the replacement final cover system.

10. Congress Defendants shall implement the activities in the approved Landfill Compliance Plan and other plans contained therein pursuant to the approved schedules.

J. Interim Measures

This paragraph sets forth the measures Congress Defendants shall continue to undertake until the plan(s) described herein relevant to each such measure is (are) approved by the Plaintiff, and the Plaintiff approves in writing that such particular interim measure is no longer required. The interim measures required in this paragraph are intended to be temporary in nature, to ensure the safety and integrity of the Landfill during the period between the entry of this Consent Order and the approval by the Plaintiff of the plans described herein. This Consent Order incorporates the following provisions from the Second Supplemental Agreed Preliminary Injunction and Order which was entered on January 10, 2007:

1. Paragraph 26, Areas 1, 2, 4 and 7; specifically, the Congress Defendants shall continue to implement the approved Work Plans submitted to the Plaintiff pursuant to these provisions;

2. Paragraph 28 (relating to obtaining necessary permits); and

3. Paragraph 45 (Incident Reporting).

After approval of any plan, the approved plan shall control as to the subject matter covered by that plan only.

K. Review of Plans

1. Plaintiff shall provide any comments on Congress Defendants' Plans, or sections thereof, as soon as possible. Reference to the term "Plan" shall include any plan or other document required to be submitted to the Plaintiff by this Consent Order, as amended, for review and approval. Plaintiffs may approve, approve with conditions or disapprove individual plans or sections within the Landfill Compliance Plan. Within fourteen (14) days of receipt of the Plaintiff's comments on any plan, Congress Defendants shall provide a revised plan to the Plaintiff that addresses all deficiencies identified by the Plaintiff. Defendants may request an extension of this fourteen (14) day deadline if additional time is required to provide a response, and Plaintiff shall not unreasonably withhold approval of such a request. Plaintiff shall approve, approve with conditions or disapprove of the revised plan. In the event Plaintiff approves the revised plan with conditions, Congress Defendants shall implement the plan's conditions within the time period specified in the approval with conditions, unless the Congress Defendants invoke Dispute Resolution. Nothing in this Section, however, prevents the Congress Defendants from taking any action to address an imminent and substantial threat to human health and welfare or the environment, including the potential off-site release of gases or leachate. Furthermore,

nothing herein prevents the Congress Defendants from submitting any plan or performing any approved task prior to the date(s) approved in any plan.

2. In the event that a revised plan is disapproved, Congress Defendants may invoke Dispute Resolution, Section X. Thereafter, the Plaintiff and Congress Defendants shall attempt to resolve the dispute in accordance with Dispute Resolution, Section X. Approved plans shall be implemented by the Congress Defendants in accordance with Plaintiff-approved schedules approved therein.

3. If Congress Defendants propose and/or the Plaintiff believes that certain activities at the Landfill are necessary prior to the approval of the associated plan, then the Plaintiff may grant interim approval to commence those parts of the plan. The Plaintiff's decision on such a request is not subject to Dispute Resolution. Any interim approval shall be provided in writing.

4. Any Plaintiff approved plan or approved modification thereto is incorporated by reference herein.

L. Reporting

1. Monthly Reports: Congress Defendants shall provide a written report to Plaintiff once per month, by the 15th day of the month following the calendar month for which the report is provided, on progress on each of the actions required by this Consent Order. The reports shall include:

- a. Narrative
 - i. Activities, including any corrective actions, undertaken during the reporting period;
 - ii. Activities, including any corrective actions, planned for the next 45 days;

iii. An explanation of any issues/problems encountered during the reporting period and how resolved;

iv. Unscheduled shutdown of emission units, monitoring devices and pollution control devices during the reporting period, including the reason why the device or emission unit was not operating, unless reported to the Plaintiff under separate correspondence; and

v. Planned permit applications (local, state and federal).

b. Tables

i. Gas Collection and Control System (GCCS) Monitoring Data;

ii. Flare Flow Readings;

iii. Odor Complaint Summary (with identification of any activities at the Landfill which gave rise to any odor complaints; weather conditions at the time of any odor complaints; and proposals for any revisions to the OMP that may be necessary, which may include either more frequent or less frequent sampling indicated);

iv. Odor monitoring and corrective action summary (with specific location of odor identified and corrective actions completed);

v. Pump Stroke Counter Data;

vi. Daily Leachate Discharge Volume (indicate quantity by disposal method if more than one disposal location used); and

vii. Surface Emission Scan Results Summary.

c. Figures

i. Wellfield Operational Status (locations where vertical and permanent horizontal gas wells not flowing or with flows less than 15 cubic feet per

minute, indicated);

- ii. Gas Collection Well Temperature Exceedances (locations where temperatures > 131 degrees Fahrenheit indicated);
- iii. Gas Collection Well Pressure Exceedances (locations where positive pressure in gas system indicated);
- iv. Gas Collection Well Oxygen Exceedances (locations where oxygen concentration greater than 5% indicated);
- v. Leachate and most recent Groundwater Potentiometric Surface Map(s) (with operating leachate extraction pumps identified);
- vi. Monthly Activities Map (with location of recent issues, repairs and modifications identified);
- vii. Gas Monitoring Exceedances (with location of applicable exceedances indicated for gas probes, manholes, any other monitoring points indicated);
- viii. Leachate Discharge Quantities (provide daily quantity for previous 12 months);
- ix. Gas Monitoring Data at Sewer Discharge Location (provide lower explosive limit monitoring results from continuous monitoring device);
- x. Imported soil and fill material volume estimate based on cut-fill analysis with figure of locations where fill material was placed on landfill;
- xi. Total and Differential Settlement Plots and Settlement Rates; and
- xii. Temperature Probe Data (include previous 12 months data).

2. 48 Hour Notice. Congress Defendants shall provide email notice to the named persons with email addresses listed under Plaintiffs in the Notice section herein (Section XI), at least 48 hours prior to beginning identified work described in the Landfill Compliance Plan.

3. Semi-Annual Reports: Congress Defendants shall provide a written report to the Plaintiff once every six months, by the 25th day of the month following the 6-month period for which the report is provided, to assess the progress over time on the impacts of the actions required by this Consent Order. The first semi-annual report shall be due 25 days after the expiration of the first 6 month period following entry of this Consent Order. Unless otherwise agreed to by the State, the semi-annual report plan shall include the following items:

a. Narrative

- i. Assessment of Impact of Settlement;
- ii. Assessment of Gas Collection and Control System;
- iii. Assessment of Gas Collection Operating Standards;
- iv. Assessment of Gas Migration and Monitoring;
- v. Assessment of Leachate Management System;
- vi. Assessment of Landfill Leachate Levels including potentiometric

surface versus the location of operating downhole pumps and the elevation of the screened portion of gas wells;

- vii. Assessment of Odor Monitoring;
- viii. Assessment of Sewer Discharge Monitoring;
- ix. Assessment of Surface Water Management System;

x. Assessment of the slant well system to evaluate the effectiveness of the system based on gas analysis data and applied vacuum measurements at each well point, gas probe data and other applicable information; and

xi. Recommendations (as necessary) to improve effectiveness of GCCS, leachate and other Landfill management systems with specific activities identified including additional infrastructure, maintenance, monitoring, assessment, and additional investigations; including a proposed schedule for implementation.

b. Tables

i. Vertical gas collection well screen elevation versus leachate liquid level.

c. Figures

i. Number of Hotline Complaints Over Time (include previous 12 months data).

4. Monthly and Semi-Annual Reports shall continue until such time as the Plaintiff approves in writing the cessation or schedule modification of such reports, which approval shall not be unreasonably withheld, or until further order of the Court. Reporting under this consent order shall not excuse the Congress Defendants from any reporting required by the Act, applicable regulations, and permits.

M. Meetings

Congress Defendants shall meet with Plaintiff once per month from the date of this Consent Order to discuss actions taken and planned to complete the requirements of this Consent Order. Monthly meetings shall continue until such time as the Plaintiff approves a modification to this requirement in writing, which approval shall not be unreasonably withheld, or as

otherwise ordered by the Court. Unless otherwise agreed by the parties, the meetings shall take place at 10 A.M. on the fourth Wednesday of each month at the offices of the Attorney General, 69 West Washington Street, Suite 1800, Chicago, Illinois.

N. State Project Consultant

1. Congress Defendants shall pay the reasonable costs of an outside consultant to assist Plaintiff in oversight of the Future Work required under this Consent Order. The Plaintiff may require the assistance of the Project Consultant until the purpose of this Consent Order is achieved.

2. Congress Defendants shall pay the Plaintiff's costs of retaining the Project Consultant, which include all reasonable costs of time, overhead and expenses incurred by the Project Consultant, in an amount up to and not to exceed Fifty Thousand Dollars (\$50,000.00), without further order of this Court or written agreement of the Parties. After Congress Defendants have paid \$50,000.00 for services of the State Project Consultant, at the written request of the Plaintiff, the parties shall discuss the continuing need for the Project Consultant on this project. If the parties cannot agree whether there is a continuing need for the State Project Consultant, any party may petition the Court regarding the continuing need for the Project Consultant, with notice to the other parties and opportunity to respond.

3. The State Project Consultant shall submit monthly invoices to the Illinois Attorney General. The Illinois Attorney General shall thereafter submit to Congress Defendants a statement of payment due, including a description of services rendered, hours and expenses, at the following addresses:

Russ Eggert
Reed Smith, Ltd.
10 S. Wacker Drive, Ste. 4000
Chicago, Illinois 60606

Phone: (312) 207-2408
Fax: (312) 207-6400
reggert@reedsmith.com

Mr. Jim Spencer
Republic Services
4100 West Frontage Rd.
Hillside, IL 60162
Phone: (219) 477-7783
jspencer@republicservices.com

Mr. Philip L. Comella
Seyfarth Shaw, LLP
131 S. Dearborn Street, Ste. 2400
Chicago, Illinois 60603
Phone: (312) 460-5000
Fax: (312) 460-7000
pcomella@seyfarth.com

4. Congress Defendants shall, within thirty (30) days of receipt of a statement of payment due, remit a check(s) for the amount of those costs, unless Dispute Resolution is invoked. Payment shall be made in the form of a check or checks made payable to the identified State Project Consultant. The case name shall be put on the face of the check. The check(s) shall be delivered to:

Illinois Attorney General's Office
Chief, Environmental Bureau North
69 West Washington St., 18th Flr.
Chicago, Illinois 60602

5. Payment of the costs of the State Project Consultant by Congress Defendants shall not entitle Congress Defendants to direct or supervise the State Project Consultant.

O. Recordkeeping

Congress Defendants shall maintain a copy of all permits, permit applications, work plans, O&M manuals, calibration procedures, as-built drawings, monitoring data and reporting

required under this order at the Landfill office and available for review by Plaintiff during normal business hours.

P. Financial Assurance

Congress Defendants shall maintain financial assurance at all times in compliance with Section 21.1 of the Act, 415 ILCS 5/21.1, and Section 811.701 of the Board Land Pollution Regulations, 35 Ill. Adm. Code 811.701.

VI. RIGHT OF ENTRY

The Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Landfill, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

VII. COMPLIANCE WITH OTHER LAWS/CEASE AND DESIST

This Consent Order in no way affects the responsibilities of the Congress Defendants to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations. Congress Defendants shall cease and desist from future violations of the Act and Board regulations that were the subject matter of the Complaint.

VIII. FORCE MAJEURE

A. *Force majeure* is an event arising solely beyond the control of any of the Congress Defendants, which prevents the timely performance of any of the requirements of this Consent Order and shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, and labor disputes solely beyond the reasonable control of the Congress Defendants.

An increase in costs associated with implementing any requirement of this Consent Order shall not, by itself, excuse the Congress Defendants for a failure to comply with such a requirement.

B. When a *force majeure* event occurs which causes or may cause a delay in the performance of any of the requirements of this Consent Order, the Congress Defendants shall orally notify the Illinois EPA, John Waligore, Assistant Counsel, at 217-306-4247, within forty-eight (48) hours of the occurrence. Written notice shall be given to the Plaintiff as soon as practicable, but no later than ten (10) calendar days after the claimed occurrence. This section shall be of no effect as to the particular event involved if the Congress Defendants fail to comply with these notice requirements.

C. Within ten (10) calendar days of receipt of any written *force majeure* notice, the Plaintiff shall respond in writing regarding the Congress Defendants' claim of a delay or impediment to performance. If the Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of any of the Congress Defendants and that the Congress Defendants could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances. Such stipulation may be filed as a modification to this Consent Order. The Congress Defendants shall not be liable for stipulated penalties for the period of any such stipulated extension.

D. If the Plaintiff does not accept the Congress Defendants' claim of a *force majeure* event, the Congress Defendants must file a petition with the Court within twenty (20) calendar days of receipt of the Plaintiff's determination in order to contest the imposition of stipulated penalties. The Plaintiff shall have twenty (20) calendar days to file its response to said petition. The burden of proof of establishing that a *force majeure* event prevented the timely performance shall

be upon the Congress Defendants. If this Court determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of any of the Congress Defendants and that the Congress Defendants could not have prevented the delay by the exercise of due diligence, the Congress Defendants shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by this Court.

IX. ENFORCEMENT AND MODIFICATION OF CONSENT ORDER

A. This Consent Order is a binding and enforceable order of this Court. This Court shall retain jurisdiction of this matter and shall consider any motion by any party for the purposes of interpreting and enforcing the terms and conditions of this Consent Order. The Parties agree that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waive any requirement of service of process.

B. The Parties to the Consent Order may, by mutual written consent, extend any compliance dates or modify the terms of this Consent Order without leave of this Court. A request for any modification shall be made in writing and submitted to the designated representatives. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Consent Order. Any such agreed modification shall be in writing and signed by authorized representatives of each party, for filing and incorporation by reference into this Consent Order.

X. DISPUTE RESOLUTION

A. Except as provided herein, the Parties to the Consent Order may seek to informally resolve disputes arising under this Consent Order, including but not limited to the Illinois EPA's decision regarding appropriate or necessary response activity, approval or denial of any report,

plan or remediation objective, or the Plaintiff's rejection of a request for modification of the Consent Order. The Plaintiff reserves the right to seek enforcement by the Court where the Congress Defendants have failed to satisfy any compliance deadline within this Consent Order. The following are also not subject to the dispute resolution procedures provided by this section: a claim of *force majeure*, a failure to make any required payment and any circumstances posing a substantial danger to the environment or to the public health or welfare of persons.

B. The dispute resolution procedure must be invoked by a party through a written notice describing the nature of the dispute and the party's position with regard to such dispute. The other parties shall acknowledge receipt of the notice and schedule a meeting to discuss the dispute informally not later than fourteen (14) calendar days from the receipt of such notice. These informal negotiations shall be concluded within thirty (30) calendar days from the date of the first meeting between the parties, unless the parties agree, in writing, to shorten or extend this period. The invocation of dispute resolution, in and of itself, shall not excuse compliance with any requirement, obligation or deadline contained herein, and stipulated penalties may be assessed for failure or noncompliance during the period of dispute resolution. As part of the resolution of any dispute, the Parties to the Consent Order, by agreement or by order of this Court, may extend or modify the schedule for completion of work under this Consent Order to account for the delay in the work that occurred as a result of dispute resolution.

C. In the event that the parties are unable to reach agreement during the informal negotiation period, the Plaintiff shall provide the Congress Defendants with a written summary of its position regarding the dispute. The position advanced by the Plaintiff shall be considered binding unless, within twenty (20) calendar days of the Congress Defendants' receipt of the written summary of the Plaintiff's position, the Congress Defendants file a petition with this

Court seeking judicial resolution of the dispute. The Plaintiff shall respond to the petition by filing the administrative record of the dispute and any argument responsive to the petition within twenty (20) calendar days of service of Congress Defendants' petition. The administrative record of the dispute shall include the written notice of the dispute, any responsive submittals, the Plaintiff's written summary of its position, the Congress Defendants' petition before the Court and the Plaintiff's response to the petition. The Plaintiff's position shall be affirmed unless, based upon the administrative record, it is against the manifest weight of the evidence.

XI. NOTICE AND SUBMITTALS

Except for payments, the submittal of any notice, reports or other documents required under this Consent Order, shall be delivered to the following designated representatives:

As to the Plaintiff:

The Illinois Attorney General

Ms. Elizabeth Wallace
Supervising Attorney, Environmental Bureau
69 West Washington St., 18th floor
Chicago, Illinois 60602
Phone: (312) 814-5396
Fax: (312) 814-2347
ewallace@atg.state.il.us

The Illinois EPA

Ms. Maureen Wozniak
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, IL 62794-9276
Phone: (217) 782-5544
Fax: (217) 782-9807
Maureen.wozniak@illinois.gov

Dr. William Franek
Illinois Environmental Protection Agency
9511 West Harrison Street
Des Plaines, Illinois 60016
Phone: (847) 294-4000
Fax: (847) 294-4018
Bill.franek@illinois.gov

Mr. John Waligore
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, IL 62794-9276
Cell Phone: (217)306-4247
Fax: (217)782-9807
John.Waligore@illinois.gov

Mr. Mark Gurnik
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, IL 62794-9276
Phone: (217) 782-5544
Fax: (217) 782-9807
Mark.Gurnik@illinois.gov

Mr. Thomas Hubbard
Permit Section
Bureau of Land
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, IL 62794-9276
Phone: (217) 524-8724
Fax: (217) 524-3291
Thomas.hubbard@illinois.gov

Manager, Bureau of Air Compliance Unit
1021 North Grand Avenue East
Springfield, IL 62794-9276
Mail Code: #40
Phone: (217) 782-5811
Fax: (217) 782-4018

As to State Project Consultant

Mr. Christopher M. Martell, P.E.
CDM
125 S. Wacker Drive, Ste. 600
Chicago, Illinois 60606
Phone: (312) 346-5000
Fax: (312) 346-5528
martelcm@cdm.com

As to the Congress Defendants

Mr. Jim Spencer
Republic Services
4100 West Frontage Rd.
Hillside, IL 60162
Phone: (219) 477-7783
jspencer@republicservices.com

Russ Eggert
Reed Smith, Ltd.
10 S. Wacker Drive, Ste. 4000
Chicago, Illinois 60606
Phone: (312) 207-2408
Fax: (312) 207-6400
reggert@reedsmith.com

XII. RELEASE FROM LIABILITY

In consideration of the Congress Defendants' payment of a \$1,000,000.00 penalty, \$100,000 in past Illinois EPA costs, \$100,000 in past Illinois Attorney General costs, future Illinois EPA costs associated with the Community Relations Plan as provided in Section IV.C.2, payment of the State Project Consultant costs provided for in Section V.N, and completion of all activities required hereunder, the Plaintiff releases, waives and discharges the Congress Defendants from any further liability or penalties for the violations of the Act and Board

Regulations that were the subject matter of the Complaint filed in this matter and additional allegations of noncompliance set forth in Section I.D herein. The release set forth above does not extend to any matters other than those expressly specified in Plaintiff's Second Amended Complaint filed on August 16, 2010, and additional allegations of noncompliance set forth in Section I.D herein. The Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against the Congress Defendants with respect to all other matters, including but not limited to the following:

- a. criminal liability;
- b. liability for future violations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. the Congress Defendants' failure to satisfy the requirements of this Consent Order.

The Congress Defendants reserve all defenses. Nothing in this Consent Order is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), other than the Congress Defendants.

XIII. EXECUTION AND ENTRY OF CONSENT ORDER

This Consent Order shall become effective only when executed by all Parties to the Consent Order and the Court. This Order may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument. The undersigned representatives for each party certify that they are fully authorized by the party

whom they represent to enter into the terms and conditions of this Consent Order and to legally bind them to it.

WHEREFORE, the Parties to the Consent Order, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

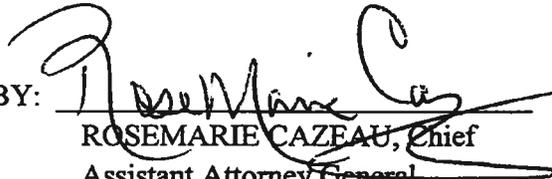
FOR THE PLAINTIFF:

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY: 
ROSEMARIE CAZEAU, Chief
Assistant Attorney General
Environmental Bureau

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 8/16/10

DATE: 8/13/10

FOR THE DEFENDANTS:

FOR DEFENDANT CONGRESS DEVELOPMENT CO.:

BY: JOHN SEXTON SAND & GRAVEL CORP.,
ITS GENERAL PARTNER

BY: *Peter Daniels*
TITLE: President
DATED: 8-12-10

BY: ALLIED WASTE TRANSPORTATION, INC.,
ITS GENERAL PARTNER

BY: _____
TITLE: _____
DATED: _____

FOR DEFENDANT JOHN SEXTON SAND & GRAVEL CORP.:

BY: *Peter Daniels*
TITLE: President
DATED: 8-12-10

FOR DEFENDANT ALLIED WASTE TRANSPORTATION, INC.:

BY: _____
TITLE: _____
DATED: _____

ENTERED:

JUDGE SOPHIA HALL

DATE: _____

FOR THE DEFENDANTS:

FOR DEFENDANT CONGRESS DEVELOPMENT CO.:

BY: JOHN SEXTON SAND & GRAVEL CORP.,
ITS GENERAL PARTNER

BY: _____
TITLE: _____
DATED: _____

BY: ALLIED WASTE TRANSPORTATION, INC.,
ITS GENERAL PARTNER

BY: W. J. Eggleston, Jr.
TITLE: Vice President
DATED: _____

FOR DEFENDANT JOHN SEXTON SAND & GRAVEL CORP.:

BY: _____
TITLE: _____
DATED: _____

FOR DEFENDANT ALLIED WASTE TRANSPORTATION, INC.:

BY: W. J. Eggleston, Jr.
TITLE: Vice President
DATED: _____

ENTERED:

JUDGE S. J. HALL - 0162
DATE: _____ AUG 17 2010

DOUGLAS J. HALL
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

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for proper consideration, and to grant such further relief as the law and the facts justify.

Parties, Jurisdiction and Venue

1. Plaintiff Congress Development Company is an Illinois general partnership with its sole place of business in Hillside, Illinois.

2. Defendant Illinois Environmental Protection Agency is an administrative agency created by statute. See 415 ILCS 5/4 (a); 735 ILCS 5/3-101.

3. Defendant Lisa Bonnett is the Director of defendant Illinois Environmental Protection Agency. Defendant Bonnett is named solely in her official capacity, and not personally.

4. The Illinois statutes establishing jurisdiction over the Decision in this case are ambiguous and not entirely consistent, and could arguably be read to vest jurisdiction in either the Illinois Pollution Control Board (“Board”) or this Court. As a result, and out of an abundance of caution, Congress is simultaneously filing both this case and a Petition for Review of the Decision with the Board. (A copy of the Petition for Review is attached as Exhibit C).

a. On the one hand, the Request sought Agency approval of certain changes of requirements contained in a Clean Air Act Program Permit that IEPA had previously issued to Congress. As such, jurisdiction to review the Decision would be vested in the Board, see 415 ILCS 5/40(a) and 35 Ill. Adm. Code 105.302(a). Although certain officials at Illinois EPA have stated that the Board does not have jurisdiction to review their decision to deny the Request (and some Agency officials have gone so far as to opine that the Decision is entirely unreviewable in any forum whatsoever) Congress believes that the better reading of the relevant jurisdictional provisions makes the Board the proper forum.

b. But if the Board does not have jurisdiction, this Court does under the Administrative Review Law, 735 ILCS 5/3-104: “Jurisdiction to review final administrative decisions is vested in the Circuit Courts, ***.” Congress is filing this case simultaneously with its petition before the Board so that it can be certain that it will obtain review of the Agency’s decision somewhere.

c. Alternatively, this Court has jurisdiction to issue a common law writ of certiorari to review the Agency’s action.

5. Venue is proper in Cook County pursuant to 735 ILCS 5/3-104 (2), because “the subject matter involved is situated” in Cook County.

Count I - Review under the Administrative Review Law

6. This case has its roots in (a) certain characteristics of the Congress landfill in Hillside which result in the production of landfill gas that displays temperatures, pressures and chemical composition that is not typical, and (b) a provision contained in the Final Consent Decree in *People v. Congress Development Company, supra*.

7. The Congress landfill contains an area of waste, deep within one portion of the facility, that is hotter and under greater pressure than is typical in landfills (and that is even different from the characteristics of other areas of the Congress landfill itself). This characteristic of the Congress landfill has been the subject of literally dozens of meetings among Congress, the Agency, and the Illinois Attorney General’s office since 2007. During the pendency of *People v. Congress Development Company*, and pursuant to an interlocutory injunction that this Court entered, Congress prepared a study of the area of high temperatures and pressures and submitted it for review to the Agency and to the Illinois Attorney General’s office. Among other things, that study concluded that the area of high temperature and pressure, while

so deep within the landfill that it did not pose any risk to the integrity of the final cover on the top of the landfill, was likely to continue for the indefinite future. The study also concluded that the area of high temperature and pressure could be managed through the use of appropriate engineering controls, but that that actual temperatures and pressures could not be reduced at the source, other than by the passage of time.

8. In recognition of this phenomenon at the Congress landfill, the Final Consent Decree gave Congress until June 30, 2013 to demonstrate that it was in compliance with the regulations that govern the temperature, pressure, and chemical composition of landfill gas. Specifically, Paragraph I (page 28) set forth a series of deadlines by which Congress was required to meet certain requirements at the landfill.

As relevant for this case, subparagraph 6 required that Congress meet specified regulatory limits on the temperature, pressure, nitrogen and oxygen content of the landfill gas that it collects: Congress was required to “achieve the following objectives by the deadlines specified below, subject to Section IX of this Consent Order (Enforcement and Modification of the Consent Order); approval of request(s) for modification of the objectives and deadlines will not be unreasonably withheld: *** 6. By June 30, 2013, the Landfill shall be in compliance with the Board Air Pollution Regulations found at 35 Ill. Adm. Code Part 220 and 40 C.F.R. 63, Subpart AAAA.”

9. Part 220 and 40 C.F.R. 63, Subpart AAAA in turn require the owner or operator of a landfill to do either of two things in order to be in compliance. On the one hand, the owner or operator can show that the gas collection wells meet enumerated limits on temperature, pressure, nitrogen and oxygen. If the gas collection wells meet those enumerated limits, or “default values,” the facility is in compliance. Alternatively, the owner or operator “may establish a higher operating temperature, nitrogen, or oxygen value at a particular well.” 35 Ill. Adm. Code 220.250 (c). Given the physical impossibility of meeting the default values,

Congress chose to comply by using the latter alternative.

10. Well before Congress submitted the formal Request, Illinois EPA was fully aware that Congress would request alternate operating parameters. Pursuant to Paragraph V M (page 35) of the Final Consent Order, Congress met with the Agency and the Illinois Attorney General's office on a regular basis between August, 2010 and February, 2013. At those meetings Congress regularly apprised both the Agency and the Attorney General's office that the high temperatures and pressures at the landfill were continuing, and that it therefore would file a request for alternate parameters in February, 2013. Consistent with its statements, and consistent with both the Final Consent Order and 35 Ill. Adm. Code 220.250, Congress submitted the Request (formally, a Request for Alternate Operating Parameters and Procedures for Active Landfill Gas Extraction Collectors) to the Agency on February 28, 2013.

11. On March 12, 2013 the Agency denied the Request. The stated reason for the denial, in its entirety, was the following: "Circuit Court Order No. 06 CH 1438 requires Congress [to] be in compliance with 35 Ill. Adm. Code Part 220, and 40 C.F.R. 63, Subpart AAAA, by June, 2013. The Illinois EPA cannot grant alternate operating parameters and procedures outside the requirements of these regulations[,] effectively circumventing the Compliance Schedule in this Order. As such the Illinois EPA is denying your request."

12. The Agency's rationale is erroneous as a matter of law, for at least three reasons:

- a. The Request did not seek anything "outside the requirements" of Part 220 or 40 C.F.R. 63, Subpart AAAA, because those very regulations envision the prospect that a landfill owner or operator can seek alternate operating parameters pursuant to section 220.250. Illinois EPA's interpretation effectively reads that section out of Part 220. The Agency's reading of Part 220 is erroneous as a matter of law.

b. Nor did the Request seek to “circumvent” anything in the Final Consent Order. The very Paragraph that contains the June 30, 2013 deadline itself contemplates that Congress could seek modification of any of the objectives or deadlines, and requires that “approval of request(s) for modification of the objectives or deadlines will not be unreasonably withheld.” The Agency’s refusal even to consider the substance of the Request on the merits was unreasonable within the meaning of the Final Consent Order, and erroneous as a matter of law.

c. Finally, and alternatively, Section IX B of the Final Consent Order (p. 40) provides that “[t]he parties to the Consent Order may, by mutual written consent, extend any compliance dates or modify the terms of this Consent Order with leave of this Court.” The Agency’s claim that it is powerless even to consider the Request is inconsistent with this provision and is erroneous as a matter of law.

WHEREFORE, Congress Development Company accordingly asks that the Court declare the Illinois Environmental Protection Agency’s Decision to deny the Request for Alternate Operating Parameters and Procedures for Active Landfill Gas Extraction Collectors to be arbitrary, capricious, and contrary to law, and to grant such further relief as the law and the facts justify.

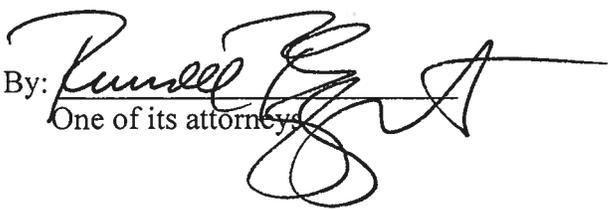
Count II - Common Law Certiorari

13. Congress incorporates by reference paragraphs 1-12 of this Complaint as if set forth in full.

WHEREFORE, Congress Development Company asks that the Court issue a common law writ of certiorari to review the Illinois Environmental Protection Agency's Decision to deny the Request for Alternate Operating Parameters and Procedures for Active Landfill Gas Extraction Collectors, to declare the Decision to be arbitrary, capricious, and contrary to law, and to grant such further relief as the law and the facts justify.

Respectfully submitted,

CONGRESS DEVELOPMENT COMPANY

By: 
One of its attorneys

Lathrop & Gage LLP
155 N. Wacker Drive
Suite 3050
Chicago, Illinois 60606
Phone: (312) 920-3300
Fax: (312) 920-3301

Firm ID: 46500