BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CLINTON LANDFILL, INC.,	)	
	)	
Petitioner,	)	PCB 2015-060
	)	PCB 2015-076
v.	)	PCB 2015-111
	)	PCB 2015-113 (cons.)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	(Permit Appeals)
	)	
Respondent.	)	

NOTICE OF ELECTRONIC FILING

TO: All Parties of Record

PLEASE TAKE NOTICE that on February 5, 2015, I filed the following documents electronically with the Clerk of the Pollution Control Board of the State of Illinois:

1. Reply in Support of Motion for Partial Summary Judgment Regarding Changes to Special Condition Section III.A.2.f (MGP Waste); and

2. This Notice of Electronic Filing

Copies of the above-listed documents were served upon you in the manner stated in the Certificate of Service attached hereto.

Respectfully submitted,

CLINTON LANDFILL, INC.,
Petitioner

By: _____
One of its attorneys

Brian J. Meginnes, Esq. (bmeginnes@emrslaw.com)
Janaki Nair, Esq. (jnair@emrslaw.com)
Elias, Meginnes & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
Telephone: (309) 637-6000
Facsimile: (309) 637-8514

915-0116

CERTIFICATE OF SERVICE

The undersigned certifies that on February 5, 2015, the foregoing document will be served upon each party to this case in the following manner:

_X_ VIA EMAIL with confirmation by United States Mail

Jennifer A. VanWie, Esq., Assistant Attorney General
Stephen Sylvester, Esq., Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
Emails: jvanwie@atg.state.il.us
ssylvester@atg.state.il.us

Matthew J. Dunn
Division Chief, Environmental Enforcement and Asbestos
Litigation Division
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706
Email: mdunn@atg.state.il.us

Hearing Officer Carol Webb
VIA EMAIL ONLY: Carol.Webb@illinois.gov

By: _____
Attorney

Brian J. Meginnes, Esq. (bmeginnes@emrslaw.com)
Janaki Nair, Esq. (jnair@emrslaw.com)
Elias, Meginnes & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
Telephone: (309) 637-6000
Facsimile: (309) 637-8514

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CLINTON LANDFILL, INC.,	)	
	)	
Petitioner,	)	PCB 2015-060
	)	PCB 2015-076
v.	)	PCB 2015-111
	)	PCB 2015-113 (cons.)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	(Permit Appeals)
	)	
Respondent.	)	

REPLY IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING
CHANGES TO SPECIAL CONDITION SECTION III.A.2.f (MGP WASTE)

NOW COMES the Petitioner, CLINTON LANDFILL, INC. ("CLI"), by and through its undersigned attorneys, and as and for its Reply in support of its Motion for Partial Summary Judgment (the "Motion") regarding the changes to Special Condition Section III.A.2.f of the Permit (concerning MGP Waste), pursuant to 35 Ill. Admin. Code §101.516, responding to "Respondent's Response in Opposition to Petitioner's Motion for Partial Summary Judgment" filed on January 9, 2015 (the "Response") by the Illinois Environmental Protection Agency (the "Agency"), states as follows. All capitalized terms used herein that are not otherwise defined herein are ascribed the meanings given them in the Motion. CLI has adopted the Agency's practice of shortening "Modification No." to "Mod" (as in, "Mod 47").

INTRODUCTION

In Mod 47, the Agency made three discrete changes to CLI's operations at the CWU: (1) the addition of an additional criterion for acceptance of certain types of PCB wastes at the CWU, (2) the deletion of the exception from Special Condition Section III.A.2.f permitting the disposal of MGP waste exceeding the regulatory levels set forth in 35 Ill. Adm. Code 721.124(b) (hereinafter, "MGP/E waste") in the CWU, and (3) the addition of an additional trigger for

certain leachate management protocols in the CWU. These three discrete changes were appealed by CLI, and are the subject of this consolidated case. **The Agency did *NOT* revoke CLI's permit to operate the CWU.** In fact, during the pendency of PCB 2015-060, the Agency has re-issued CLI's permit, including the provisions permitting disposal operations in the CWU, three additional times.

Therefore, the only issue presented to the Board in the instant Motion for Partial Summary Judgment is whether the Agency's modification to the permit barring MGP/E waste from disposal in the CWU was legal. It is this narrow question, and only this narrow question, that CLI addresses below.

ARGUMENT

I. In Mod 47, the Agency imposed conditions on CLI's operation of the CWU. The Agency did not revoke the permit for disposal operations at the CWU. The CWU still exists.

As above, the only issues that are actually before the Board in this case are the following three modifications to the Permit, initially made in Mod 47 on July 31, 2014, and incorporated into Mod 48, Mod 49, and Mod 50:

(1) Special Condition Section II.10.f: As of July 30, 2014, Section II.10.f provided that there were three (3) conditions before the Chemical Waste Unit could accept certain types of PCB wastes. (R18348). On July 31, 2014, the Agency added a fourth condition: "The local siting authority for Clinton Landfill 3 (currently the DeWitt County Board) grants local siting approval specifically allowing such waste to be disposed of in CWU." (R15772).

(2) Special Condition Section III.A.2.f: As of July 30, 2014, Section III.A.2.f included the following exception to the Agency's general policy prohibiting

disposal of Manufactured Gas Plant (MGP) waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) in landfills in Illinois: "Manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) can be disposed in the CWU." (R18355). On July 31, 2014, the Agency deleted this exception. (R15779-80).

(3) Special Condition Section VII.12: On July 31, 2014, the Agency added the following as a condition to triggering of the leachate management protocols in the section: "the local siting authority for Clinton Landfill 3 grants local siting approval specifically allowing PCB waste to be disposed of in the CWU...." (R15801).

(*See* Petitions for Review filed in PCB 2015-060, PCB 2015-076, PCB 2015-111, and PCB 2015-113). The instant Motion addresses only the second modification listed above.

The Agency did not revoke or terminate Mod 9 through the issuance of Mod 47, nor did the Agency revoke or terminate the permitting of the CWU. Rather, Mod 47 contemplated the continued existence and operation of the CWU as part of Clinton Landfill No. 3. As the Agency stated in its cover letter to Mod 47, "...Modification No. 9 to Permit No. 2001-070-LF, which was originally issued on January 8, 2010, and approved development of the Chemical Waste Unit (CWU) at Clinton Landfill 3, is being ***revised***, on July 31, 2014, through an Agency initiated modification (Modification No. 47) ***to prohibit acceptance of the following wastes*** at Clinton Landfill 3...." (R15752; emphasis added). There is more to the CWU than disposal of certain PCB wastes and MGP/E waste. As CLI stated in its application for development of the CWU, submitted to the Agency on February 1, 2008, "CLI intends to utilize the CWU for disposal of non-hazardous Special Waste and certified non-Special Waste." (R8703). The

permitting of the CWU itself was not revoked or revised through Mod 47 – only the permissible waste streams allowed to be disposed of in the CWU were revised.

There are references to continued disposal operations at the CWU peppered throughout Mod 47. Principal among these are the following references in Section II (Operating Conditions) of Mod 47, which permit CLI to continue disposal operations in the CWU:

> 27. Waste disposal operations shall be restricted to areas of the landfill specifically approved by the Illinois EPA for operation or granted operating authorization pursuant to 35 Ill. Adm. Code, Section 813.203. Such areas of the landfill are presently limited to:
>
> * * *
>
> d. The approximately 4.5 acres of Phase 1A of CWU, in accordance with application and plans provided in permit application Log Nos. 2011-024 and 2014-359 and approved by Modification Nos. 18 and 47, respectively;
>
> * * *
>
> g. The approximately 1.64 acres of Phase 1A of CWU, in accordance with application and plans provided in permit application Log Nos. 2011-024, 2012-047 and 2014-359 and approved by Modification Nos. 18, 28 and 47, respectively; * * *.

(R15775-76; *see also, e.g.*, references at R15801-02, R15807-08, R15819). Thus, in Mod 47, the Agency expressly permitted CLI to continue disposal operations at the CWU, subject to the three specific modifications discussed above.

Moreover, since the filing of the Petition for Review in PCB 2015-060, the Agency has issued three more modifications to the Permit: Mod 48 (PCB 2015-076), Mod 49 (PCB 2015-111), and Mod 50 (PCB 2015-113). All three of these modifications also permit continued disposal operations at the CWU, subject to the three specific modifications made in Mod 47:

- Mod 48, issued September 17, 2014, §II.27.d and .g, R15889
- Mod 49, issued November 26, 2014, §II.27.d and .g, R18702
- Mod 50, issued December 16, 2014, §II.27.d and .g, R18784

In the Response, counsel for the Agency take the entirely inconsistent position that "the IEPA did not have jurisdiction under Section 39(c), 415 ILCS 5/39(c), to issue Mod 9 and therefore Mod 9 is void." (Response, pg. 19; *see also* pgs. 20-21). In keeping with this argument, counsel for the Agency take the position that every modification after Mod 9 is also void: "the permit must revert back to the original IEPA-issued Permit No. 2005-070-LF for CL3 (or Mod 8, as it was the last modification prior to the inclusion of the development and operation of the CWU)…." (Response, pgs. 6-7). This reaches far beyond what the Agency actually did in Mod 47, and is simply not consistent with Mod 47 (or Mod 48, or Mod 49, or Mod 50).

Based on the foregoing, it is clear that the Agency did not, and did not intend to, revoke Mod 9 or any subsequent incarnation of the permit through the issuance of Mod 47. Rather, the Agency in Mod 47 "revised" the permit on three specific points only, to prohibit the acceptance of certain specific wastes pending certain circumstances. (R15752). Only these specific modifications (or "revisions") are before the Board for review in this case.

II. CLI did not require siting approval before seeking modification of its permit to allow for disposal of MGP/E waste.

The majority of the Agency's Response is devoted to its argument that CLI failed to obtain necessary siting approvals from the DeWitt County Board before seeking to modify its permit to allow the disposal of MGP/E waste. As is discussed below, no such siting approval was required, because MGP/E waste is just another non-hazardous special waste.

As above, the question presented here is ***not*** whether the ***CWU*** constituted a new pollution control facility. The Agency issued a development permit for the CWU (Mod 9 on January 8, 2010 (R7854 *et seq.*)), and thereafter issued dozens of operating permits for the CWU (beginning with Mod 18 on April 1, 2011 (R15951 *et seq.*), through, most recently, Mod 50 on December 16, 2014 (*see* R18763 *et seq.*)). Therefore, the Agency has not required CLI to submit

proof of separate siting approval for the CWU (*i.e.*, siting approval beyond the 2002 siting for the whole of Clinton Landfill No. 3), and therefore, the Agency does not believe that the CWU is a "new pollution control facility." The CWU continues to exist; the Agency has never revoked or terminated its development and operations permits. (*See* discussion in Section I above).

In unilaterally modifying CLI's permit in Mod 47, the Agency took the narrow position that siting was required for (a) ***disposal of certain PCB wastes*** and for (b) ***disposal of MGP/E waste***. It is these narrow decisions by the Agency that are on appeal in this case. The question presented by the instant Motion and the Response is whether CLI was required to obtain siting approval before requesting approval to dispose of MGP/E waste.

A. A landfill that is already accepting special waste is not required to obtain siting before accepting a new special waste stream.

Pursuant to Section 39(c) of the Act, proof of siting is only required for permitting of a "new pollution control facility." 415 ILCS §5/39(c). The term "new pollution control facility" is defined as follows in the Act: "(1) a pollution control facility initially permitted for development or construction after July 1, 1981; or (2) the area of expansion beyond the boundary of a currently permitted pollution control facility; or (3) ***a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste.***" 415 ILCS §5/3.330(b) (emphasis added). The Agency, the Board, and the Courts have consistently interpreted the third definition of "new pollution control facility" to mean that if a facility is already receiving special waste, the facility does not require additional siting requesting approval to store, dispose of, transfer or incinerate additional special waste streams.

In its briefing to the Board in the case of United Disposal of Bradley, Inc., v. Illinois Environmental Protection Agency, the Agency explained the development of the definition of "new pollution control facility" in the Act as follows:

> First, a facility is "new" if it is initially permitted for development after July 1, 1981. Moreover, at the time of enactment of Section 3.330(b), the General Assembly recognized that some facilities were "currently permitted." As a result, the General Assembly drafted subsection (b)(2) and (b)(3) to control siting approval for these "grandfathered" facilities. Grandfathered facilities permitted before July 1, 1981 are required to provide proof of local siting approval if the facility: (1) expanded its boundaries; or (2) requested to accept special of hazardous waste for the first time. Later, as "initially permitted" sites attempted to expand their boundaries, Section 3.330(b) created a separate category of a "new" facility in situations in which a facility was initially permitted for development after July 1, 1981 and ***the facility requested the ability to modify its development permit to***: (1) expand its boundaries; or (2) ***request the right to transfer or manage special or hazardous waste for the first time***.

PCB 03-235, Agency Motion for Summary Judgment, pg. 10, filed December 5, 2003 (emphasis added); *see also* the Board's discussion of the Agency's Motion, United Disposal of Bradley, Inc., v. Illinois Environmental Protection Agency, PCB 03-235, Opinion and Order, pg. 12, 2004 WL 1470978 at *11 (Illinois Pollution Control Board, June 17, 2004), *affirmed*, United Disposal of Bradley, Inc. v. Pollution Control Bd., 363 Ill. App. 3d 243, 842 N.E.2d 1161 (3rd Dist. 2006). *See also*, *e.g.*, Medical Disposal Services, Inc. v. Illinois Environmental Protection Agency, PCB 95-75, PCB 95-76, 1995 WL 283830, at *3 (Illinois Pollution Control Board, May 4, 1995) ("A 'new pollution control facility' [footnote omitted] is defined to include newly developed or constructed facilities, expansions beyond the boundary of currently permitted pollution control facilities, and ***receipt of special or hazardous waste for the first time***." (emphasis added)).

Even in the context of the CWU itself, the Agency's position has consistently been (until the filing of the Response) that the mere acceptance of an additional special waste stream at the

CWU did not make the CWU a "new pollution control facility" as defined in the Act. In her June 10, 2011 letter to an opposition group, then Interim Director Lisa Bonnett explained the law as follows:

> The permit modification issued by the Illinois EPA does not authorize the acceptance of "hazardous waste" within the meaning of state and federal environmental laws. However, the permit does authorize the acceptance of non-hazardous special waste including non-hazardous MGP waste. * * *. In addition, there was nothing in the application making the unit a "new pollution control facility" and triggering a second local siting approval procedure. The application did not propose an expansion to the area that was approved by the Board in the 2002 siting approval resolution, and it did not propose the acceptance of special or hazardous waste for the first time. 415 ILCS 5/3.330(b).

(R15746).

The position of the Courts has been the same as that of the Agency and the Board regarding this issue. For example, in the case of Sierra Club v. Illinois Pollution Control Bd., the appellants contended that PDC, the landfill owner, had "created a new pollution control facility by accepting EAFDSR [a new special waste stream] for the first time." 403 Ill. App. 3d 1012, 1021, 936 N.E.2d 670, 677 (3rd Dist. 2010), *decision vacated, appeal dismissed, on other grounds*, 2011 IL 110882, 957 N.E.2d 888 (Supreme Court held that the appellants lacked standing to pursue the case *ab initio*). The Appellate Court held that "[h]ere, the actions proposed by PDC [the landfill owner] do not fit the definition of a new pollution control facility. * * *. PDC is not asking to deal with special or hazardous waste for the first time. The facility is already permitted to and does treat hazardous waste." Id. at 1022, 677.

A facility that is permitted to dispose of special waste is not required to produce proof of siting to receive additional special waste streams, because it is not requesting the right to dispose of special waste for the first time.

B. CLI did not require siting approval before seeking modification of its permit to allow for disposal of MGP/E waste.

Nevertheless, in its Response, the Agency asserts that the because "[i]n its application for Mod 9, CLI sought to dispose of MGP waste exceeding the regulatory levels set forth in 35 Ill. Adm. Code 721.124(b)" for the first time, "Section 39(c) of the Act required CLI to obtain authorization from the DeWitt County Board prior to accepting this new special waste." (Response, pgs. 19-20). Respectfully, the Agency is mistaken.

Clinton Landfill No. 3 has always been permitted to accept non-hazardous special waste, including certain MGP wastes. The first page of the original permit issued in 2007 states that "[p]ermit is hereby granted to Clinton Landfill, Inc. as owner and operator, approving the development of a new municipal solid waste and non-hazardous special waste landfill...." (R6976). The original permit goes on to state, "[s]pecifically, Permit No. 2005-070-LF approves ... d. Acceptance of special waste streams without individual special waste stream authorizations, in accordance with the special conditions listed in Part III of this permit." (R6977).

On February 1, 2008, CLI submitted its Application for Significant Modification to the Agency requesting, among other things, modification of its permit to allow disposal of MGP/E waste. (R8699 *et seq.*). As of February 1, 2008, MGP/E waste was non-hazardous special waste. *See* 35 Ill. Adm. Code §721.124(a). CLI was already accepting special wastes at Clinton Landfill No. 3, so the addition of the new special waste stream did not trigger the definition of "new pollution control facility" under the Act. 415 ILCS §5/3.330(b)(3). Therefore, no proof of

additional siting beyond the 2002 siting of Clinton Landfill No. 3 was required for the modification (nor was any submitted).[1] 415 ILCS §5/39(c).

Notably, even after Mod 47, Clinton Landfill No. 3 is ***still*** permitted to accept non-hazardous special waste, including certain MGP wastes. The first page of the Mod 47 states that "[p]ermit is hereby granted to Clinton Landfill, Inc. as owner and operator, approving the development of a new municipal solid waste and non-hazardous special waste landfill...." (R15756). Mod 47 also provides that, "[s]pecifically, Permit No. 2005-070-LF approves ... d. Acceptance of special waste streams without individual special waste stream authorizations, in accordance with the special conditions listed in Part III of this permit." (R15756-57).

CLI did not require additional siting approval in 2010 to dispose of MGP/E waste for the first time, because CLI was already disposing of special waste in Clinton Landfill No. 3. The MGP/E waste was simply one more special waste stream being disposed of in a landfill that was already permitted to accept special waste. No additional siting was required.

C. The Agency's argument that there were implied limitations to the 2002 siting of Clinton Landfill No. 3 do not have any relevance to the disposal of MGP/E waste.

In the Response, the Agency takes the position that CLI made representations during the 2002 siting process for Clinton Landfill No. 3 relating to certain PCB wastes and hazardous wastes which, by implication, limited the scope of the 2002 siting. (Response, pgs. 8-9). Essentially, the Agency's position is that the 2002 siting included an implied siting condition

[1] Notably, as of February 1, 2008, CLI actually ***did*** have the blessing of DeWitt County to proceed with the application for development of the CWU (though it was not required). On August 24, 2007, CLI and the County entered into that certain First Amendment to Host County Agreement, a copy of which is attached hereto as Exhibit A for the Board's reference. (CLI will be filing a separate Motion to Supplement the Record to add this document and others to the Record). In that First Amendment, the County unequivocally stated as follows: "***The County supports and approves the permitting, development, construction and operation of the Chemical Waste Landfill by CLI.***" (Ex. A, pg. 2; emphasis added). But for the support of the County, CLI would not have proceeded with the development of the CWU.

requiring that Clinton Landfill No. 3 not accept certain PCB wastes (arguing that "...CLI had specifically represented that the CL3 would only take municipal solid wastes and non-hazardous special wastes, and not hazardous wastes or wastes containing PCBs regulated by TSCA"). (Response, pg. 15; emphasis in original). The Agency also points out (and CLI clearly concedes) that CLI did not apply for or receive siting for development of a RCRA hazardous waste landfill at Clinton Landfill No. 3, in 2002 or thereafter.

CLI expressly denies that the Agency's characterizations of the statements it made regarding PCB wastes during the 2002 siting process are accurate, and expressly denies that the Agency's arguments regarding the legal consequences of the statements are correct. However, setting those issues aside for the purposes of the instant Motion for Partial Summary Judgment (which relates only to MGP waste), the Agency has pointed to ***nothing*** that happened during the 2002 siting process that purports to limit (or even address) disposal of non-hazardous special MGP wastes.

Regarding MGP/E waste, the Agency argues that "[a]t the time CLI's local siting application was pending with the DeWitt County Board, MGP wastes were required to undergo TCLP testing to determine if the MGP waste was hazardous." (Response, pg. 15). While the Agency appears to be correct that, for the first ten days after CLI filed its siting application on April 12, 2002, the Board had not yet revised its regulations to expressly exempt MGP waste from the TCLP test, the Agency's observation is irrelevant.[2] Apparently the Agency's argument is that, because (a) Clinton Landfill No. 3 was not sited as a hazardous waste landfill in 2002,

[2] Interestingly, the D.C. Circuit Court had invalidated the USEPA's equivalent regulation, finding that the USEPA failed to justify its application of the TCLP to MGP waste, two years earlier on April 21, 2000. Ass'n of Battery Recyclers, Inc. v. U.S. E.P.A., 208 F.3d 1047, 1064 (D.C. Cir. 2000). It is also worthy of note that the hearings on the siting application did not take place until July, 2002, well after the Board adopted the revised regulation, and the Board did not approve the siting application with conditions until September 12, 2002.

and (b) in 2002, some MGP waste might have been classified as hazardous using the TCLP (assuming that the operator did not object to application of the TCLP pursuant to the Battery Recyclers case, decided two years earlier), therefore (c) CLI cannot now dispose of non-hazardous MGP waste without conflicting with the siting. This argument simply does not add up.

As of February 1, 2008, which was the first time that CLI requested that its permit be modified to allow disposal of MGP/E waste at Clinton Landfill No. 3, such waste was ***not*** a hazardous waste, and was not subject to TCLP testing as a matter of law. *See* 35 Ill. Adm. Code §721.124(a). MGP/E waste was just another non-hazardous special waste. Therefore, the Agency's argument that the 2002 siting was somehow inferentially limited to exclude MGP/E waste from Clinton Landfill No. 3 is unavailing.

III. CLI is not seeking review of the Agency's prohibition on disposing of MGP/E waste in the MSWLF in this case.

Section C of the Agency's Response (pages 6-22) concerns disposal of MGP/E wastes in the CWU. Section D of the Agency's Response (pages 22-28) concerns disposal of MGP/E wastes in the MSWLF. Regarding disposal of MGP/E wastes, in its Petitions for Review in this consolidated case, CLI asked only that the following phrase in Special Condition Section III.A.2.f in Mod 46, which was deleted in Mod 47, be restored: "Manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) can be disposed in the CWU." (R18355). CLI has not (to date) appealed the bar to allow disposal of MGP/E wastes in the MSWLF, though to be frank, if the Board were to consider the issue, it would probably find that the Agency lacks the authority to bar to disposal of MGP/E wastes in the MSWLF for the same reasons that the Agency lacks the authority to bar the disposal of MGP/E wastes in the CWU.

IV. The Agency concedes that there is no technical basis to prohibit disposal of MGP/E waste in the CWU.

The question presented in the instant Motion for Partial Summary Judgment is whether the Agency can rewrite the Board's regulation barring the application of the TCLP to MGP wastes by writing a conflicting provision into CLI's permit. *See* 35 Ill. Adm. Code §721.124(a). In Section C of the Response (pages 6-22), the Agency makes its arguments against disposal of MGP/E waste in the CWU. Nowhere in that Section does the Agency respond to the substantive question presented in the instant Motion. (In fact, the Agency's technical arguments regarding why disposal of MGP/E waste should not be permitted in the MSWLF in Section D of the Response (pages 22-28), amply demonstrate that there is no technical reason to exclude MGP/E waste from the CWU).

The fact remains that all MGP waste is non-hazardous special waste, regardless of whether any constituent in the waste exceeds the regulatory levels specified in 35 Ill. Adm. Code §721.124(h). Those regulatory levels are not applicable to any MGP waste as a matter of law. The Permit (as modified through Mod 50) allows CLI to accept non-hazardous special waste for disposal at the CWU. Therefore, the Agency has no legal basis for excluding one type of non-hazardous special waste, MGP/E waste, from disposal at the CWU.

Between July 30, 2014, when CLI did have approval to dispose of MGP/E waste in the CWU (R18355), and July 31, 2014, when that approval was rescinded (R15779-80), no new relevant facts were uncovered by the Agency, no new technological breakthroughs occurred, no relevant scientific data were received, and no changes in the law occurred relative to disposal of MGP/E waste in the CWU. ***Nothing changed*** between July 30, 2014, and July 31, 2014, that made the disposal of MGP/E waste in the CWU more dangerous, or less permissible. There is no

basis in law or in fact for the Agency to distinguish between disposal of MGP/E waste in the CWU, and other non-hazardous special wastes (including other MGP wastes).

Based on the foregoing, CLI has established that vacating the Agency's modification of Special Condition Section III.A.2.f of CLI's permit will not result in the violation of the Act, and that the Agency's modification of Special Condition Section III.A.2.f was arbitrary and unnecessary as a matter of law.

WHEREFORE, CLI respectfully requests that the Board (A) declare the Agency's action issuing a unilateral modification of Special Condition Section III.A.2.f in Mod 47 relating to MGP waste to be arbitrary, capricious, unreasonable, unlawful, and/or beyond the regulatory authority of the Agency; (b) vacate the Agency's action issuing such unilateral modification; and (c) grant CLI such other and further relief as is deemed appropriate under the circumstances.

Respectfully submitted,

CLINTON LANDFILL, INC.,
Petitioner

By: _____
One of its attorneys

Brian J. Meginnes, Esq. (bmeginnes@emrslaw.com)
Janaki Nair, Esq. (jnair@emrslaw.com)
Elias, Meginnes & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
Telephone: (309) 637-6000
Facsimile: (309) 637-8514

915-0081

FIRST AMENDMENT TO HOST COUNTY AGREEMENT

THIS FIRST AMENDMENT TO HOST COUNTY AGREEMENT ("Agreement") is made and effective August 24, 2007, between Clinton Landfill, Inc., an Illinois corporation ("CLI"), and the County of DeWitt, Illinois (the "County").

WHEREAS, CLI and the County entered into a certain Host County Agreement effective April 20, 2001 (the "Host County Agreement");

WHEREAS, on September 12, 2002, the County approved the site location suitability of Clinton Landfill No. 3 as a new pollution control facility in accordance with Section 39.2 of the Illinois Environmental Protection Act, 415 ILCS 5/39.2 ("Clinton Landfill No. 3");

WHEREAS, as part of the site location approval, the County imposed certain conditions on the operation of Clinton Landfill No. 3 (the "Siting Conditions");

WHEREAS, on March 2, 2007, the Illinois Environmental Protection Agency issued Permit No. 2005-070-LF to CLI for the development and construction of Clinton Landfill No. 3;

WHEREAS, Clinton Landfills No. 2 and No. 3 are already permitted to accept regulated PCB wastes, notably PCB bulk product wastes, for disposal.

WHEREAS, in order for CLI to accommodate the disposal needs of its customers, CLI intends to file an application with the U.S. Environmental Protection Agency to permit, develop, construct and operate a Chemical Waste Landfill for the disposal of PCBs and PCB Items within a section of Clinton Landfill No. 3, pursuant to the Toxic Substances Control Act (the "Chemical Waste Landfill");

WHEREAS, although receiving the support of the DeWitt County Board is not a requirement of the permit application process for a Chemical Waste Landfill under the Toxic Substances Control Act, CLI desires to maintain its positive relationship with the citizens of the County;

WHEREAS, if CLI is successful in permitting a Chemical Waste Landfill within a section of Clinton Landfill No. 3, CLI shall be responsible for providing perpetual care for the Chemical Waste Landfill pursuant to the Toxic Substances Control Act;

WHEREAS, in order to better serve its customers and reduce the number of waste vehicles entering and exiting Clinton Landfill No. 3, CLI intends to file an application with the Illinois Environmental Protection Agency to permit, develop, construct and operate a rail unloading facility at Clinton Landfill No. 3 (the "Rail Unloading Facility");

WHEREAS, operating a Rail Unloading Facility at Clinton Landfill No. 3 does not require local siting approval from the DeWitt County Board under Section 39.2 of the Illinois Environmental Protection Act, 415 ILCS 5/39.2;

WHEREAS, due to the development of the Chemical Waste Landfill and the Rail Unloading Facility, CLI and the County desire to amend the Host County Agreement to effectuate certain changes and revisions thereof;

NOW, THEREFORE, for and in consideration of the foregoing recitals, and other good and valuable consideration, the receipt of which is hereby acknowledged, CLI and the County hereby amend the Host County Agreement as follows:

1. The recitals of the Host County Agreement are hereby deleted in their entirety, and the Siting Conditions contained therein are hereby deleted.

2. Paragraph 33 through 35 are added to the Host County Agreement as follows:

33. CHEMICAL WASTE LANDFILL

The County supports and approves the permitting, development, construction and operation of the Chemical Waste Landfill by CLI.

34. DEWITT COUNTY'S SOLID WASTE MANAGEMENT PLAN

Commencing on January 1, 2008, and continuing on each January 1 thereafter until the certified closure of the Chemical Waste Landfill, CLI shall pay to the County the sum of Fifty Thousand Dollars ($50,000.00) per year to use to support implementation of the DeWitt County Solid Waste Management Plan. On or before April 15, 2014, CLI and the County shall in good faith negotiate an adjustment in the amount of this fee. In the event CLI does not receive a permit from the U.S. Environmental Protection Agency by January 1, 2010, to develop, construct and operate the Chemical Waste Landfill, then CLI shall not be required to make any further such payments to the County, until the permit is issued by the U.S. Environmental Protection Agency.

35. RAIL UNLOADING FACILITY

The County supports and approves the permitting, development, construction and operation of the Rail Unloading Facility by CLI, and the County agrees and acknowledges that operating a Rail Unloading Facility at Clinton Landfill No. 3 does not require local siting approval from the DeWitt County Board under Section 39.2 of the Illinois Environmental Protection Act, 415 ILCS 5/39.2. In addition to the Host Benefit Fee payable under Paragraph 11 of the Host County Agreement, CLI shall pay the County a Rail

Unloading Facility Fee of $1.25 for each ton of waste unloaded at the Rail Unloading Facility for deposit into Clinton Landfill No. 3. Said payments shall be paid on or before the 20th day following the end of each calendar quarter and shall be subject to the same documentation and verification requirements of the Host Benefit Fee. Pursuant to the Siting Conditions, the County hereby gives its written permission that waste unloaded at the Rail Unloading Facility shall not be included in calculating whether CLI has exceeded an average of 3,000 tons per day of waste deposited in Clinton Landfill No. 3. In order to facilitate the development of the Rail Unloading Facility, the County hereby authorizes and approves the construction of a railroad crossing by CLI across County Highway No. 1, and upon the request of CLI, the County shall provide a resolution evidencing such authorization and approval to the Illinois Commerce Commission.

3. Except as hereinabove set forth, the Host County Agreement shall remain unmodified and be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers or representatives on the date first above written.

COUNTY OF DEWITT

By: _____
Steve Lobb, Chairman

Attest:

By: _____
DeWitt County Clerk

CLINTON LANDFILL, INC.

By: _____
Royal F. Coulter, President

Attest:

By: _____
Steven C. Davison, Secretary

107-1266

CERTIFICATE OF SERVICE

The undersigned certifies that on February 5, 2015, the foregoing document will be served upon each party to this case in the following manner:

X VIA EMAIL with confirmation by United States Mail

Jennifer A. VanWie, Esq., Assistant Attorney General
Stephen Sylvester, Esq., Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
Emails: jvanwie@atg.state.il.us
ssylvester@atg.state.il.us

Matthew J. Dunn
Division Chief, Environmental Enforcement and Asbestos
Litigation Division
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706
Email: mdunn@atg.state.il.us

Hearing Officer Carol Webb
VIA EMAIL ONLY: Carol.Webb@illinois.gov

By: _____
Attorney

Brian J. Meginnes, Esq. (bmeginnes@emrslaw.com)
Janaki Nair, Esq. (jnair@emrslaw.com)
Elias, Meginnes & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
Telephone: (309) 637-6000
Facsimile: (309) 637-8514