BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainants,	)	
	)	
v.	)	PCB No. 11-50
	)	(Enforcement-Land)
THE CITY OF MORRIS, AN ILLINOIS MUNICIPAL CORPORATION, AND COMMUNITY LANDFILL COMPANY, INC., A DISSOLVED ILLINOIS CORPORATION,	)	
	)	
Respondents.	)	

CITY OF MORRIS' RESPONSE IN OPPOSITION TO STATE OF ILLINOIS' MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT AND FOR LEAVE TO VOLUNTARILY DISMISS THE COMMUNITY LANDFILL COMPANY

NOW COMES Respondent, CITY OF MORRIS (hereinafter referred to as "City"), an Illinois municipal corporation, by and through its attorneys, Hinshaw & Culbertson, LLP, and for its response in opposition to the State of Illinois' motion for leave to file an amended complaint and for leave to voluntarily dismiss the Community Landfill Company, states as follows:

INTRODUCTION

On August 5, 2011, the Third District Appellate Court reversed the Illinois Pollution Control Board's (hereinafter "PCB") prior summary judgment against the City in case number 03-191. In that case, the State alleged, as it does here, that the City was conducting a waste disposal operation and has a duty to provide financial assurances to pay for closure and post-closure care of the waste disposal operation. The Third District found that the City was not the owner nor operator of the landfill (and rather merely owned the land beneath the landfill), was not conducting a waste disposal operation and had no responsibility to pay for closure/post-closure care of the facility. *City of Morris v. Cmty. Landfill Co.*, 2011 IL App (3d) 090847, ¶ 54.

Despite the opinion, on October 30, 2013, the State of Illinois (hereinafter "State") issued a violation notice to the City alleging additional landfill violations and alleging it was the owner and operator of the landfill. *See* Violation Notice M-2013-01016 dated October 30, 2013, attached as Exhibit ("Ex.") A. The violation notice was purportedly based upon an inspection report dated June 16, 2010, an inspection completed on May 23, 2013 and a financial record review completed on October 10, 2013. *Id.* Thereafter, on August 14, 2020, the City filed a complaint for declaratory judgment in the Circuit Court of Grundy County, Illinois (case number 2020-CH-31), requesting the court declare that the City is not liable for the violations alleged in the State's October 30, 2013 Violation Notice. *See* City's First Amended Complaint for Declaratory Judgment, Case No. 2020 CH 31, Grundy County, Illinois, attached as Ex. B.[1] The case is currently pending.

Notably, in December 2006, the State previously filed a lawsuit in the Thirteenth Judicial Circuit Court of Grundy County (Case No. 06-CH-184) against the City and the Community Landfill Company asserting that both the City and CLC were responsible for the operation of the Landfill's gas collection system and compliance with air quality statutes of the Illinois Environmental Protection Act and the regulations thereunder. *See* Filed Complaint in 06-CH-184, without attachment, attached hereto as Ex. C. On July 8, 2013, the State voluntarily dismissed all allegations against the City, informing the court that one reason it was dismissing the case was because the State "has learned that the Illinois Environmental Protection Agency has recently inspected the Landfill, and that Illinois EPA observed potential violations related to the failure to close the Landfill. Based on the Illinois EPA inspection report, one or both of the Defendants in this case [i.e. CLC and the City] may be issued violation notices related to these

[1] On September 11, 2020, the City filed its Motion for Leave to file First Amended Complaint in 2020 CH 31 which removes any claim for injunctive relief. The Court has not yet ruled on the Motion for Leave but substantively all of the allegations concerning Violation Notice M-2013-01016 are raised in the original Complaint.

potential closure violations." *See* State's Motion for Voluntary Dismissal of 06-CH-184, attached as Ex. D. The State further explained the pursuant to Section 31 of the Act, prospective Defendants have a right to meet with the Agency and confer, and the State believed that "complete resolution in this case [06 CH 184] will require full closure of the Landfill" and the State threatened that '[t]hese [alleged] violations, and any additional violations observed by the Illinois EPA [in its recent inspection] may be the subject of a future enforcement proceeding." *Id.*

Despite the Third District's opinion, the pending declaratory action against the State, the State's previous voluntarily dismissal, and a nearly ten year procedural history in this matter, the State seeks to pursue the violations alleged in its October 30, 2013 violation notice by adding the following counts to its existing Complaint:

Count I – failure to complete closure of parcel B;
Count II – failure to initiate and complete closure of parcel A;
Count III – failure to install final cover;
Count VIII – failure to provide financial assurance;
Count IX – violation of board waste disposal regulations: failure to update financial assurance;
Count X – permit violation: failure to provide updated closure post/closure cost estimates;
Count XI – permit violation: failure to maintain records;
Count XII – failure to have a certified operator for the landfill; and
Count XIII – regulatory violation: failure to have a chief operator for the landfill.

For the reasons below, the State's motion for leave to amend its complaint and for leave to voluntarily dismiss the Community Landfill Company should be denied.

• ARGUMENT

Under Illinois law[2], the State does not have an absolute and unlimited right to amend. *Ruklick v. Julius Schmid Inc.,* 169 Ill. App. 3d 1098, 1113 (1988). The primary consideration is whether amendment would further the ends of justice. *Id.* Where it is apparent even after amendment that no cause of action can be stated, leave to amend should be denied. *Id.* at 1111; see also *Village of Gulfport, Henderson County v. Buettner,* 114 Ill. App. 2d 1, 6 (1969); *Fleisch v. First American Bank,* 305 Ill. App. 3d 105, 110 (1999) (allowing leave to amend when plaintiff fails to demonstrate he can plead and prove a viable cause of action does not further the ends of justice); *Hayes Mech., Inc. v. First Indus., Ltd. P'ship*, 351 Ill. App. 3d 1, 7 (2004). It is not necessary for the parties to go through the process of filing an amended pleading and then testing its sufficiency by a motion to dismiss. *Id.* Instead, when ruling on a motion to amend, the court may consider the ultimate efficacy of a claim as stated in a proposed amended pleading. *Id.*

Relatedly, in ruling on a motion to dismiss, the Board takes all well-pled allegations as true and draws all reasonable inferences in favor of the non-movant. The Board will dismiss a cause of action if it is clear there are no facts that could be proved that would entitle the plaintiff to relief. *People v. Professional Swine Management, LLC*, PCB 1 0-84 (February 2, 2012), citing *Beers v. Calhoun*, PCB 04-204 (July 22, 2004).

The State's proposed violations alleged in Counts I to III and Counts VIII to XIII cannot withstand a motion to dismiss because they fail to state a cause of action. Pursuant to the doctrines of *res judicata* and collateral estoppel, the State is barred from enforcing the violations alleged in the Violation Notice dated October 30, 2013 as the they arise out of allegations that the City was the operator of the Community Landfill and the Third District Appellate Court has

[2] Under the Illinois Administrative Code, the Board may look to the Illinois Code of Civil Procedure and the Supreme Court Rules for guidance when the Board's procedural rules are silent. 35 Ill. Adm. Code 101.100(b)

already ruled that the City is not an operator. *Cmty. Landfill Co.*, 2011 IL App (3d) at ¶ 54. In addition, the alleged violations are barred by the statute of limitations and the doctrine of laches given the State was aware of the alleged violations ten years ago. Further, the violations are barred under 735 ILCS 5 2-619(a)(3) because there is a pending declaratory judgment action involving the same claims in the Circuit Court of Grundy County, Illinois. Since the State cannot plead and prove a viable cause of action the State's leave to amend should be denied. Further, because Community Landfill Company is a necessary party as owner of the Landfill, the State's motion for leave to voluntarily dismiss CLC should also be denied.

I. The Doctrines of *Res Judicata* Bars the State's Proposed Violations Alleged in Counts I to III and Counts VIII to XIII.

The Third District Appellate Court's opinion has *res judicata* effect and bars the violations alleged in Counts I to III and Counts VIII to XIII. Under the doctrine of *res judicata*, a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent cause of action between the parties or their privies on the same cause of action. *Cooney v. Rossiter,* 2012 IL 113227, ¶ 18. The doctrine of *res judicata* applies to all matters that were actually decided in the original action, as well as to matters that could have been decided. *Id.* Accordingly, the doctrine applies where: (1) a final judgment on the merits has been rendered by a court of competent jurisdiction, (2) an identity of cause of action exists; and (3) the parties or their privies are identical in both actions. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 478 (Ill. 2008). Summary judgment is the procedural equivalent of a trial and is considered an adjudication of the claim on the merits. *Congregation of the Passion v. Touche Ross & Co.*, 159 Ill. 2d 137, 152-53 (Ill. 1994). All three factors are met in this case and the doctrine applies.

In 2011, the Third District Appellate Court reversed the judgment of the Pollution Control Board on PCB No. 03-191. *Cmty. Landfill Co.*, 2011 IL App (3d) at ¶ 54. First, the

decision was a final judgment on the merits, which the State did not pursue further. The Third District Appellate Court determined that the City was not the owner of the Landfill operation, but merely the owner of the land upon which the waste disposal operation was situated, and therefore was not liable for the alleged violations. *Id.* Second, the case involved identical issues to the violations alleged in Counts I to III and Counts VIII to XIII. Specifically, both cases involve the same violations at the same landfill and therefore, are based on the same subject matter and the same operative facts that gave rise to the prior action. Third, the City and State are parties to both actions.

For these reasons, *res judicata* bars Counts I to III and Counts VIII to XIII.

II. The Doctrine of Collateral Estoppel Bars the State's Proposed Violations Alleged in Counts I to III and Counts VIII to XIII.

Relatedly, the Third District Appellate Court's opinion has collateral estoppel effect, which also bars the violations alleged in Counts I to III and Counts VIII to XIII. The doctrine of collateral estoppel bars relitigation of an issue that was already decided in a prior case. Collateral estoppel applies when: (1) the issue decided in the prior adjudication is identical with the one presented in the suit in question; (2) there was a final judgment on the merits in the prior adjudication; and (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication. *Hurlert v. Charles*, 238 Ill. 2d 248, 255 (Ill. 2010). The doctrine of collateral estoppel is properly applied when a party or someone in privity with a party participates in two separate and consecutive cases arising on different causes of action and some controlling act or question material to the determination of both causes has been adjudicated against that party in the former suit by a court of competent jurisdiction. *Housing Authority for La Salle County v. YMCA of Ottawa*, 101 Ill. 2d 246, 252 (Ill. 1984). The adjudication of the fact or question in the first cause will be conclusive of the same question in the later suit. *Id.*

Summary judgment is the procedural equivalent of a trial and is considered an adjudication of the claim on the merits. *Congregation of the Passion*, 159 Ill. 2d at 152-53 (Ill. 1994). All three factors are met here and collateral estoppel bars the claims.

Again, in *Cmty. Landfill Co.*, 2011 IL App (3d) at ¶ 54, the Third District Appellate Court ruled the City was not conducting a waste disposal operation and therefore was not responsible for securing financial assurance of closure and post-closure activities. The Court found that the Community Landfill Company was the only entity liable for the operation of the landfill and its closure and post-closure care. *Id.* Similarly, the Fourth District Appellate Court has concluded, that "it is not proper to hold a landowner liable for violations that a landfill developer-operator allowed to occur on the land...contrary to the landfill operator's express contractual obligation to develop and operate its facility legally." *People ex rel. Madigan v. Lincoln, Ltd.*, 2016 IL App (1st) 143487 *P9. Whether the City is an "operator" and/or "owner" is the critical underlying question regarding the responsibility to maintain and close the Landfill which was adjudicated in *City of Morris v. Community Landfill Company,* 2011 Ill.App.3d 090847.

Since the violations alleged in Counts I to III and Counts VIII to XIII raise the same issue—whether the City was the operator of the Community Landfill—and the Third District Appellate Court ruled on that exact issue, finding that the City is not an operator, the violations are barred. Pursuant to the doctrine of collateral estoppel, the City is not liable for the alleged violations referenced in the October 30, 2013 violation notice because the City has been adjudicated not to be an owner or operator of the waste disposal facility in issue. The State is therefore barred from pursuing these alleged violations in this matter.

III. The Doctrine of Laches Bars the State's Proposed Violations Alleged in Counts I to III and Counts VIII to XIII.

The doctrine of laches equally bars the violations alleged in Counts I to III and Counts VIII to XIII. The doctrine of laches precludes the assertion of a claim by a litigant whose unreasonable delay in raising its claim has prejudiced the opposing party. *Tully v. State*, 143 Ill. 2d 425, 432 (Ill. 1991). Laches applies where there is: (1) a lack of diligence by the party asserting the claim and (2) prejudice to the opposing party results from the delay. *Id.* The doctrine of laches is "grounded in the equitable notion that courts are reluctant to come to the aid of a party who knowingly slept on his rights to the detriment of the opposing party." *Id.* 53. Here, both factors are met and the doctrine of laches precludes the claims.

First, there has been a significant lack of diligence by the State as alleged violations have been ongoing for over twenty years. From 1995 through 1996 and thereafter, the operator of the underlying landfill, Community Landfill Company filed forms with the IEPA which provided that the landfill had reached its permitted capacity. *See* City's First Amended Complaint for Declaratory Judgment, attached as Ex. B. 35 Ill. Admin. Code Sec. 811.110(e)(1) requires a landfill operator to close within 30 days of reaching capacity. Despite the IEPA being aware that since at least 1995 that the landfill was allegedly over capacity, it never brought an action against Community Landfill Company to compel closure and comply with applicable closure/post-closure regulations. Moreover, despite this knowledge, the State failed to compel CLC to cease and desist from accepting waste at the landfill which was again at that point in excess of its permitted capacity, and further failed to compel the commencement of closure of the Facility by CLC.

Further, Counts I to III and Counts VIII to XIII are based on violations that were purportedly discovered via an inspection report dated June 16, 2010, an inspection completed on

May 23, 2013 and a financial record review completed on October 10, 2013. *See* Violation Notice M-2013-01016 dated October 30, 2013, attached as Ex. A. The State's delay in pursuing these claims for over ten years further highlights the lack of diligence by the State.

Additionally, the State, through the Illinois Department of Transportation, transported and deposited waste at the Landfill from 2001 through 2009 at a time that the State was aware that the Landfill was over capacity and required to be closed. *See* Ex. B. Going further, by failing to enforce the regulations against CLC at a time when it was in possession of the Landfill and financially solvent, and by the State itself using the Landfill to deposit waste after the Landfill had reached all of its permitted capacity amounts to a lack of diligence by the State. *See* Ex. B.

Second, significant prejudice has resulted from the delay. The State's failure to require CLC to institute closure years ago when it was financially solvent and when it had generated millions of dollars in revenue from the use of the Landfill and also when it had a form of approved, viable closure/post-closure financial assurances in place, has severely prejudiced the City by causing it to incur extensive costs, time, and effort in maintaining this litigation and the property upon which the Landfill sits.

Accordingly, pursuant to the doctrine of laches, the City is not liable to the State for the violations in Counts I to III and Counts VIII to XIII and the State is barred from pursuing these alleged violations in this matter.

IV. The State's Proposed Violations Alleged in Counts I to III and Counts VIII to XIII are Barred Because a Cause of Action is Already Pending in Another Venue.

Section 2-619(a)(3) of the Code allows for a dismissal of a cause of action if "there is another action pending between the same parties for the same cause." 735 ILCS 5/2-619(a)(3) (West 2010). The purpose of section 2-619(a)(3) is "to avoid duplicative litigation." *In re Marriage of Murugesh*, 2013 IL App (3d) 110228, ¶ 19; *Kellerman v. MCI Telecommunications*

Corp., 112 Ill. 2d 428, 447 (1986). Here, on August 14, 2020, prior to the filing of this motion, the City filed a complaint for declaratory judgment in the Circuit Court of Grundy County, Illinois (case number 2020-CH-31), requesting the court declare that the City is not liable for the violations alleged in the State's proposed Counts I to III and Counts VIII to XIII. *See* Ex. B. The case is currently pending. The State thereafter filed this motion and the corresponding proposed amended complaint, which is barred by 2-619(a)(3).

V. The State's Proposed Violations Alleged in Counts I to III and Counts VIII to XIII are Barred by the Statute of Limitations.

The Illinois Environmental Protection Act (hereinafter "Act") and the Illinois Code of Civil Procedure bars the State's additional claims. The Act provides in pertinent part, that "within 180 days after becoming aware of an alleged violation of the Act, . . . the Agency shall issue and serve . . . a written notice . . . of the alleged violation." 415 ILCS 5/31(a)(1) (Emphasis added). Additionally, the Illinois Code of Civil Procedure establishes a five-year statute of limitations for "all civil actions not otherwise provided for." 735 ILCS 5/13-205 (Emphasis added). Accordingly, the Illinois Pollution Control Board (hereinafter "PCB") has held that the five-year statute of limitations is applicable to most enforcement cases. *Union Oil Company of California v. Barge-Way Oil Company, Inc.,* PCB 98-169 (January 7, 1999) (accepting that the five-year statute of limitations could be applied to an enforcement action). Therefore, subject to first complying with the threshold requirements of Section 31(a)(1) above, an enforcement action for violation of the Act must generally be filed within five years of the incident giving rise to the claim.

Here, the State's additional claims are based on violations that were purportedly discovered via an inspection report dated June 16, 2010, an inspection completed on May 23, 2013 and a financial record review completed on October 10, 2013. *See* Violation Notice M-

2013-01016 dated October 30, 2013, attached as Ex. A. First, in violation of the Act, the Illinois Environmental Protection Agency (hereinafter "Agency") did not issue a written notice of the alleged violations until October 30, 2013, more than three years (and certainly more than 180 days) after the report and inspection. Second, the applicable statute of limitations required the State to pursue the alleged violations by June 16, 2015, five years from the date the State knew of the alleged violations. The violations alleged in Counts I to III and Counts VIII to XIII therefore accrued more than five years before the filing of the State's complaint.

For these reasons, Counts I to III and Counts VIII to XIII are barred by the applicable statute of limitations.

VI. The Amendment of 415 ILCS 5/21.1 Does Not Create any Liability to the City of Morris.

In Counts I and IV, the State's amended complaint refers to an amendment to Section 21.1 of the Act, effective August 2, 2012. This amendment does not somehow remove the violations alleged in Counts I to III and Counts VIII to XIII from the purview of the decision of the aforementioned Third District Appellate Court. *Cmty. Landfill Co.*, 2011 IL App (3d) at ¶ 54. That decision held that the City was not conducting a waste disposal operation, was not involved in the day-to-day operation of the landfill, had no obligation to close or provide financial assurance for closure of the landfill, and was not the owner of the landfill and rather was merely the owner of the land upon which the landfill was located. *Id.* The amendment of Section 21.1 in August of 2012, was in response to the Third District opinion, and is commonly referred to as the "Morris Amendment," and changed the language of the statute to provide that no person shall "own or operate" a municipal solid waste landfill ("MSWLF") unit without first posting financial assurance which IEPA apparently somehow believes gives rise to a violation by the City. The

language previously provided that no person shall " ... conduct any disposal operation at ... " a MSWLF unit without posting financial assurance.

First, this amendment did not change the language of Section 21 upon which the violations alleged in Counts I to III and Counts X to XIII are essentially based. Section 21 of the Act provides no person shall "conduct" any waste storage or disposal operation without a permit. 415 ILCS 5/21 (2013). That language was not amended, and continues to this date. Again, the Third District has already held that the City of Morris did not conduct a waste disposal operation. Accordingly, violations alleged in Counts I to III and Counts X to XIII have in no way been affected by the amendment of Section 21.1 of the Act.

Second, the amendment of Section 21.1 does not create any liability on the part of the City to post financial assurance as alleged in Counts XII to XIII because as noted in detail above, the City did not, and does not, own nor operate a MSWLF unit. Again, the Third District explicitly found and held that "the City transferred its interest in the landfill to CLC, but retained ownership of the land on which the landfill was situated." *Cmty. Landfill Co.*, 2011 IL App (3d) at ¶ 54. Section 21.1 of the Act as amended, does not impose any liability upon the City as the Act does not require anyone which merely owns the land upon which a MSWLF unit is situated to post financial assurance. If the Legislature had intended this result it could have, and would have, so stated. Accordingly, the Third District's decision is binding precedent which bars the claims raised in Counts XII to XIII.

Third, even if the amendment of Section 21.1 in any way created liability for one who merely owns the land upon which a landfill is situated (which, again, it did not), the amendment could not be applied to the City. To the extent the amendment is a substantive change it cannot be applied retroactively and the amendment only takes effect upon becoming law on August 2,

2012. There was no indication within the amendment that it was intended to be applied retroactively. *Doe A. v. Diocese of Dallas*, 234 Ill.2d 393, 405 (2009); Statute on Statutes, 5 ILCS 70/4 (2012). Further, retroactive application of the statute against the City would be inequitable. *Id.* at 406; *Landgraph v. US! Film Prod.*, 511 U.S. 211 (1994).

Fourth, Section 21.1 explicitly provides that "no person other than the State of Illinois, its agencies and institutions, or a unit of local government shall own or operate a MSWLF unit ... unless such person has posted [financial assurances]". 415 ILCS 5/21.l(a) (2012) (emphasis added). Therefore, the statute itself exempts units of local government from its application. The City is obviously a unit of local government.

Fifth, the regulations under Section 21.1 have not been amended and still explicitly provide that only a person who "conduct[s] a waste disposal operation" is required to post financial assurances for closure or post-closure care. 35 Ill.Admin.Code 811.700(c) and (f). Once again, the Third District has already held that the City of Morris was not conducting a waste disposal operation at that time and there is no evidence in any of the materials submitted by the EPA in its violation notice that the City has conducted a waste disposal operation since the Third District opinion.

Sixth, even if the amendment of Section 21.1 somehow imposed liability upon one who merely owns land where an MSWLF unit is located for posting financial assurances (which it does not), such an amendment cannot be applied to the City without violating the separation of powers required under Article II, Section 1, of the Illinois Constitution. The separation of powers clause provides: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." If the Legislature enacts amendment in response to a judicial decision which attempts to reverse the court's decision, it is a violation of the

separation of powers clause. *People ex rel. Ryan v. AgPro, Inc.*, 214 Ill.2d 222, 229-31 (2005). The amendment to Section 21.1 (which the State of Illinois proposed and refers to as the "Morris Amendment") constitutionally was in direct response to the *City of Morris v. CLC* action. That amendment cannot be used by the State to overrule the 2011 Third District decision in favor of the City.

For these reasons, the State is barred from pursuing proposed Counts I to III and Counts VIII to XIII.

VII. The State is Barred from Bringing Counts I, II, III and XI under 735 ILCS 5/13-217.

Here, on July 8, 2013, the State voluntarily dismissed all allegations against the City in its lawsuit in the Thirteenth Judicial Circuit Court of Grundy County (Case No. 06-CH-184) against the City and the Community Landfill Company. *See* State's Motion for Voluntary Dismissal of 06-CH-184, attached as Ex. D. This lawsuit asserted that both the City and CLC were responsible for the operation of the Landfill's gas collection system and compliance with air quality statutes of the Illinois Environmental Protection Act and the regulations thereunder. *See* Filed Complaint in 06-CH-184, without exhibits, attached hereto as Ex. C.

In its dismissal, the State even acknowledged that one reason it was dismissing the case was because the State "has learned that the Illinois Environmental Protection Agency has recently inspected the Landfill, and that Illinois EPA observed potential violations related to the failure to close the Landfill. Based on the Illinois EPA inspection report, one or both of the Defendants in this case [i.e. CLC and the City] may be issued violation notices related to these potential closure violations." *See* State's Motion for Voluntary Dismissal of 06-CH-184, attached as Ex. D. The State further explained the pursuant to Section 31 of the Act, prospective Defendants have a right to meet with the Agency and confer, and the State believed that

"complete resolution in this case [06 CH 184] will require full closure of the Landfill" and the State threatened that '[t]hese [alleged] violations, and any additional violations observed by the Illinois EPA [in its recent inspection] may be the subject of a future enforcement proceeding." *Id.*

The same allegations related to compliance with air quality standard, operation of the Landfill's gas collection system and closure of the Landfill to comply with the air and landfill gas regulations are contained in the State's Proposed First Amended Complaint. (See e.g. Count I, paras 46, 51, 60, 64, 65, 66, 67, 68, 77; Count II same paras, and para 80; Count III, paras 63, 71; Count XI, paras 52, 53, 54). Once a lawsuit has been voluntarily dismissed without prejudice, the plaintiff may re-file the lawsuit within one year of the voluntary dismissal, or within the remaining period of limitation, whichever is the greater. 735 ILCS 5/13-217. Therefore, the State had until July 9, 2014 to re-file its lawsuit, which it failed to meet. In an attempt to circumvent 735 ILCS 5/13-217, the State attempts to bring those same allegations related to air regulations, gas collection systems and closure in its First Amended Complaint and such is barred as it was not filed within one year of voluntarily dismissing 06 CH 184.

For these reasons, the State is barred from bringing Counts I, II, III and XI.

VIII. This Board Should Deny the State's Motion to Voluntarily Dismiss Community Landfill Company

The Community Landfill Company is the owner of the underlying landfill and is therefore a necessary party to this complaint. For the Board to grant complete relief addressing the alleged violations, the Community Landfill Company must be in the case as a named party. There can be no recourse for the alleged violations without CLC. Further, the State failed to require CLC to institute closure years ago when it was financially solvent and when it had generated millions of dollars in revenue from the use of the Landfill and also when it had a form

of approved, viable closure/post-closure assurance in place. Finally, the State has asserted that "if the Board accepts the proposed Amended Complaint, CLC is no longer a necessary party to this Complaint" without any explanation. CLC continues to be the only party responsible for closure of the landfill and regardless for the reasons stated herein the motion for leave to amend should be denied. For these reasons, the State's motion for leave to voluntarily dismiss CLC should also be denied.

CONCLUSION

The violations alleged in Counts I to III and Counts VIII to XIII are barred by the applicable statute of limitations, the doctrines of *res judicata*, collateral estoppel, equitable estoppel, laches, under 735 ILCS 5 2-619(a)(3) and under 735 ILCS 5/13-217. Further, the Community Landfill Company is a necessary party. As such, the State's motion for leave to amend its complaint and for leave to voluntarily dismiss the Community Landfill Company should be denied as no cause of action can be stated.

WHEREFORE, Respondent the City of Morris respectfully requests that this Board deny the State of Illinois' Motion for Leave to File an Amended Complaint, with prejudice, plus enter such other and further relief in favor of Respondent as this Court deems just and proper.

Dated: September 11, 2020

Respectfully submitted,

On behalf of CITY OF MORRIS

/s/ Richard S. Porter
One of Its Attorneys

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AFFIDAVIT OF SERVICE

The undersigned certifies that on September 11, 2020 she served a copy of the foregoing City of Morris' Response in Opposition to State of Illinois' Motion for Leave to File an Amended Complaint and for Leave to Voluntarily Dismiss the Community Landfill Company upon the following:

Robert J. Pruim
13432 Westview Drive
Palos Heights, IL 60463

Edward H. Pruim
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Orland Park, IL 60462

People of the State of Illinois
c/o Christopher Grant
Environmental Bureau
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Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
By electronic mail only
Brad.halloran@Illinois.gov

Stephen J. Sylvester
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by e-mailing and/or depositing a copy thereof, enclosed in an envelope, in the United States Mail at 100 Park Avenue, Rockford, Illinois 61101, proper postage prepaid, at or about the hour of 5:00 o'clock p.m., addressed as above.

Danita Heaney

HINSHAW & CULBERTSON LLP
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217)782-2829
PAT QUINN, GOVERNOR LISA BONNETT, DIRECTOR

217/524-3300
TDD 217/782-9143

7009 2820 0001 7486 9649
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

October 30, 2013

City of Morris
Mayor Richard Kopczick
700 N. Division Street
Morris, Illinois 60450

Re: **Violation Notice, M-2013-01016**
0630600001 – Grundy County
Morris/Community Landfill
Compliance File

Dear Mayor Kopczick:

This constitutes a Violation Notice pursuant to Section 31(a)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/31(a)(1), and is based on an inspection completed on May 23, 2013 and a financial record review completed on October 10, 2013 by representatives of the Illinois Environmental Protection Agency ("Illinois EPA").

The Illinois EPA hereby provides notice of alleged violations of environmental laws, regulations, or permits as set forth in the attachments to this notice. The attachments include an explanation of the activities that the Illinois EPA believes may resolve the specified alleged violations, including an estimate of a reasonable time period to complete the necessary activities. Due to the nature and seriousness of the alleged violations, please be advised that resolution of the violations may also require the involvement of a prosecutorial authority for purposes that may include, among others, the imposition of statutory penalties.

A written response, which may include a request for a meeting with representatives of the Illinois EPA, must be submitted via certified mail to the Illinois EPA within 45 days of receipt of this notice. If a meeting is requested, it shall be held within 60 days of receipt of this notice. The response must include information in rebuttal, explanation, or justification of each alleged violation and a statement indicating whether or not you wish to enter into a Compliance Commitment Agreement ("CCA") pursuant to Section 31(a) of the Act. If you wish to enter into a CCA, the written response must also include proposed terms for the CCA that includes dates for achieving each commitment and may include a statement that compliance has been achieved for some or all of the alleged violations. The proposed terms of the CCA should contain sufficient detail and must include steps to be taken to achieve compliance and the necessary dates by which compliance will be achieved.

The Illinois EPA will review the proposed terms for a CCA provided by you and, within 30 days of receipt, will respond with either a proposed CCA or a notice that no CCA will be issued by the Illinois EPA. If the Illinois EPA sends a proposed CCA, you must respond in writing by either

EXHIBIT
A
tabbies

agreeing to and signing the proposed CCA or by notifying the Illinois EPA that you reject the terms of the proposed CCA.

If a timely written response to this Violation Notice is not provided, it shall be considered a waiver of the opportunity to respond and meet, and the Illinois EPA may proceed with referral to a prosecutorial authority.

Written communications should be directed to:

Illinois EPA – Bureau of Land#24
Attn: Brian White
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

Please include the Violation Number **M-2013-01016** and the Site Identification Number **0630600001** on all written communications.

The complete requirements of the Illinois Environmental Protection Act and any Illinois Pollution Control Board regulations cited herein or in the inspection report can be viewed at:

http://www.ipcb.state.il.us/SLR/TheEnvironmentalProtectionAct.asp
and
http://www.ipcb.state.il.us/SLR/IPCBandIEPAEnvironmentalRegulations-Title35.asp

Questions regarding Attachment A should be directed to **Mark Retzlaff** at **847/294-4070.**
Questions regarding Attachment B should be directed to **Brian White** at **217/782-9887.**

Sincerely,

Paul M. Purseglove, Manager
Field Operations Section
Bureau of Land

PMP:MR:dv01016

cc: Division File
Des Plaines Region File
Mark Retzlaff
Robert Mathis, Jr.
Deanne Virgin

ATTACHMENT A

1. Pursuant to Section 21(a) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(a)), no person shall cause or allow the open dumping of any waste.

   A violation of Section 21(a) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(a)) is alleged for the following reason: **Acceptance of wastes without necessary permits. Based on an Agency file review from a June 16, 2010 inspection report, and the fact that Parcels A and B are developed and accepted waste.**

2. Pursuant to Section 21(d)(1) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(d)), no person shall conduct any waste-storage, waste-treatment, or waste-disposal operation without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder... This subsection (d) shall not apply to hazardous waste.

   A violation of Section 21(d)(1) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(d)) is alleged for the following reason: **Facility does not have a valid permit in place for the Landfill.**

3. Pursuant to Section 21(d)(2) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(d)), no person shall conduct any waste-storage, waste-treatment, or waste-disposal operation: In violation of any regulations or standards adopted by the Board under this Act. This subsection (d) shall not apply to hazardous waste.

   A violation of Section 21(d)(2) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(d)) is alleged for the following reason: **Facility does not have a written closure plan and related supporting documents.**

4. Pursuant to Section 21(o)(6) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(o)), no person shall conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section [21], in a manner which results in failure to provide final cover within time limits established by Board regulations.

   The prohibitions specified in this subsection (o) shall be enforceable by the Agency either by administrative citation under Section 31.1 of this Act or as otherwise provided by this Act. The specific prohibitions in this subsection do not limit the power of the Board to establish regulations or standards applicable to sanitary landfills.

   A violation of Section 21(o)(6) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(o)) is alleged for the following reason: **Failure to provide final cover within time limits.**

5. Pursuant to Section 21(o)(7) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(o)), no person shall conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section [21], in a manner which results in acceptance of wastes without

necessary permits.

The prohibitions specified in this subsection (o) shall be enforceable by the Agency either by administrative citation under Section 31.1 of this Act or as otherwise provided by this Act. The specific prohibitions in this subsection do not limit the power of the Board to establish regulations or standards applicable to sanitary landfills.

A violation of Section 21(o)(7) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(o)) is alleged for the following reason: **Acceptance of wastes without necessary permits. Based on an Agency file review from a June 16, 2010 inspection report, and the fact that Parcels A and B are developed and accepted waste.**

6. Pursuant to Section 21(o)(11) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(o)), no person shall conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section [21], in a manner which results in failure to submit reports required by permits or Board regulations.

The prohibitions specified in this subsection (o) shall be enforceable by the Agency either by administrative citation under Section 31.1 of this Act or as otherwise provided by this Act. The specific prohibitions in this subsection do not limit the power of the Board to establish regulations or standards applicable to sanitary landfills.

A violation of Section 21(o)(11) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(o)) is alleged for the following reason: **The Agency has not received the required reports.**

7. Pursuant to Section 21(o)(13) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(o)), no person shall conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section [21], in a manner which results in failure to submit any cost estimate for the site or any performance bond or other security for the site as required by this Act or Board rules.

The prohibitions specified in this subsection (o) shall be enforceable by the Agency either by administrative citation under Section 31.1 of this Act or as otherwise provided by this Act. The specific prohibitions in this subsection do not limit the power of the Board to establish regulations or standards applicable to sanitary landfills.

A violation of Section 21(o)(13) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(o)) is alleged for the following reason: **The Agency has not received current closure cost estimates or evidence of a performance bond.**

8. Pursuant to 225 ILCS 230/1004 of the Solid Waste Site Operator Certification Law, no person shall cause or allow the operation of a landfill permitted or required to be permitted by the Agency unless the landfill has on its operational staff at least one natural person certified as competent by the Agency under the provisions of this Act [Solid Waste Site Operator Certification Law].

(a) For landfill sites which accept non-hazardous solid waste other than clean construction or demolition debris, the landfill shall have a Class A Solid Waste Site Operator certified by the Agency who is responsible for directing landfill operations or supervising other operational staff in performing landfill operations.

A violation of 225 ILCS 230/1004 [Solid Waste Site Operator Certification Law] is alleged for the following reason: **Landfill does not have a certified operator for the site.**

9. Pursuant to 35 Ill. Adm. Code 745.181, Chief Operator Requirements:

a) The individual who is chief operator of a waste disposal site, as defined pursuant to Section 745.102(c), shall have prior conduct certification.

b) The owner or other named permitee shall designate one or more chief operators for each waste disposal site.

1) One certified chief operator may serve in that capacity for multiple waste disposal units located at one waste disposal site.

2) One certified chief operator shall not serve in that capacity for units located at two or more waste disposal sites.

3) A certified waste operator need not be present during all hours a site is operating, provided that the chief operator retains responsibility for site operations during the period of absence, and can be contacted by waste disposal site personnel during the absence.

A violation of 35 Ill. Adm. Code Section 745.181 is alleged for the following reason: **Facility does not have a Chief Operator.**

10. Pursuant to 35 Ill. Adm. Code 745.201, Prohibitions [under Prior Conduct Certitication]:

a) No person shall operate a waste disposal site unless the site chief operator has prior conduct certification.

b) No site owner or other named permittee shall cause or allow operation of a waste disposal site unless the site chief operator has prior conduct certification.

c) No person shall own or operate a waste disposal site if the person has had prior conduct certification denied, cancelled or revoked, unless the person has a current, valid prior conduct certification.

d) No person shall serve as an officer or director of the owner or operator of a waste disposal site if the person has had prior conduct certification denied,

cancelled or revoked, unless the person has a current, valid prior conduct certification.

e) No person shall serve as an employee at a waste disposal site if the person has had prior conduct certification denied, cancelled or revoked, unless the person has a current, valid prior conduct certification.

A violation of 35 Ill. Adm. Code 745.201 is alleged for the following reason: **Facility does not have a certified chief operator and because the landfill does not have a chief operator with prior conduct certification.**

11. Pursuant to 35 Ill. Adm. Code 811.110(d)(1), Written Closure Plan, the operator shall maintain a written plan describing all actions that the operator will undertake to close the unit or facility in a manner that fulfills the provisions of the Act, of this Part and of other applicable Parts of 35 Ill. Adm. Code: Chapter I. The written closure plan shall fulfill the minimum information requirements of 35 Ill. Adm. Code 812.114.

A violation of 35 Ill. Adm. Code 811.110(d)(1) is alleged for the following reason: **Written Closure Plan was not available at the time of the inspection.**

12. Pursuant to 35 Ill. Adm. Code 811.110(e), the owner or operator of a MSWLF unit shall begin closure activities for each MSWLF unit no later than the date determined as follows:

1) 30 days after the date on which the MSWLF unit receives the final receipt of wastes; or

2) If the MSWLF unit has remaining capacity and there is a reasonable likelihood that the MSWLF unit will receive additional wastes, no later than one year after the most recent receipt of wastes.

3) The Agency shall grant extensions beyond this one year deadline for beginning closure if the owner or operator demonstrates that:

A) The MSWLF unit has the capacity to receive additional wastes; and

B) The owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed MSWLF unit.

A violation of 35 Ill. Adm. Code 811.110(e) is alleged for the following reason: **Acceptance of final volume of waste occurred. Closure activities were not initiated after receipt of the final volume of waste.**

13. Pursuant to 35 Ill. Adm. Code 811.110(f)(1), the owner or operator of a MSWLF unit shall complete closure activities for each unit in accordance with closure plan no later than within 180 days of beginning closure, as specified in subsection (e) of this Section.

A violation of 35 Ill. Adm. Code 811.110(f)(1) is alleged for the following reason: **Facility failed to complete closure activities with 180 days of beginning closure.**

14. Pursuant to 35 Ill. Adm. Code 811.112(c), the owner or operator of a MSWLF unit shall record and retain near the facility in an operating record or in some alternative location specified by the Agency, the information submitted to the Agency pursuant to 35 Ill. Adm. Code 812 and 813, as it becomes available. At a minimum, the operating record shall contain the ... gas monitoring results and any remediation plans required by Section 811.310 record and retain near the facility in an operating record or in some alternative location and 811.311.

A violation of 35 Ill. Adm. Code 811.112(c) is alleged for the following reason: **Records were not available at the time of the inspection.**

15. Pursuant to 35 Ill. Adm. Code 811.112(d), the owner or operator of a MSWLF unit shall record and retain near the facility in an operating record or in some alternative location specified by the Agency, the information submitted to the Agency pursuant to 35 Ill. Adm. Code 812 and 813, as it becomes available. At a minimum, the operating record shall contain ... any MSWLF unit design documentation for placement of leachate or gas condensate in a MSWLF unit required by Section 811.107(m).

A violation of 35 Ill. Adm. Code 811.112(d) is alleged for the following reason: **Leachate related documents were not available at the time of the inspection.**

16. Pursuant to 35 Ill. Adm. Code 811.112(e), the owner or operator of a MSWLF unit shall record and retain near the facility in an operating record or in some alternative location specified by the Agency, the information submitted to the Agency pursuant to 35 Ill. Adm. Code 812 and 813, as it becomes available. At a minimum, the operating record shall contain ... any demonstration, certification, monitoring results, testing, or analytical data relating to the groundwater monitoring program required by Sections 811.319, 811.324, 811.325, and 811.326 and 35 Ill. Adm. Code 812.317, 813.501, and 813.502.

A violation of 35 Ill. Adm. Code 811.112(e) is alleged for the following reason: **Last documented sampling event occurred in October of 2011. Current groundwater monitoring records were not available at the time of the inspection.**

17. Pursuant to 35 Ill. Adm. Code 811.112(f), the owner or operator of a MSWLF unit shall record and retain near the facility in an operating record or in some alternative location specified by the Agency, the information submitted to the Agency pursuant to 35 Ill. Adm. Code 812 and 813, as it becomes available. At a minimum, the operating record shall contain ... closure and post-closure care plans and any monitoring, testing, or analytical data required by Sections 811.110 and 811.111, and 35 Ill. Adm. Code 812.114(h), 812.115, and 812.313.

A violation of 35 Ill. Adm. Code 811.112(f) is alleged for the following reason: **Closure related documents were not available at the time of the inspection.**

18. Pursuant to 35 Ill. Adm. Code 811.112(g), the owner or operator of a MSWLF unit shall record and retain near the facility in an operating record or in some alternative location specified by the Agency, the information submitted to the Agency pursuant to 35 Ill. Adm. Code 812 and 813, as it becomes available. At a minimum, the operating record shall contain ... any cost estimates and financial assurance documentation required by Subpart G of this Part.

A violation of 35 Ill. Adm. Code 811.112(g) is alleged for the following reason: **Closure cost estimated and financial assurance documents were not available at the time of the inspection.**

19. Pursuant to 35 Ill. Adm. Code 811.310(c):

1) All gas monitoring devices, including the ambient air monitors must be operated to obtain samples on a monthly basis for the entire operating period and for a minimum of five years after closure.

2) After a minimum of five years after closure, monitoring frequency may be reduced to quarterly sampling intervals.

3) The sampling frequency may be reduced to yearly sampling intervals upon the installation and operation of a gas collection system equipped with a mechanical device such as a compressor to withdraw gas.

4) Monitoring must be continued for a minimum period of: thirty years after closure at MSWLF units, except as otherwise provided by subsections (c)(5) and (c)(6) of this Section; five years after closure at landfills, other than MSWLF units, which are used exclusively for disposing of wastes generated at the site; or fifteen years after closure at all other landfills regulated under this Part. Monitoring, beyond the minimum period, may be discontinued if the following conditions have been met for at least one year:

A) The concentration of methane is less than five percent of the lower explosive limit in air for four consecutive quarters at all monitoring points outside the unit; and

B) Monitoring points within the unit indicate that methane is no longer being produced in quantities that would result in migration from the unit and exceed the standards of subsection (a)(1) of this Section.

5) The Agency may reduce the gas monitoring period at an MSWLF unit upon a demonstration by the owner or operator that the reduced period is sufficient to protect human health and environment.

6) The owner or operator of an MSWLF unit must petition the Board for an adjusted standard in accordance with Section 811.303, if the owner or operator seeks a reduction of the post closure care monitoring period for all of the following

requirements:

A) Inspection and maintenance (Section 811.111);

B) Leachate collection (Section 811.309);

C) Gas monitoring (Section 811.310); and

D) Groundwater monitoring (Section 811.319).

A violation of 35 Ill. Adm. Code 811.310(c) is alleged for the following reason: **Documentation was not available at the time of the inspection to show landfill gas monitoring frequency.**

Suggested Resolutions

1. **Immediately stop accepting waste without a permit.**

2. **Immediately maintain the required information in the landfill operating record.**

3. **By December 15, 2013, the City of Morris must submit to the IEPA, a renewal permit application including an updated closure plan.**

4. **By December 15, 2013, the City of Morris must have a Certified Operator with the proper competency certificate.**

5. **By December 15, 2013, perform the required groundwater monitoring, leachate monitoring and gas monitoring activities in accordance with the existing expired permit conditions and regulations.**

6. **By January 15, 2014, submit to the IEPA, the most recent results/reports for the groundwater monitoring, leachate monitoring and gas monitoring.**

The written response to this Violation Notice must include information in rebuttal, explanation, or justification of each alleged violation and a statement indicating whether or not you wish to enter into a Compliance Commitment Agreement ("CCA") pursuant to Section 31(a) of the Act. If you wish to enter into a CCA, the written response must also include proposed terms for the CCA that includes dates for achieving each commitment and may include a statement that compliance has been achieved for some or all of the alleged violations. The written response must be submitted to the Illinois EPA by certified mail within 45 days of receipt of this Violation Notice.

ATTACHMENT B

1. Pursuant to Section 21.1(a.5) of the Environmental Protection Act, on and after the effective date established by the United States Environmental Protection Agency for Municipal Solid Waste Landfill (MSWLF) units to provide financial assurance under Subtitle D of the Resource Conservation and Recovery Act, no person, other than the State of Illinois, its agencies and institutions, shall own or operate a MSWLF unit that requires a permit under subsection (d) of Section 21 of this Act, unless that person has posted with the Agency [Illinois EPA] a performance bond or other security for the purposes of:
   (1) insuring closure of the site and post-closure care in accordance with the Act and its rules; and
   (2) insuring completion of a corrective action remedy when required by Board rules....

   A violation of Section 21.1(a.5) of the [Illinois] Environmental Protection Act (45 ILCS 5/21.1(a.5) is alleged for the following reason: **The City of Morris as the owner and operator of a Municipal Solid Waste Landfill that requires a permit under subsection (d) of Section 21 of the Environmental Protection Act has not posted a performance bond or other security for the purpose of insuring closure of the landfill and post-closure care in accordance with the Environmental Protection Act and its rules. The landfill has not had compliant financial assurance since prior to May 31, 2000.**

   Please Note: In the 1970s, the City of Morris owned and operated the Morris Community Landfill. In 1982, the City of Morris leased the operation of the landfill to Community Landfill Co. (CLC) and remained the owner of the landfill. CLC paid the City of Morris dumping related royalties for its use of the landfill. In 1999, the City of Morris and CLC entered into an agreement that required the City of Morris to become active in the operation of the landfill and treat leachate from the landfill at its publically owned treatment works plant at no cost to CLC. The corporation CLC was "involuntarily dissolved" on May 14, 2010. Pursuant to 35 Ill. Adm. Code, Section 810.103: "The 'owner' is the 'operator' if there is no other person who is operating and maintaining a solid waste disposal facility." Therefore, the City of Morris once again became the sole operator of the landfill on May 14, 2010.

2. Pursuant to Section 21(d)(1) of the Environmental Protection Act, no person shall conduct any waste-storage, waste-treatment, or waste-disposal operation ... in violation of any conditions imposed by such permit ....

   A violation of Section 21(d)(1) of the [Illinois] Environmental Protection Act (45 ILCS 5/21(d)(1)) is alleged for the following reason: **Failure to comply with the permit conditions for Parcel A and Parcel B associated with updating closure and post-closure care cost estimates and with providing and maintaining acceptable financial assurance equal to or greater than the amount of the approved cost estimate.**

3. Pursuant to Section 21(d)(2) of the Environmental Protection Act, no person shall conduct any waste-storage, waste-treatment, or waste-disposal operation in violation of any regulations or standards adopted by the Board under this Act.

   A violation of Section 21(d)(2) of the [Illinois] Environmental Protection Act (45 ILCS 5/21(d)(2)) is alleged for the following reason: **The City of Morris failed to comply with the provisions of 35 Ill. Adm. Code Subtitle G, Part 811, Subpart G. Specifically, the City of Morris failed to comply with Section 811.700(a), (c), and (f), requiring the owner or the operator of a permitted landfill to provide financial assurance; Section 811.701(a), requiring the owner or operator of a landfill to supply financial assurance equal to or greater than the current cost estimate; Section 811.701(c), requiring the owner or operator of a landfill to make annual adjustments for inflation to the cost estimates; Section 811.705(d), requiring an adjustment of the cost estimate for inflation on an annual basis; and Section 811.706(d) requiring the owner or operator of the landfill to supply continuous financial assurance coverage until the owner or operator is released from the financial assurance requirements.**

4. Pursuant to Section 21(o)(13) of the Environmental Protection Act, no person shall conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section, in an manner which results in failure to submit any cost estimate for the site or any performance bond or other security for the site as required by this Act or Board rules.

   A violation of Section 21(o)(13) of the Illinois Environmental Protection Act (45 ILCS 5/21(o)(13)) is alleged for the following reason: **Failure to provide an annual revision of the cost estimate and for failure to provide acceptable continuous financial assurance coverage. The landfill has not had compliant financial assurance since prior to May 31, 2000.**

5. Pursuant to 35 Ill. Adm. Code 811.700(a), this Subpart [Part 811, Subpart G] provides procedures by which the owner or operator of a permitted waste disposal facility provides financial assurance satisfying the requirements of Section 21.1(a) of the Act.

   A violation of 35 Ill. Adm. Code 811.700(a) is alleged for the following reason: **The City of Morris as the owner and the operator of the permitted waste disposal facility (landfill) failed to provide financial assurance that satisfies the requirements of the Environmental Protection Act. The landfill has not had compliant financial assurance since prior to May 31, 2000.**

6. Pursuant to 35 Ill. Adm. Code 811.700(b), financial assurance shall be provided, as specified in Section 811.706, by a trust agreement, a bond guaranteeing payment, a bond guaranteeing payment or performance, a letter of credit, insurance or self-insurance.

A violation of 35 Ill. Adm. Code 811.700(b) is alleged for the following reason: **The City of Morris has not provided financial assurance as specified in 35 Ill. Adm. Code, 811.706. The landfill has not had compliant financial assurance since prior to May 31, 2000.**

7. Pursuant to 35 Ill. Adm. Code 811.700(f), on or after April 9, 1997, no person, other than the State of Illinois, its agencies and institutions, shall conduct any disposal operation at an MSWLF unit that requires a permit under Section 21(d) of the Act, unless that person complies with the financial assurance requirements of this Part [811].

   BOARD NOTE: Subsection (f) clarifies the applicability of the financial assurance requirements to units of local government, since the Subtitle D regulations exempt only federal and state governments from financial assurance requirements. (See 40 CFR 258.70 (1996).) P.A. 89-200, signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the deadline for financial assurance for MSWLFs from April 9, 1995 to the date that the federal financial assurance requirements actually become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg. 60327), USEPA added 40 CFR 258.70(c) (1996), codified here as subsection (g), to allow states to waive the compliance deadline until April 9, 1998.

   A violation of 35 Ill. Adm. Code 811.700(f) is alleged for the following reason: **The City of Morris as the operator of the permitted waste disposal facility (landfill) failed to provide financial assurance that satisfies the requirements of 35 Ill. Adm. Code, Part 811. The landfill has not had compliant financial assurance since prior to May 31, 2000.**

8. Pursuant to 35 Ill. Adm. Code 811.701(a), Upgrading Financial Assurance, the owner or operator shall maintain financial assurance equal to or greater than the current cost estimate calculated pursuant to Section 811.704 all times…

   A violation of 35 Ill. Adm. Code 811.701(a) is alleged for the following reason: **Failure to maintain continuous financial assurance. The landfill has not had compliant financial assurance since prior to May 31, 2000.**

   The City of Morris and CLC attempted to provide financial assurance through the use of three performance bonds from Frontier Insurance Co., with a total penal sum on the bonds of $17,427,366.00. The bonds were received by the Illinois EPA in June of 2000. Two of the bonds had an effective date of May 31, 2000 and the third bond had an effective date of June 14, 2000. The City of Morris was the principal for one of the bonds with a penal sum of $10,081,630.00, and CLC was the principal for the other two bonds.

   The three bonds were never compliant with the regulations because the surety, Frontier Insurance Co., was removed from the list of acceptable sureties approved by the U.S. Department of Treasury in its Circular 570. On June 6, 2000, the U.S. Treasury issued notification that Frontier no longer qualified as an acceptable

surety on Federal bonds and had been removed from Circular 570 effective May 31, 2000.

In addition, because the cost estimate has not been updated annually since prior to 2000, it cannot be determined if the amount of financial assurance previously approved in 2000 and adjusted for inflation is sufficient to cover the costs of closure and post-closure care.

9. Pursuant to 35 Ill. Adm. Code 811.701(c), Upgrading Financial Assurance, the owner or operator of a MSWLF unit shall annually make adjustments for inflation if required pursuant to Section 811.704(k)(2) or 811.705(d).

   A violation of 35 Ill. Adm. Code 811.701(c) is alleged for the following reason: **The City of Morris has failed to make adjustments to financial assurance for inflation as required. The landfill has not had compliant financial assurance since prior to May 31, 2000.**

10. Pursuant to 35 Ill. Adm. Code 811.705(d), Revision of Cost Estimate, the owner or operator of a MSWLF unit shall adjust the cost estimates of closure, post-closure, and corrective action for inflation on an annual basis.

    A violation of 35 Ill. Adm. Code 811.705(d) is alleged for the following reason: **Failure to provide an annual revision of the cost estimate. The permits for Parcel A and Parcel B require that the annual update be submitted in the form of a permit application for a significant modification by June 1st of each year and either update the cost estimate or certify that there are no changes to the current cost estimate. The most recent permit applications with cost estimate revisions (Permit No. 2000-155-LFM, Log No. 2009-424 and Permit No. 2000-156-LFM, Log No. 2009-425) were received on August 18, 2009 and October 13, 2009 and were denied on January 10, 2010.**

11. Pursuant to 35 Ill. Adm. Code 811.706(d), Mechanisms for Financial Assurance, the owner or operator [of a Municipal Solid Waste Landfill] shall provide continuous coverage until the owner or operator is released from the financial assurance requirements pursuant to 35 Ill. Adm. Code Section 813.403(b) or Section 811.326(g).

    A violation of 35 Ill. Adm. Code 811.706(d) is alleged for the following reason: **Failure to maintain continuous financial assurance until the owner or operator is released from the financial assurance requirements. The landfill has not provided financial assurance compliant with the Environmental Protection Act and the regulations since prior to May 31, 2000.**

Suggested Resolutions

Within 30 days of receipt of this Violation Notice, the City of Morris as both the owner and the operator of the landfill is required by statute, regulation, and permit

to submit a permit application for a significant modification to update the cost estimate or certify that there are no changes to the cost estimate that was previously approved in 2000. The last update was due June 1st of this year and the updates are required to be submitted on an annually on June 1st of each year. See http://www.epa.state.il.us/land/regulatory-programs/permits-and-management/forms/pa1.html for instructions on submitting a significant modification to a permit.

Immediately submit financial assurance that complies with the requirements of 35 Ill. Adm. Code, Subtitle G, Part 811, Subpart G to the Illinois EPA in the amount of at least $22,739,617.15 - the last approved cost estimate adjusted for inflation to current dollars.

The written response to this Violation Notice must include information in rebuttal, explanation, or justification of each alleged violation and a statement indicating whether or not you wish to enter into a Compliance Commitment Agreement ("CCA") pursuant to Section 31(a) of the Act. If you wish to enter into a CCA, the written response must also include proposed terms for the CCA that includes dates for achieving each commitment and may include a statement that compliance has been achieved for some or all of the alleged violations. The written response must be submitted to the Illinois EPA by certified mail within 45 days of receipt of this Violation Notice.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
811 Solid Waste Landfill Inspection Checklist

County: Grundy LPC#: 0630600001 Region: 2 - Des Plaines

Location/Site Name: Morris/Community Landfill

Date: 05/23/2013 Time: From 10:30 am To 12:15 pm Previous Inspection Date: 06/16/2010

Inspector(s): Mark Retzlaff Weather: 50 F, Cloudy

No. of Photos Taken: # 12 Samples Taken: Yes # ____ No ☒

Interviewed: Caleb Moore Facility Phone No.: 815-942-0103

Permitted Owner Mailing Address

City of Morris
Attn: Mayor Richard Kopczick
700 N. Division Street
Morris, Illinois 60450

Permitted Operator Mailing Address

City of Morris
Attn: Mayor Richard Kopczick
700 N. Division Street
Morris, Illinois 60450

Chief Operator Mailing Address

Not Available

Certified Operator Mailing Address

Not Available

AUTHORIZATION:
Significant Modification Permit
Initial: 1974-22-DE/OP
Latest ____

OPERATIONAL STATUS:
☐ Operating
☒ Closed-Not Certified.
Closed-Date Certified: ____

TYPE OF OPERATION:
Existing Landfills 814-Subpart C ☐
814-Subpart D ☒
New Landfills: 811-Putres./Chem. ☐

	SECTION	DESCRIPTION	VIOL
		ILLINOIS ENVIRONMENTAL PROTECTION ACT REQUIREMENTS	
1.	9(a)	**CAUSE, THREATEN OR ALLOW AIR POLLUTION IN ILLINOIS**	☐
2.	9(c)	**CAUSE OR ALLOW OPEN BURNING**	☐
3.	12(a)	**CAUSE, THREATEN OR ALLOW WATER POLLUTION IN ILLINOIS**	☐
4.	12(d)	**CREATE A WATER POLLUTION HAZARD**	☐
5.	12(f)	**CAUSE, THREATEN OR ALLOW DISCHARGE WITHOUT OR IN VIOLATION OF AN NPDES PERMIT**	☐
6.	21(a)	**CAUSE OR ALLOW OPEN DUMPING**	☒
7.	21(d)	**CONDUCT ANY WASTE-STORAGE, WASTE-TREATMENT, OR WASTE- DISPOSAL OPERATION:**	
	(1)	Without a Permit or in Violation of Any Conditions of a Permit (See Permit Provisions)	☒
	(2)	In Violation of Any Regulations or Standards Adopted by the Board	☒
8.	21(e)	**DISPOSE, TREAT, STORE, OR ABANDON ANY WASTE, OR TRANSPORT ANY WASTE INTO THE STATE AT/TO SITES NOT MEETING REQUIREMENTS OF ACT AND REGULATIONS**	☐
9.	21(f)(1)	**CONDUCT ANY HAZARDOUS WASTE-STORAGE, TREATMENT OR DISPOSAL OPERATION WITHOUT A RCRA PERMIT.**	☐

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10.	21(o)	**CONDUCT A SANITARY LANDFILL OPERATION WHICH RESULTS IN ANY OF THE FOLLOWING CONDITIONS:**	
	(1)	Refuse in Standing or Flowing Water	☐
	(2)	Leachate Flows Entering Waters of the State	☐
	(3)	Leachate Flows Exiting the Landfill Confines	☐
	(4)	Open Burning of Refuse in Violation of Section 9 of the Act	☐
	(5)	Uncovered Refuse Remaining From Any Previous Operating Day or at the Conclusion of Any Operating Day	☐
	(6)	Failure to Provide Final Cover Within Time Limits	☒
	(7)	Acceptance of Wastes Without Necessary Permits	☒
	(8)	Scavenging as Defined by Board Regulations	☐
	(9)	Deposition of Refuse in Any Unpermitted Portion of the Landfill	☐
	(10)	Acceptance of Special Waste Without a Required Manifest	☐
	(11)	Failure to Submit Reports Required by Permits or Board Regulations	☒
	(12)	Failure to Collect and Contain Litter by the End of each Operating Day	☐
	(13)	Failure to Submit Any Cost Estimate, Performance Bond or Other Security	☒
11.	21(t)	**CAUSE OR ALLOW A LATERAL EXPANSION OF A MUNICIPAL SOLID WASTE LANDFILL (MSWLF) UNIT WITHOUT A PERMIT MODIFICATION**	☐
12.	21.6(b)	**ACCEPTANCE OF LIQUID USED OIL FOR FINAL DISPOSAL (EFFECTIVE JULY 1, 1996)**	☐
13.	22.01	**FAILURE TO SUBMIT ANNUAL NONHAZARDOUS SPECIAL WASTE**	☐
14.	22.17	**LANDFILL POST-CLOSURE CARE**	
	(a)	Failure to Monitor Gas, Water, Settling	☐
	(b)	Failure to Take Remedial Action	☐
15.	22.22(c)	**ACCEPTANCE OF LANDSCAPE WASTE FOR FINAL DISPOSAL**	☐
16.	22.23(f)(2)	**CAUSE OR ALLOW THE DISPOSAL OF ANY LEAD-ACID BATTERY**	☐
17.	22.28(b)	**ACCEPTANCE OF WHITE GOODS FOR FINAL DISPOSAL**	☐
18.	55(b)(1)	**ACCEPTANCE OF ANY USED OR WASTE TIRE FOR FINAL DISPOSAL (UNLESS LANDFILL MEETS EXEMPTION OF 55(b)(1))**	☐
19.	56.1(a)	**CAUSE OR ALLOW THE DISPOSAL OF ANY POTENTIALLY INFECTIOUS MEDICAL WASTE**	☐
		SOLID WASTE SITE OPERATOR CERTIFICATION LAW REQUIREMENTS	
20.	225 ILCS 230/1004	**CAUSING OF ALLOWING OPERATION OF A LANDFILL WITHOUT PROPER COMPETENCY CERTIFICATE**	☒
		35 ILLINOIS ADMINISTRATIVE CODE REQUIREMENTS SUBTITLE G	
		PRIOR CONDUCT CERTIFICATION REQUIREMENTS	
21.	745.181	**CHIEF OPERATOR REQUIREMENTS**	☒
22.	745.201	**PRIOR CONDUCT CERTIFICATION PROHIBITIONS**	☒
		SPECIAL WASTE HAULING REQUIREMENTS	
23.	809.301	**REQUIREMENTS FOR DELIVERY OF SPECIAL WASTE TO HAULERS**	☐

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24.	809.302(a)	REQUIREMENTS FOR ACCEPTANCE OF SPECIAL WASTE FROM HAULERS	☐
25.	809.501	MANIFESTS, RECORDS, ACCESS TO RECORDS, REPORTING REQUIREMENTS AND FORMS	
	(a)	Delivery of Special Waste to Hauler	☐
	(e)	Retention of Special Waste Manifests	☐
		NEW SOLID WASTE LANDFILL REQUIREMENTS	
	PART 811 SUBPART	**GENERAL STANDARDS FOR ALL LANDFILLS**	
26.	811.103	SURFACE WATER DRAINAGE	
	(a)	Runoff from Disturbed Areas	☐
	(b)	Diversion of Runoff from Undisturbed Areas	☐
27.	811.104	SURVEY CONTROL	
	(a)	Boundaries Surveyed and Marked	☐
	(b)	Stakes and Monuments Marked	☐
	(c)	Stakes and Monuments Inspected	☐
	(d)	Control Monument Established and Maintained	☐
28.	811.105	COMPACTION	☐
29.	811.106	DAILY COVER	
	(a)	Six Inches Soil	☐
	(b)	Alternative Daily Cover	☐
30.	811.107	OPERATING STANDARDS	
	(a)	Phasing of Operations	☐
	(b)	Work Face Size and Slope	☐
	(c)	Equipment	☐
	(d)	Utilities	☐
	(e)	Maintenance	☐
	(f)	Open Burning	☐
	(g)	Dust Control	☐
	(h)	Noise Control	☐
	(i)	Vector Control	☐
	(j)	Fire Protection	☐
	(k)	Litter Control	☐
	(l)	Mud Tracking	☐
	(m)	Liquid Restrictions for MSWLF Units	☐
31.	811.108	SALVAGING	
	(a)	Salvaging Interferes with Operation	☐
	(b)	Safe and Sanitary Manner	☐
	(c)	Management of Salvagable Materials	☐
32.	811.109	BOUNDARY CONTROL	
	(a)	Access Restricted	☐
	(b)	Proper Sign Posted	☐

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33.	**811.110**	**CLOSURE AND WRITTEN CLOSURE PLAN**	
	(a)	Final Slopes and Contours	☐
	(b)	Drainage Ways and Swales	☐
	(c)	Final Configuration	☐
	(d)	Written Closure Plan	☒
	(e)	Initiation of Closure Activities at MSWLF Units	☒
	(f)	Completion of Closure Activities at MSWLF Units	☒
	(g)	Deed Notation for MSWLF Units	☐
34.	**811.111**	**POST-CLOSURE MAINTENANCE**	
	(a)	Procedures After Receipt of Final Volume of Waste	☐
	(b)	Remove All Equipment of Structures	☐
	(c)	Maintenance and Inspection of the Final Cover and Vegetation	☐
	(d)	Planned Uses of Property at MSWLF Units	☐
35.	**811.112**	**RECORDKEEPING REQUIREMENTS FOR MSWLF UNITS**	
	(a)	Location Restriction Demonstration	☐
	(b)	Load Checking Requirements	☐
	(c)	Gas Monitoring Records	☒
	(d)	MSWLF Liquid Restriction Records	☒
	(e)	Groundwater Monitoring Program Requirements	☒
	(f)	Closure and Post Closure Care Requirements	☒
	(g)	Cost Estimates and Financial Assurance Requirements	☒
	PART 811 SUBPART C	**PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS**	
36.	**811.302**	**FACILITY LOCATION**	
	(c)	Site Screening (Does Not Apply To Part 814-Subpart D Sites)	☐
37.	**811.309**	**LEACHATE TREATMENT AND DISPOSAL SYSTEM**	
	(a)	General Requirements	☐
	(c)	Standards for On-Site Treatment and Pretreatment	☐
	(d)	Standards for Leachate Storage System	☐
	(e)	Standards for Discharge to Off-Site Treatment	☐
	(f)	Standards for Leachate Recycling Systems	☐
	(g)	Standards for Leachate Monitoring Systems	☐
38.	**811.310**	**LANDFILL GAS MONITORING (FOR SITES ACCEPTING PUTRESCIBLE WASTE)**	
	(b)	Location and Design of Gas Monitoring Wells	☐
	(c)	Monitoring Frequency for Landfill Gas	☒
	(d)	Monitoring Parameters	☐
39.	**811.311**	**LANDFILL GAS MANAGEMENT SYSTEM (FOR CHEMICAL AND PUTRESCIBLE LANDFILLS)**	
	(a)	Conditions for Installation of Gas Management System	☐
	(b)	Notification and Implementation Requirements	☐
	(c)	Standards for Gas Venting	☐
	(d)	Standards for Gas Collection	☐

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40.	811.312	**LANDFILL GAS PROCESS AND DISPOSAL SYSTEM**	
	(c)	No Unpermitted Gas Discharge	☐
	(d)	Gas Flow Rate Measurements into Treatment of Combustion Device	☐
	(e)	Standards for Gas Flares	☐
	(f)	Standards for On-Site Combustion of Landfill Gas Using Devices Other Than Flares	☐
	(g)	Gas Transported Off-Site	☐
41.	811.313	**INTERMEDIATE COVER**	
	(a)	Requirements for the Application for Intermediate Cover	☐
	(b)	Runoff and Infiltration Control	☐
	(c)	Maintenance of Intermediate Cover	☐
42.	811.314	**FINAL COVER SYSTEM (DOES NOT APPLY TO PART 814 SITES THAT HAVE CLOSED, COVERED AND VEGETATED PRIOR TO SEPTEMBER 18, 1990)**	
	(a)	General Requirements	☐
	(b)	Standards for Low Permeability Layer	☐
	(c)	Standards for Final Protective Layer	☐
43.	811.316	**PLUGGING AND SEALING OF DRILL HOLES**	☐
44.	811.321	**WASTE PLACEMENT**	
	(a)	Phasing of Operations	☐
	(b)	Initial Waste Placement	☐
45.	811.322	**FINAL SLOPE AND STABILIZATION**	
	(a)	Grade Capable of Supporting Vegetation and Minimizing Erosion	☐
	(b)	Slopes Required to Drain	☐
	(c)	Vegetation	☐
	(d)	Structures Built over the Unit	☐
46.	811.323	**LOAD CHECKING PROGRAM**	
	(a)	Load Checking Program Implemented	☐
	(b)	Load Checking Program for PCB's at MSWLF Units	☐
	(c)	Load Checking Program Components	☐
	(d)	Handling Regulated Hazardous Wastes	☐
	PART 811 SUBPART D	**MANAGEMENT OF SPECIAL WASTES AT LANDFILLS**	
47.	811.402	**NOTICE TO GENERATORS AND TRANSPORTERS**	☐
48.	811.403	**SPECIAL WASTE MANIFESTS REQUIREMENTS**	☐
49.	811.404	**IDENTIFICATION RECORD**	
	(a)	Special Waste Profile Identification Sheet	☐
	(b)	Special Waste Recertification	☐
50.	811.405	**RECORDKEEPING REQUIREMENTS**	☐
51.	811.406	**PROCEDURES FOR EXCLUDING REGULATED HAZARDOUS WASTES**	☐

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	PART 811 SUBPART G	FINANCIAL ASSURANCE	
52.	811.700	COMPLY WITH FINANCIAL ASSURANCE REQUIREMENTS OF PART 811, SUBPART G	☐ NE
53.	811.701	UPGRADING FINANCIAL ASSURANCE	☐ PMT 10/23/13
54.	811.704	CLOSURE AND POST-CLOSURE CARE COST ESTIMATES	☐
55.	811.705	REVISION OF COST ESTIMATE	☐
		SOLID WASTE FEE SYSTEM REQUIREMENTS	
56.	Part 858 Subpart B	MAINTAINED, RETAINED & SUBMITTED DAILY & MONTHLY SOLID WASTE RECORDS AND QUARTERLY SOLID WASTE SUMMARIES WHERE INCOMING WASTE IS WEIGHED (LIST SPECIFIC SECTION	☐
57.	Part 858 Subpart C	MAINTAINED, RETAINED & SUBMITTED DAILY & MONTHLY SOLID WASTE RECORDS AND QUARTERLY SOLID WASTE SUMMARIES WHERE INCOMING WASTE IS NOT WEIGHED (LIST SPECIFIC	☐
		OTHER REQUIREMENTS	
58.	OTHER:	APPARENT VIOLATION OF: (☐) PCB; (☐) CIRCUIT COURT CASE NUMBER: ORDER ENTERED ON:	☐
59.			☐
			☐
			☐
			☐
			☐

Mark Retzlaff
Signature of Inspector(s)

Informational Notes

1. [Illinois] Environmental Protection Act: 415 ILCS 5/4.
2. Illinois Pollution Control Board: 35 Ill. Adm. Code, Subtitle G.
3. Statutory and regulatory references herein are provided for convenience only and should not be construed as legal conclusions of the Agency or as limiting the Agency's statutory or regulatory powers. Requirements of some statutes and regulations cited are in summary format. Full text of requirements can be found in references listed in 1. and 2. above.
4. The provisions of subsection (o) of Section 21 of the [Illinois] Environmental Protection Act shall be enforceable either by administrative citation under Section 31.1 of the Act or by complaint under Section 31 of the Act.
5. This inspection was conducted in accordance with Sections 4(c) and 4(d) of the [Illinois] Environmental Protection Act: 415 ILCS 5/4(c) and (d).
6. Items marked with an "NE" were not evaluated at the time of this inspection.

0630600001 – Grundy
Morris/Community Landfill
May 23, 2013
Mark Retzlaff

NARRATIVE

On May 23, 2013, I conducted a routine landfill inspection at Community Landfill Parcels A and B. I briefly met with Caleb Moore, Laborer with the Department of Public Works for the City of Morris. Moore was observed pumping leachate from a sump along the southeast corner of Parcel A. Moore stated in summary, that the City of Morris still pumps leachate, however, no longer mows or maintains the Landfill. Moore further added that the City no longer cleans out or maintains the drainage ditches nor repairs erosion cuts and areas lacking vegetation. The temperature was approximately 50 degrees Fahrenheit and soil conditions were wet.

Parcel A, clearly lacks routine or any ongoing maintenance, access roads are not maintained nor are drainage ditches. Erosion cuts were observed along the east slope, and various locations at the central to south end on top lacked vegetation. The top portion does not appear to be properly graded with spoil piles of soil observed in various locations.

At Parcel B, the gas flare was not working at the time of the inspection. It was evident that the access roads are not maintained and drainage ditches are neglected. The leachate manholes located at the southwest corner of Parcel B and northeast portion of Parcel B were full, not covered with the potential to overflow onto the ground. Based on an Agency document review, the last groundwater sampling event occurred in October of 2011, with those results received by the Agency in November of 2011.

At the southern and western portion, mature trees have established themselves on the cap. Erosion cuts were observed along the eastern, western and southern slopes. Erosion cuts observed were approximately 35 feet by 3 feet wide by 18 inches deep, 30 by 3 by 18 inches deep on average. Along the north-slope, areas lacked vegetation roughly 35 feet by 20 feet in size and 20 by 15 feet in size. The top of Parcel B is not properly graded with piles of concrete blocks observed from previous site inspections.

Documents required to be maintained and available on site were not available and or accessible at the time of the inspection. This includes a Written Closure Plan, Financial Assurance Documentation, Closure Cost Estimates and Leachate and Gas Management Records to name a few. No landfill site personnel were on site at the time of the inspection. Per Moore, the buildings are now used by the City of Morris Department of Public Works. Moore further added that landfill site personnel left approximately two years ago when they were no longer paid to perform their work related duties.

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Apparent Violations Observed or Cited from May 23, 2013, Site Inspection:

Section 21(a) of the Act: Cause or Allow Open Dumping. Acceptance of Wastes without Necessary Permits. Based on an Agency file review from a June 16, 2010 inspection report, and the fact that Landfill Parcels A & B are developed and accepted waste.

Section 21(d)(1) of the Act: Conduct any Waste-Storage, Waste-Treatment or Waste-Disposal Operation: Without a Permit or in Violation of any Conditions of a Permit. Facility does not have a valid Permit in place for the Landfill.

Section 21(d)(2) of the Act: Conduct any Waste-Storage, Waste-Treatment or Waste-Disposal Operation: In Violation of Any Regulations or Standards Adopted by the Board. Facility does not have a written closure plan and related supporting documents.

Section 21(o)(6) of the Act: Conduct a Sanitary Landfill Operation Which Results in any of the Following Conditions: Failure to Provide Final Cover Within Time Limits.

Section 21(o)(7) of the Act: Conduct a Sanitary Landfill Operation Which Results in any of the Following Conditions: Acceptance of Wastes without Necessary Permits. Based on an Agency file review from a June 16, 2010 inspection report, and that fact that Landfill Parcels A & B are developed and accepted waste.

Section 21(o)(11) of the Act: Conduct a Sanitary Landfill Operation Which Results in any of the Following Conditions: Failure to Submit Reports Required by Permits or Board Regulations: Agency has not received required reports.

Section 21(o)(13) of the Act: Conduct a Sanitary Landfill Operation Which Results in any of the Following Conditions: Failure to Submit Any Cost Estimate, Performance Bond or Other Security. Agency has not received current closure cost estimates or evidence of a performance bond.

225 ILCS 230/1004: Solid Waste Site Operator Certification Law Requirements: Causing or Allowing the Operation of a Landfill without a Proper Competency Certificate. Beginning January 1, 1992, no person shall cause or allow the operation of a landfill permitted or required to be permitted by the Agency unless the landfill has on its operational staff at least one natural person certified as competent by the Agency under the provisions of this Act.
(a) For landfill sites which accept non-hazardous solid waste other than clean construction or demolition debris, the landfill shall have a Class A Solid Waste Site Operator certified by the

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May 23, 2013
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Agency who is responsible for directing landfill operations or supervising other operational staff in performing landfill operations. Landfill does not have a certified operator.

Section 745.181 of the Regulations: Chief Operator Requirements. Facility does not have a Chief Operator.

Section 745.201 of the Regulations: Prior Conduct Certification Prohibitions. No Chief Operator, No Prior Conduct Certification can be performed.

Section 811.110(d) of the Regulations: Closure and Written Closure Plan. Written Closure Plan was not available at the time of the inspection.

Section 811.110(e) of the Regulations: Closure and Written Closure Plan, Initiation of Closure Activities at MSWLF Units. Acceptance of final volume of waste occurred. Closure Activities were not initiated after receipt of the final volume of waste.

Section 811.110(f) of the Regulations: Closure and Written Closure Plan, Completion of Closure Activities at MSWLF. Facility failed to complete closure within 180 days of beginning closure.

Section 811.112(c) of the Regulations: Record Keeping Requirements for MSWLF Units: Gas Monitoring Records. Records were not available at the time of the inspection.

Section 811.112(d) of the Regulations: Record Keeping Requirements for MSWLF Units: MSWLF Liquid Restriction Records. Leachate related documents were not available at the time of the inspection.

Section 811.112(e) of the Regulations: Record Keeping Requirements for MSWLF Units: Groundwater Monitoring Program Requirements. Last documented sampling event occurred in October 2011. Current groundwater monitoring records were not available at the time of the inspection.

Section 811.112(f) of the Regulations: Record Keeping Requirements for MSWLF Units: Closure and Post Closure Care Requirements. Closure related documents were not available at the time of the inspection.

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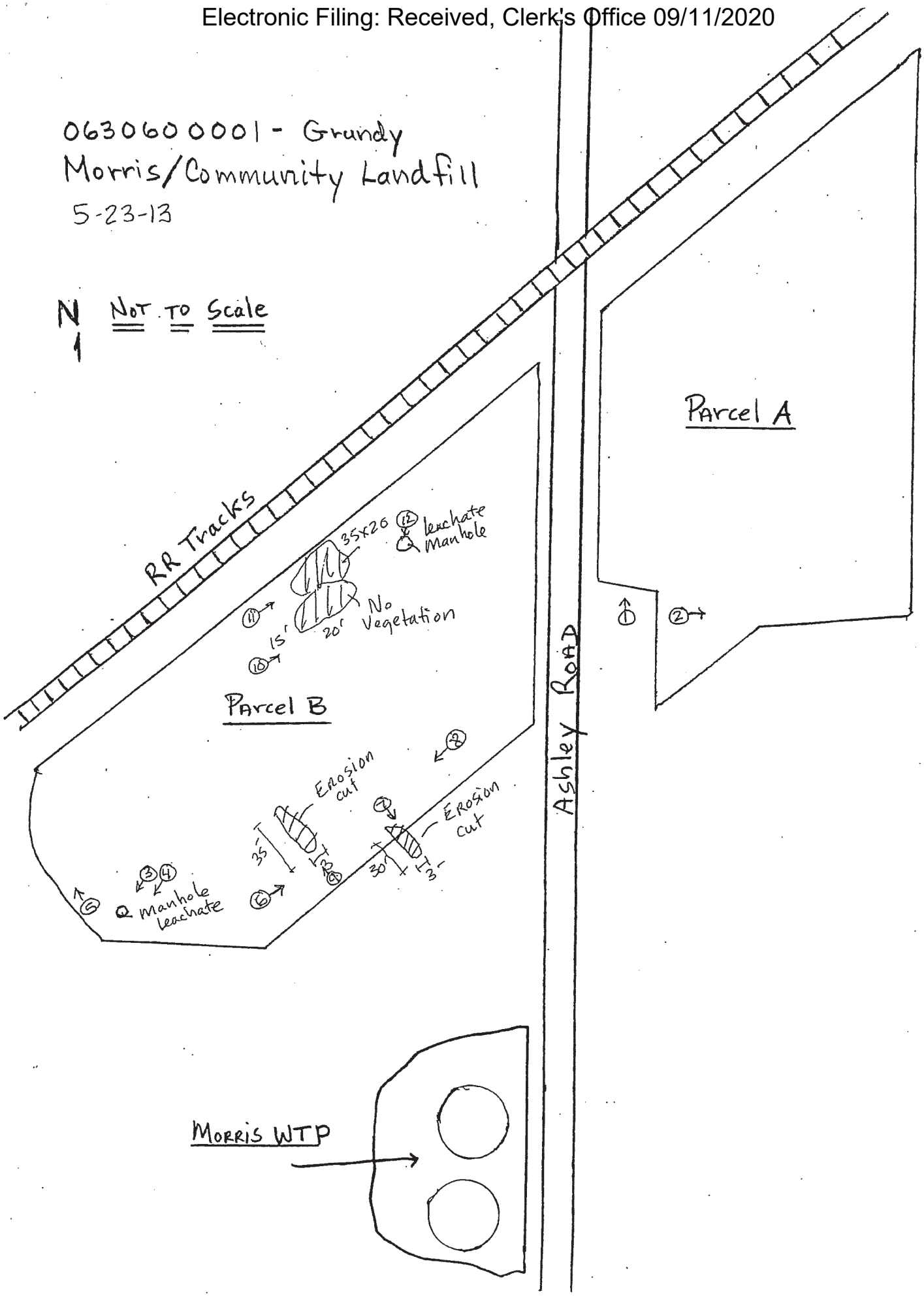
Section 811.112(g) of the Regulations: Record Keeping Requirements for MSWLF Units: Cost Estimates and Financial Assurance Requirements: Closure cost estimates and financial assurance documents were not available at the time of the inspection.

Section 811.310(c) of the Regulations: Landfill Gas Monitoring, monitoring frequency for landfill gas. Documentation was not available at the time of the inspection to show landfill gas monitoring frequency.



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Division of Land Pollution Control

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FOS File

DIGITAL PHOTOGRAPHS

File Names: 0630600001~05232013-[Exp. #].jpg

Date: 05/23/13
Time: 10:30 12:15 pm
Direction: North
Photo by: M. Retzlaff
Exposure #: 1
Comments: Parcel A, North at SW portion of site.

Date: 05/23/13
Time: 10:30 12:15 pm
Direction: East
Photo by: M. Retzlaff
Exposure #: 2
Comments: Parcel A, east at south slope or portion of site.

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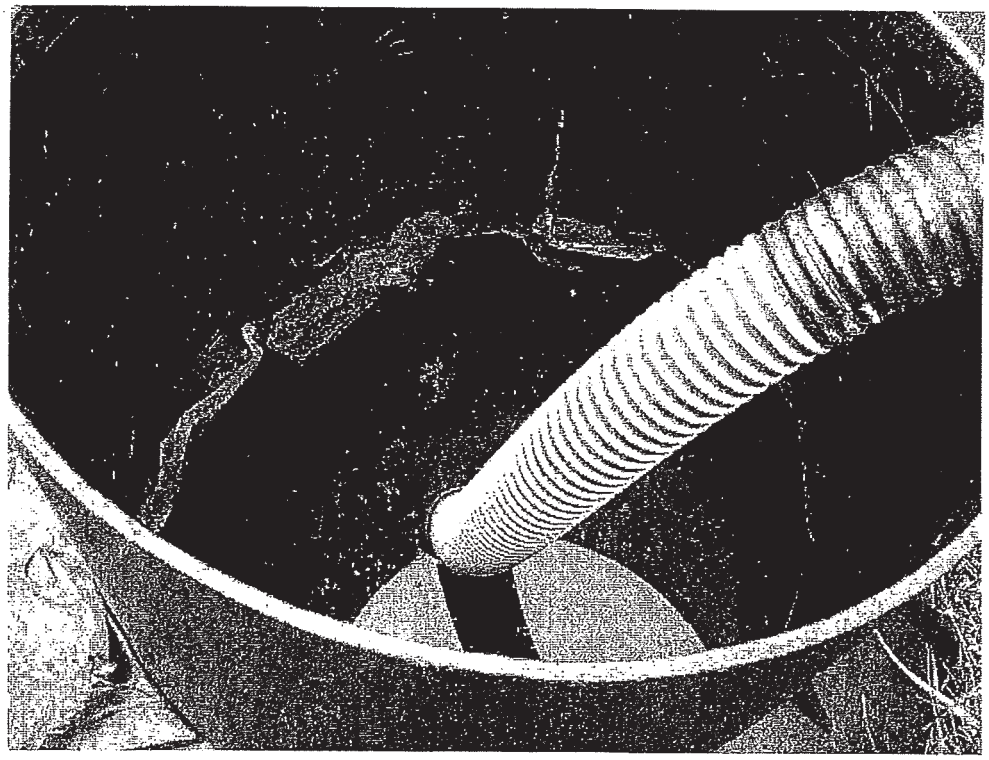
DIGITAL PHOTOGRAPHS

File Names: 0630600001 ~05232013-[Exp. #].jpg

Date: 05/23/13
Time: 10:30 12:15 pm
Direction: SW
Photo by: M. Retzlaff
Exposure #: 3
Comments: Parcel B, SW corner leachate manhole, leachate levels high. Manhole not covered.



Date: 05/23/13
Time: 10:30 12:15 pm
Direction: SW
Photo by: M. Retzlaff
Exposure #: 4
Comments: Parcel B, close up of leachate levels in manhole. Unit is not covered.

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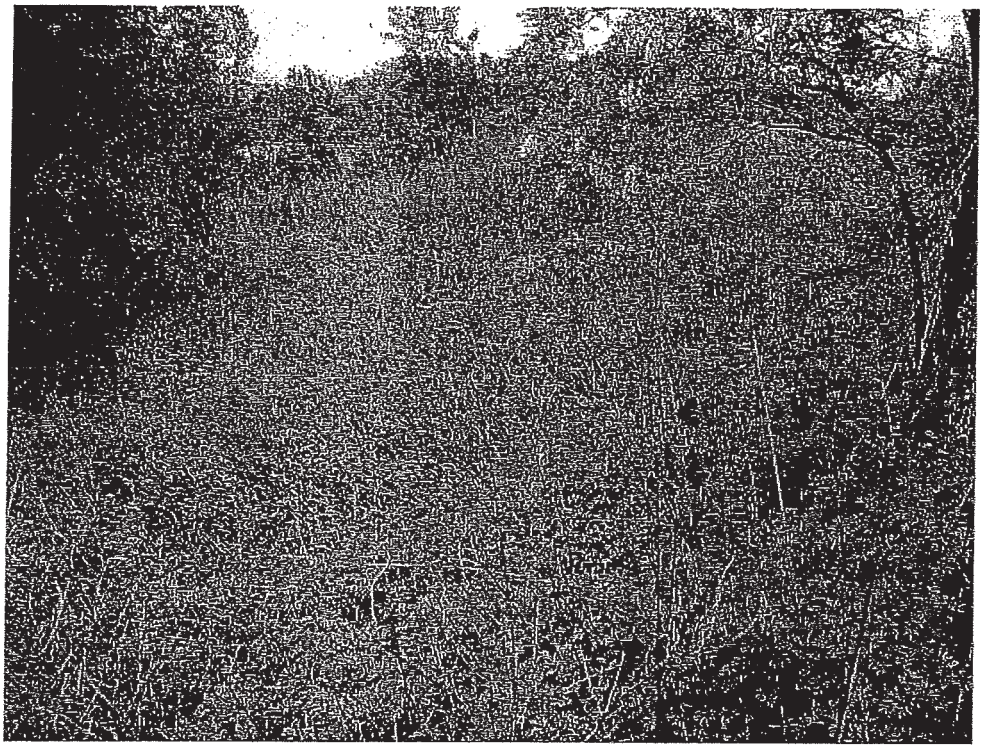
DIGITAL PHOTOGRAPHS

File Names: 0630600001~05232013-[Exp. #].jpg



Date: 05/23/13
Time: 10:30 12:15 pm
Direction: North
Photo by: M. Retzlaff
Exposure #: 5
Comments: Parcel B, north at western slope. Trees growing through vegetative cap.

Date: 05/23/13
Time: 10:30 12:15 pm
Direction: NE
Photo by: M. Retzlaff
Exposure #: 6
Comments: Parcel B, looking NE along southern slope. Mature trees established on protective cover or cap.

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File Names: 0630600001~05232013-[Exp. #].jpg

Date: 05/23/13
Time: 10:30 12:15 pm
Direction: South
Photo by: M. Retzlaff
Exposure #: 7
Comments: Parcel B, erosion cut observed along southern slope. About 30 feet long by 3 feet wide by 18 inches deep.

Date: 05/23/13
Time: 10:30 12:15 pm
Direction: SW
Photo by: M. Retzlaff
Exposure #: 8
Comments: Parcel B, looking SW along southern slope. Mature trees established on protective cover or cap.

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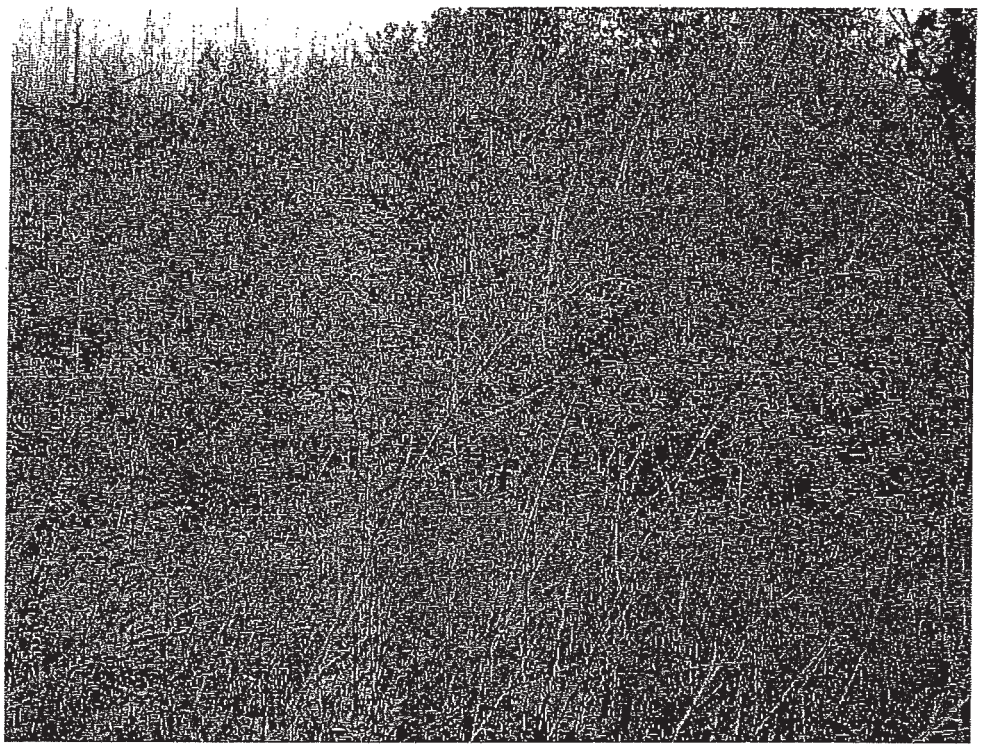
File Names: 0630600001 ~05232013-[Exp. #].jpg



Date: 05/23/13
Time: 10:30 12:15 pm
Direction: NW
Photo by: M. Retzlaff
Exposure #: 9
Comments: Parcel B, Erosion cut observed along south slope. About 35 feet long by 3 feet wide by 18 inches deep.

Date: 05/23/13
Time: 10:30 12:15 pm
Direction: NE
Photo by: M. Retzlaff
Exposure #: 10
Comments: Parcel B, north slope, area lacks vegetation about 20 feet by 15 feet in size.

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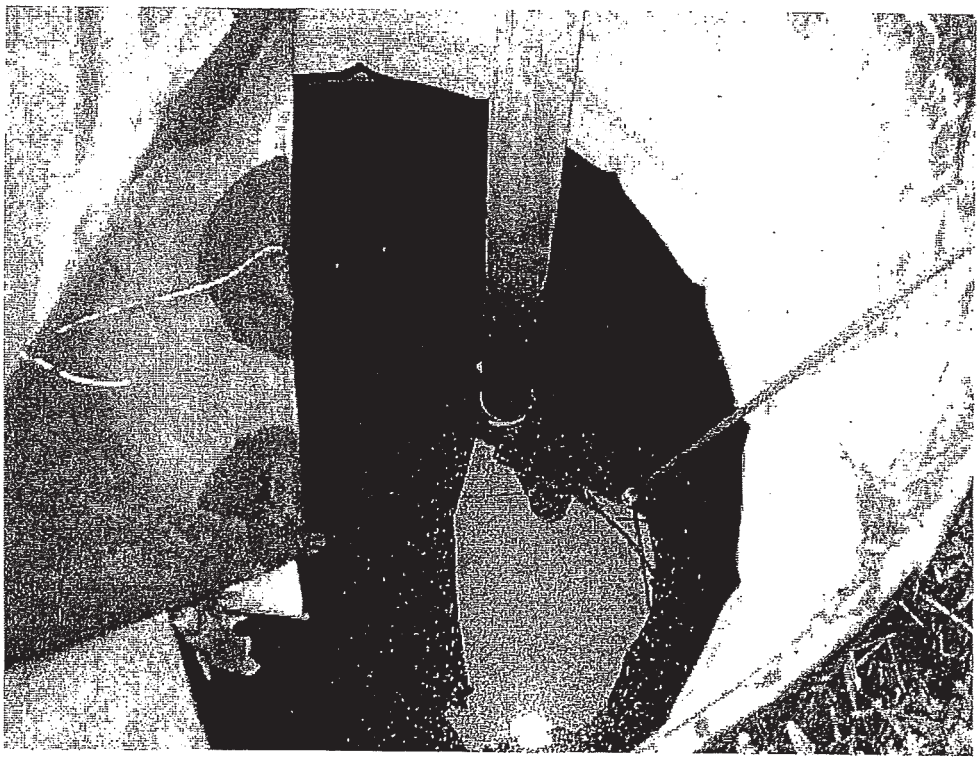
File Names: 0630600001 ~05232013-[Exp. #].jpg

Date: 05/23/13
Time: 10:30 12:15 pm
Direction: NE
Photo by: M. Retzlaff
Exposure #: 11
Comments: Parcel B, north slope, area lacks vegetation, about 35 feet by 20 feet in size.



Date: 05/23/13
Time: 10:30 12:15 pm
Direction: SW
Photo by: M. Retzlaff
Exposure #: 12
Comments: Parcel B, along north slope. Leachate manhole full and not covered.

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
GRUNDY COUNTY, ILLINOIS

CITY OF MORRIS, an Illinois Municipal Corporation, Plaintiff, v. PEOPLE OF THE STATE OF ILLINOIS and ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Defendants.	Case No. 2020 CH 31

CITY OF MORRIS' FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AGAINST STATE OF ILLINOIS AND THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

NOW COMES Plaintiff, CITY OF MORRIS (hereinafter referred to as "City"), an Illinois municipal corporation, by and through its attorneys, Hinshaw & Culbertson, LLP, and for its First Amended Complaint for Declaratory Judgment against Defendants, People of the State of Illinois (hereinafter referred to as "State"), and the Illinois Environmental Protection Agency (hereinafter referred to as "Agency") hereby states as follows:

1. ALLEGATIONS RELEVANT TO AND INCORPORATED INTO ALL COUNTS:

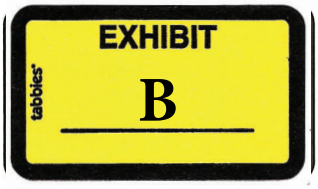
A. Background

1. The City is an Illinois Municipal Corporation in Grundy County and State of Illinois.

2. The City is the owner of land located at 1501 Ashley Road, Morris, Grundy County, Illinois on top of which the Community Landfill (hereinafter "Landfill") is situated.

3. Community Landfill Company (hereinafter "CLC") is an Illinois corporation transacting business in the State of Illinois.

4. In 1982, a lease was entered into between the City and CLC wherein the City leased land to CLC "for the sole purpose of operating a regional pollution control facility in accordance



with and pursuant to all laws rules and regulations promulgated and adopted by all agencies of the federal, state, and county governments, including the Illinois Environmental Protection Agency." (See 1982 Community Landfill Company Lease, pgs. 1-2; attached hereto as Exhibit A).

5. In 1982, the Agency approved CLC's application to transfer the operating permits for the Landfill from the City to CLC. (See 1982 Operating Permit Transfer, attached hereto as Exhibit B).

6. On June 10, 2010 the Agency conducted an inspection of the Landfill and on October 30, 2013 the State through the Agency issued the Violation Notice Number M-2013-0106 (hereinafter 'Violation Notice") attached hereto as Exhibit C, containing thirty counts of alleged violations by the City of the Illinois Environmental Protection Act and the regulations thereunder, which are the subject of this complaint, including the allegation that the City is responsible for the closure and post-closure care of the Landfill.

7. In correspondence dated December 16, 2013 and February 10, 2014, attached hereto as Exhibit D, and at numerous meetings, conversations, as well as IPCB status hearings on the Violation Notice, the City denied each and every alleged violation.

8. On March 24, 2014 the State issued a Notice of Intent to Pursue Legal Action attached hereto as Exhibit E based upon the alleged violations contained in the Violation Notice.

9. The State has for several years repeatedly threatened to file a suit against the City based upon the alleged violations, including its claim that the City is responsible for the Closure and Post-Closure care of the Landfill.

B. PCB Case. No. 03-191 and Third District Appeal Determine City is Not Responsible for Closure or Operation of the Landfill.

10. In 2003 the State brought an action in the form of Pollution Control Board Case No. 03-191, alleging that the City and CLC were both conducting a waste disposal operation and

thus both had a duty to provide financial assurances to pay for closure and post-closure care of the waste disposal operation.

11. In 2005, the State moved for summary judgment on the issue of liability in PCB No. 03-191 wherein it alleged that "CLC admit[ted] that it was the operator, and that it manage[d] day-to-day operations at the Landfill" and "City of Morris' active involvement in permitting for solid waste disposal, bonding [i.e., the Frontier bond] the landfill, and collecting royalties for waste dumping shows that it was, along with CLC, 'conducting a waste disposal operation'". The PCB granted summary judgment in favor of the State and ordered the City and CLC to provide within 60 days financial assurances for the closure and post-closure of the Landfill in the amount of $17,427,3666.80, and further ordered CLC to pay a penalty in the amount of $1,059,534.70, and the City to pay a penalty in the amount of $399,308.98. *People v. Community Landfill Co. & City of Morris,* No. PCB No. 03-191 (Feb. 16, 2006).

12. In 2009, the City appealed the PCB decision before the Third District Appellate Court and on August 5, 2011, the Third District completely reversed the PCB's judgment against the City, and held that the City of Morris was not the owner nor operator of the landfill (and rather merely owned the land beneath the landfill), was not conducting a waste disposal operation and had no responsibility to pay for closure/post-closure care of the Facility, and accordingly reversed all penalties against the City. *City of Morris v. Community Landfill Company*, 2011 Ill. App. 3d 090847 (3d Dist. 2011). (Opinion attached hereto as Exhibit F). Ultimately the Third District Appellate Court found "that the City (1) did not violate the Act or its regulations, ***(2) is not responsible for obtaining financial assurance for the landfill***, and (3) is not liable for any civil penalty." (Emphasis added). The Third District Appellate Court affirmed the judgment requiring CLC to post $17.4 million in financial assurances and pay a $1.059 million penalty.

C. State Asserts that City and CLC are Both Required to Close the Landfill in this Case 06-CH-184, but Voluntarily Dismisses its Claims on July 8, 2013 and does not refile within one year.

13. On or about December 8, 2006, the State filed a lawsuit in this 13th Judicial Circuit Court of Grundy County against the City and CLC asserting that both the City and CLC were responsible for the operation of the Landfill's gas collection system and compliance with air quality statutes of the Illinois Environmental Protection Act and the regulations thereunder. (Case No. 06-CH-184).

14. On or about December 15, 2006, in 06-CH-184, the State brought a Motion for an Emergency Preliminary Injunction against the City and CLC alleging an eminent threat to the environment related to the claims raised in the Complaint. During the preliminary injunction hearing, it became obvious that the State's motion was meritless and the State subsequently withdrew its motion.

15. In November 2008 the City filed a counterclaim against Third-Party Defendants CLC, Robert Pruim, and Ed Pruim, alleging, *inter alia,* breach of contract, indemnification and common law fraud for failing to close the landfill. (Case No. 06-CH-184A, file stamped copy dated February 8, 2016).

16. In June 2010, the City of Morris filed a motion to enjoin CLC from accepting waste at the Landfill. A temporary restraining order was issued on June 25, 2010 by this Court and an injunction was later issued on September 21, 2010, enjoining CLC from accepting any further waste. The order granting the injunction explicitly provided that "Nothing herein is intended to, nor shall it be construed as a waiver of any claim or cross-claim of the City of Morris... and nothing herein shifts any responsibility of Community Landfill Company under the Lease entered on July 1, 1982 as amended thereafter to the City of Morris." (See 9/21/2010 Order attached hereto as Exhibit G). Only after the motion was granted did the State join in such motion against CLC.

17. On July 8, 2013, the State voluntarily dismissed all allegations against the City of Morris in case No. 06-CH-184. 06-CH-184 continued as to the counterclaims of the City against CLC.

18. In its motion for voluntary dismissal on 06-CH-184 the State informed the court that one reason it was dismissing the case was because the State "has learned that the Illinois Environmental Protection Agency has recently inspected the Landfill, and that Illinois EPA observed potential violations related to the failure to close the Landfill. Based on the Illinois EPA inspection report, one or both of the Defendants in this case [i.e. CLC and the City] may be issued violation notices related to these potential closure violations." The State further explained the pursuant to Section 31 of the Act, prospective Defendants have a right to meet with the Agency and confer, and the State believed that "complete resolution in this case [06 CH 184] will require full closure of the Landfill" and the State threatened that '[t]hese [alleged] violations, and any additional violations observed by the Illinois EPA [in its recent inspection] may be the subject of a future enforcement proceeding." See State's Motion for Voluntary Dismissal of 06-CH-184, attached hereto as Exhibit H.

19. On September 12, 2019, the City filed a Motion for Summary Judgment against all Third Party Defendants: Robert Pruim, Ed Pruim, and CLC on the grounds that CLC was required to close the landfill and failed to do so.

20. On or about February 10, 2020, the Court granted summary judgment on all counts in favor of the City and against CLC and awarded damages to the City in the amount of $21,922,368.92.

D. State Files PCB Action 11-050 against the City and CLC Alleging Violations Related to Groundwater at the Landfill and Thereafter Repeatedly Threatens to Bring a Complaint Asserting City is Required to Close the Landfill.

21. Despite the Third District opinion finding the City was not the owner nor operator of the Landfill and was not conducting a waste disposal facility, the State filed another action

before the PCB on February 18, 2011 against both CLC and the City, again asserting violations of the Illinois Environmental Protection Act and its regulations, but this time asserting claims related to groundwater. (PCB No. 11-050).

22. In that case the State has repeatedly threatened the City of Morris, and informed the PCB hearing officer that the State intends to file a new cause of action against the City arising out of an inspection of the Landfill in 2010 as well as the Violation Notice issued on October 30, 2013 seeking to compel the City to bear the cost of maintaining and closing the Landfill.

23. On or about September 13, 2012, the State asserted at a status conference that it was having internal discussions regarding consolidating the 2011 PCB action with other alleged violations and moving the matter to Circuit Court. These assertions continued at subsequent status conferences on November 15, 2012, January 10, 2013, April 11, 2013, May 22, 2013, and June 27, 2013 without any action.

24. During the December 17, 2019 status conference in PCB 11-050, the State indicated that it was awaiting for approval of a complaint to be filed in the Circuit Court, with the intention of subsequently dismissing the 2011 PCB action. At a status conference on April 1, 2020 the State then once again threatened to bring a new cause of action against the City stemming from the same asserted violations of October 30, 2013. On July 30, 2020 the State, sent an email to the attorneys for the City stating that it intended to file a claim with the PCB against the City, presumably related to the allegations raised in the October 30, 2013 Notice of Violation. On August 28, 2020 the State filed a Motion for Leave to Amend its Complaint in PCB 11-050 to add such allegations.

E. The October 30, 2013 Notice of Violation Letter and July 18, 2019 Agency Correspondence.

25. The October 30, 2013 Violation Notice contained nineteen (19) alleged violations of the Act and regulations in Attachment A related to Parcel A of the Landfill and eleven (11) allegations of violations in Attachment B related to Parcel B of the Landfill, for a total of thirty

(30) allegations against the City; which included allegations that the City is required to pay for the maintenance, closure and post-closure care of the Landfill. (Exhibit C).

26. The October 30, 2013 Violation Notice purports to be based upon an inspection by the Agency three years earlier on June 10, 2010.

27. At no time did the State issue a Violation Notice to CLC concerning the June 10, 2010 inspection, nor the alleged violations referenced in the October 30, 2013 Violation Notice.

28. The State has asserted that it issued the Violation Notice against the City rather than CLC because it believed the City could pay for closure by assessing a tax or levy against its citizens, but provided no legal authority for such a proposition.

29. The allegations that the City is responsible for the operation and closure of the Landfill contained in the Violation Notice were made despite the controlling ruling made in this regard in *City of Morris v. Community Landfill Company*, 2011 Ill. App. 3d 090847 (3d Dist. 2011).

30. On or about December 16, 2013, the City submitted its Response to Notice of Violation Letter. (Attached hereto as Exhibit D). The City responded to each alleged regulatory or statutory violation detailing reasons that the alleged violations by the City did not occur.

31. On or about February 10, 2014, the City submitted a 21-day Letter following a January 28, 2014, meeting with additional responses to the alleged violations contained in the October 30, 2013 Violation Notice. (Exhibit D).

32. On July 5, 2019 the Agency visited the Landfill and on July 18, 2019 Donna Czech of the Agency sent a correspondence to the City which provided a "Summary of Apparent Violations" which reiterated each of the thirty violations alleged in the October 30, 2013 Violation Notice and did not allege any different violations. (See July 18, 2019 correspondence from Donna Czech, attached hereto as Exhibit I).

33. No new violation notice has ever been issued by the Agency after its July 5, 2019 Landfill site visit.

F. Statute of Limitations.

34. In the October 30, 2013 Violation Notice, the Agency asserts the alleged violations were premised upon an inspection 3 years earlier on June 16, 2010 by the IEPA of the Landfill. (Exhibit C).

35. The Illinois Environmental Protection Act provides in pertinent part, that "***within 180 days*** after becoming aware of an alleged violation of the Act, ... ***the Agency shall issue*** and serve...a written ***notice...of the alleged violation***." 415 ILCS 5/31(a) (1). (Emphasis added).

36. The Illinois Code of Civil Procedure establishes a five-year statute of limitations for "all civil actions not otherwise provided for." 735 5/13-205. The PCB's procedural rules specifically provide "the Board may look to the Code of Civil Procedure ... where the Board's procedural rules are silent." 35 Ill. Adm. Code 101.100(b). Accordingly, the PCB has held that the five-year statute of limitations is applicable to most enforcement cases. *Union Oil Company of California v. Barge-Way Oil Company, Inc.,* PCB 98-169 (January 7, 1999)(accepting that the five-year statute of limitations could be applied to an enforcement action). Therefore, subject to first complying with the threshold requirements of Section 31(a)(1) above, an enforcement action for violation of the Act must generally be filed within five years of the incident giving rise to the claim. Nonetheless, the State continues to threaten to file a complaint against the City despite the fact that the purported violations for failing to close the Landfill were allegedly discovered over 10 years ago by the Agency and the State and were referenced (but never filed) by the State in its Motion to Voluntarily Dismiss this case 7 years ago and also referenced (but never filed) in the PCB action filed by the state 9 years ago, both well beyond the five-year statute of limitations period.

G. Res Judicata.

37. The Doctrine of *Res Judicata* applies where: (1) a final judgment on the merits has been rendered by a court of competent jurisdiction, (2) an identity of cause of action exists; and (3) the parties or their privies are identical in both actions. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 478 (Ill. 2008).

38. Summary judgment is the procedural equivalent of a trial and is considered an adjudication of the claim on the merits. *Congregation of the Passion v. Touche Ross & Co.*, 159 Ill. 2d 137, 152-53 (Ill. 1994). The doctrine of *res judicata* not only bars every matter that was actually determined in the prior suit, but also every matter that might have been raised and determined in that suit. *Hudson,* 228 Ill. 2d at 471.

39. In 2011 the Third District Appellate Court reversed the judgment of the Pollution Control Board on PCB No. 03-191. That decision was a final judgment on the merits, which the State did not pursue further. The Third District Appellate Court determined that the City was not the owner of the Landfill operation, but merely the owner of the land upon which the waste disposal operation was situated, and therefore was not liable for the alleged violations. *See City of Morris v. Community Landfill Company*, 2011 IL App 3d 090847.

40. *City of Morris v. Community Landfill*, 2011 Ill.App.3d 090847 involved identical issues to those raised in the October 30, 2013 Notice of Violation.

41. The City of Morris and State of Illinois were parties to the *City of Morris v. Community Landfill,* 2011 Ill.App.3d 090847.

H. Collateral Estoppel.

42. The Doctrine of Collateral Estoppel bars relitigation of an issue that was already decided in a prior case. Collateral Estoppel applies when: (1) the issue decided in the prior adjudication is identical with the one presented in the suit in question; (2) there was a final judgment on the merits in the prior adjudication; and (3) the party against whom estoppel is

asserted was a party or in privity with a party to the prior adjudication. *Hurlert v. Charles*, 238 Ill. 2d 248, 255 (Ill. 2010).

43. The Doctrine of Collateral Estoppel is properly applied when a party or someone in privity with a party participates in two separate and consecutive cases arising on different causes of action and some controlling act or question material to the determination of both causes has been adjudicated against that party in the former suit by a court of competent jurisdiction. *Housing Authority for La Salle County v. YMCA of Ottawa*, 101 Ill. 2d 246, 252 (Ill. 1984).

44. The adjudication of the fact or question in the first cause will be conclusive of the same question in the later suit. *Id.*

45. Summary judgment is the procedural equivalent of a trial and is considered an adjudication of the claim on the merits. *Congregation of the Passion*, 159 Ill. 2d at 152-53 (Ill. 1994).

46. Again, in *City of Morris v. Community Landfill Company*, the court ruled the City was not conducting a waste disposal operation and therefore was not responsible for securing financial assurance of closure and post-closure activities. *City of Morris v. Community Landfill Company*, 2011 IL App 3d 090847. The Third District Appellate Court found that the Community Landfill Company was the only entity liable for the operation of the landfill and its closure and post-closure care. *Id.* Similarly, the Fourth District Appellate Court has concluded, that "it is not proper to hold a landowner liable for violations that a landfill developer-operator allowed to occur on the land...contrary to the landfill operator's express contractual obligation to develop and operate its facility legally." *People ex rel. Madigan v. Lincoln, Ltd.*, 2016 IL App (1st) 143487 *P9.

47. Whether the City is an "operator" and/or "owner" is the critical underlying question regarding the responsibility to maintain and close the Landfill which was adjudicated in *City of Morris v. Community Landfill Company,* 2011 Ill.App.3d 090847.

48. Pursuant to the Doctrine of Collateral Estoppel, the City is not liable for the alleged violations referenced in the October 30, 2013 Violation Notice because the City has been adjudicated not to be an owner or operator of the waste disposal facility in issue.

I. Laches.

49. The Doctrine of Laches precludes the assertion of a claim by a litigant whose unreasonable delay in raising its claim has prejudiced the opposing party. *Tully v. State*, 143 Ill. 2d 425, 432 (Ill. 1991).

50. Laches applies where there is: (1) a lack of diligence by the party asserting the claim and (2) prejudice to the opposing party results from the delay. *Id.*

51. The Doctrine of Laches is "grounded in the equitable notion that courts are reluctant to come to the aid of a party who knowingly slept on his rights to the detriment of the opposing party." *Id.*

52. The inspection which, according to the State, revealed the alleged violations occurred over 10 years ago.

53. From 1995 through 1996 and thereafter, the operator of the Landfill, Community Landfill Company filed forms with the IEPA which provided that the Landfill had reached its permitted capacity. 35 Ill. Admin. Code Sec. 811.110(e)(1) requires a landfill operator to close within 30 days of reaching capacity. Despite the IEPA and the State being aware that since at least 1995 that the Landfill was over capacity, it never brought an action against Community Landfill Company to compel closure and comply with applicable closure/post-closure regulations. Moreover, despite this knowledge, the State failed to compel CLC to cease and desist from

accepting waste at the Landfill which was again at that point in excess of its permitted capacity, and further failed to compel the commencement of closure of the Facility by CLC.

54. The State of Illinois, through the Illinois Department of Transportation, transported and deposited waste at the Landfill from 2001 through 2009 at a time that the State was aware that the Landfill was over capacity and required to be closed.

55. The failure to require CLC to institute closure at a time it when it had generated millions of dollars in revenue from the use of the Landfill and also had a form of approved, viable closure/post-closure assurance in place, has severely prejudiced the City by causing it to incur extensive costs, time, and effort in maintaining this litigation and the property upon which the Landfill sits.

56. Accordingly, pursuant to the Doctrine of Laches, the City is not liable to the State for any alleged violation referenced in the October 30, 2013 Notice of Violation including closure of the Landfill.

J. Declaratory Judgment.

57. Pursuant to 735 ILCS 5/2-701, "the court may in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is, or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract or other written instrument, and a declaration of the rights of the parties interested."

58. There is an actual controversy between the State and the City as to whether the City can be held liable for any of the alleged violations contained in the October 30, 2013 Notice of Violation including any obligation to pay for closure or post closure care of the Landfill.

59. "The central purpose of declaratory relief is to allow the court to address a controversy one step sooner than normal after a dispute has arisen, but before the plaintiff takes

steps that would give rise to a claim for damages or relief." *Illinois State Toll Highway Authority v. Amoco Oil Co.*, 336 Ill. App. 3d 300, 305 (2003).

60. This case has a long history and has been in the courts and under administrative review for years over the same issues and despite prior rulings on the same the State continually threatens the City with further litigation.

VIOLATION NOTICE ATTACHMENT A ALLEGATIONS

COUNT ONE: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR ACCEPTANCE OF WASTE WITHOUT NECESSARY PERMITS IN VIOLATION OF 415 ILCS 5/21(a)

61. In Attachment A to Violation Notice Number M-2013-1016 ¶ 1, the Agency alleged violations concerning Parcel A of the Landfill. In that regard, Paragraph 1 of Attachment A the Agency alleges a violation of § 21(a) of the Illinois Environmental Protection Act. §21(a) providing "no person shall cause or allow the open dumping of any waste." 415 ILCS 5/21(a).

62. The Agency alleges a violation of §21(a) premised on "acceptance of wastes without necessary permits" and "***[b]ased on*** an Agency file review from a June 16, 2010, inspection report that Parcels A and B are developed and accepted waste." (Ex. A ¶ 1 Cl. 2). (Emphasis added).

63. The Third District previously ruled that the City was not conducting a waste disposal operation and thus has expressly determined that the City was not the operator and could not as a matter of law "accept waste without a necessary permit." *City of Morris v. Community Landfill Company*, 2011 Ill. App. 3d 090847 (3d Dist. 2011). The court has already ruled that the City, at most, was the owner of the underlying land, not the Facility itself. *City of Morris v. Community Landfill Company*, 2011 Ill. App. 3d 090847 (3d Dist. 2011).

64. Any allegation of violation of §21(a) of the Act is defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 415 ILCS 5/21(a).

COUNT TWO: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR LACK OF VALID PERMIT FOR LANDFILL IN VIOLATION OF 415 ILCS 5/21(d)(1)

65. In Violation Notice Number M-2013-1016 ¶ 2, the Agency alleges a violation of § 21(d)(1) of the Illinois Environmental Protection Act which provides:

> No person shall conduct any waste-storage, waste-treatment, or waste-disposal operation without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder [.]

415 ILCS 5/21 (d) (1).

66. The Agency alleges a violation of §21(d) premised on its belief that the "facility does not have a valid permit in place for the Landfill." (Ex. A. ¶ 2 Cl. 2).

67. The City has not conducted any waste-storage, waste-treatment, or waste-disposal operation, nor did it have any operating obligations with respect to the facility. Being neither the owner nor operator of the Facility, the City has no obligation to obtain or maintain permits for the facility. Further, even if the facility lacked a permit, those circumstances do not create an obligation in the City to obtain such a permit on behalf of CLC.

68. Any allegation of violation of §21(d) of the Act is defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 415 ILCS 5/21(d)(1).

COUNT THREE: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR LACK OF WRITTEN CLOSURE PLAN AND SUPPORTING DOCUMENTS IN VIOLATION OF 415 ILCS 5/21(d)(2)

69. In Violation Notice Number M-2013-1016 ¶ 3, the Agency alleges a violation of § 21 (d) (2) of the Illinois Environmental Protection Act which provides "no person shall conduct

any waste-storage, waste-treatment, or waste-disposal operation in violation of any regulations or standards adopted by the Board under this Act." 415 ILCS 5/21 (d) (2).

70. The Agency alleges a violation of §21(d)(2) premised on its belief that the "facility does not have a written closure plan and supporting documents" presumably in violation of an unidentified Board regulation. (Ex. A. ¶ 3 Cl. 2).

71. The City has not conducted any waste-storage, waste-treatment, or waste-disposal operation, nor did it have any operating obligations with respect to the facility. Having no operating obligations, the City had no obligation to create, obtain, or maintain any documents relating to a written closure plan as the City was not conducting a qualifying operation nor is it in a qualifying position as an owner or operator. *See The City of Morris v. Community Landfill Company*, 2011 Ill. App. 3d 090847 (3d Dist. 2011). Further, the Third District explicitly held the City had no financial responsibility for the closure or post-closure care of the facility. *Id.*

72. Any alleged violation of §21(d)(2) is defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 415 ILCS 5/21(d)(2).

COUNT FOUR: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO PROVIDE FINAL COVER WITHIN TIME LIMITS IN VIOLATION OF 415 ILCS 5/21(o)(6)

73. In Violation Notice Number M-2013-1016 ¶ 4, the Agency alleges a violation of § 21 (o) (6) of the Illinois Environmental Protection Act which provides "no person shall conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this section [21], in a manner which results in a … failure to provide final cover within time limits established by Board regulations." 415 ILCS 5/21(o)(6).

74. The Agency alleges a violation of §21(o)(6) premised on its belief that the City has failed to provide final cover within time limits. (Ex. A. ¶ 4 Cl. 3).

75. The City has not conducted any sanitary landfill, waste-treatment, waste-storage, or waste-disposal operations, nor did it have any operating obligations with respect to the facility. Having no such obligations, the City in turn had no obligation to obtain or provide final cover limits. Even if such an obligation had been imposed, a third-party expert investigated the cover conditions for Parcels A and B and determined that final cover had been installed on both. Further, the Third District explicitly held that the City had no financial responsibility for the closure or post-closure of the landfill.

76. Any alleged violation of §5/21(o)(6) is defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 415 ILCS 5/21(o)(6).

COUNT FIVE: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR ACCEPTANCE OF WASTE WITHOUT NECESSARY PERMITS IN VIOLATION OF 415 ILCS 5/21(o)(7)

77. In Violation Notice Number M-2013-1016 ¶ 5, the Agency alleges a violation of §21(o)(7) of the Illinois Environmental Protection Act, which provides "no person shall conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this section [21], in a manner which results in...an acceptance of wastes without necessary permits [.]" 415 ILCS 5/21 (o) (7).

78. The Agency alleges a violation of §21(o)(7) premised on its belief of the City's "acceptance of wastes without necessary permits" and "[b]ased on an Agency file review from a June 16, 2010 inspection report that Parcels A and B are developed and accepted waste." (Ex. A. ¶ 5. Cl. 3).

79. The City has not conducted any waste-storage, waste-treatment, or waste-disposal operation, nor did it have any operating obligations with respect to the facility. Therefore, the City has no obligation to obtain or maintain permits for the facility. Moreover, even if the facility lacked

a permit, those circumstances do not create an obligation in the City to obtain such a permit on behalf of CLC.

80. Again, the Third District previously ruled that the City had no operating obligations, and that it was neither the owner nor the operator of the facility. *See The City of Morris v. Community Landfill Company*, 2011 Ill. App. 3d 090847 (3d Dist. 2011). Further, the fact that Parcels A and B are developed and accepted waste does not establish a violation nor make the City the owner or operator of the facility. The Court has then already expressly ruled that the City, at most, was the owner of the underlying land, not the facility itself. *See The City of Morris v. Community Landfill Company*, 2011 Ill. App. 3d 090847 (3d Dist. 2011).

81. As such, any alleged violation of §5/21(o)(7) is defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 415 ILCS 5/21(o)(7).

COUNT SIX: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR NO RECEIPT OF REQUIRED REPORTS IN VIOLATION OF 415 ILCS 5/21(o)(11)

82. In Violation Notice Number M-2013-1016 ¶ 6, the Agency alleges a violation of §21(o)(11) of the Illinois Environmental Protection Act which provides "no person shall conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this section [21], in a manner which results in a … failure to submit reports required by permits or Board regulations." 415 ILCS 5/21(o)(11).

83. The Agency alleges a violation of §21(o)(11) premised on its belief that the Agency has not received the required reports. (Ex. A. ¶ 6. Cl. 3).

84. The City has not conducted any sanitary landfill, waste-storage, waste-treatment, or waste-disposal operation, nor did it have any operating obligations with respect to the facility.

Being neither the owner or operator of the facility, the City has no obligation to obtain, maintain, or produce any reports.

85. The Third District Appellate Court explicitly held that the City did not conduct a waste disposal operation. *See The City of Morris v. Community Landfill Company,* 2011 Ill.App.3d 090847 (3d Dist. 2011).

86. Any alleged violation of §5/21(o)(11) is defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 415 ILCS 5/21(o)(11).

COUNT SEVEN: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR NO RECEIPT OF CURRENT CLOSURE COST ESTIMATES OR EVIDENCE OF A PERFORMANCE BOND IN VIOLATION OF 415 ILCS 5/21(o)(13)

87. In Violation Notice Number M-2013-1016 ¶ 7, the Agency alleges a violation of §21(o)(13) of the Illinois Environmental Protection Act which provides "no person shall conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this section [21], in a manner which results in a ... failure to submit any cost estimate for the site or any performance bond or other security for the site as required by this Act or Board rules." 415 ILCS 5/21(o)(13).

88. The Agency alleges a violation of §21(o)(13) premised on its belief that the Agency has not received current closure cost estimates or evidence of a performance bond. (Ex. A. ¶ 7. Cl. 3).

89. The City has not conducted any sanitary landfill, waste-storage, waste-treatment, or waste-disposal operation, nor did it have any operating obligations with respect to the facility. Having no such operation, the City is not required to submit any closure cost estimate for the site nor is it required to provide any performance bond or other security for the site. *See The City of Morris v. Community Landfill Company*, 2011 Ill. App. 3d 090847 (3d Dist. 2011).

90. Accordingly, any alleged violation of §5/21(o)(13) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 415 ILCS 5/21(o)(13).

COUNT EIGHT: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO HAVE CERTIFIED LANDFILL OPERATOR IN VIOLATION OF 225 ILCS 230/1004

91. In Violation Notice Number M-2013-1016 ¶ 8, the Agency alleges a violation of the Solid Waste Site Operator Certification Law. 225 ILCS 230/1004 (a) which provides: "for landfill sites which accept non-hazardous solid waste other than clean construction or demolition debris, the landfill shall have a Class A Solid Waste Site Operator certified by the Agency who is responsible for directing landfill operations or supervising other operational staff in performing landfill operations." 225 ILCS 230/1004 (a).

92. The Agency alleges a violation of § 1004 (a) premised on its belief that the "landfill does not have a certified operator for the site." (Ex. A. ¶ 8. Cl. 3).

93. The City has not conducted any sanitary landfill, waste-storage, waste-treatment, or waste-disposal operation, nor did it have any operating obligations with respect to the facility. Being neither the owner or operator of the facility, the City is not required to provide a certified landfill operator.

94. Moreover, even if the City had an obligation to provide a certified landfill operator, a certified landfill operator is not required for a closed landfill unit. (*See* Ex. A. ¶ 12 (The Agency alleges that the acceptance of the final volume of waste has already occurred)).

95. Accordingly any alleged violation of 225 ILCS 230-1004 is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 225 ILCS 230/1004.

COUNT NINE: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO HAVE CHIEF OPERATOR AT FACILITY IN VIOLATION OF 35 ILL. ADM. CODE §745.181

96. In Violation Notice Number M-2013-1016 ¶ 9, the Agency alleges a violation of 35 Ill. Adm. Code §745.181. §745.181 which provides: "the owner or other named permittee shall designate one or more chief operators for each waste disposal site." 35 Ill. Adm. Code §745.181.

97. The Agency alleges a violation of §745.181 premised on its belief that the "facility does not have a Chief Operator." (Ex. A. ¶ 9. Cl. 2).

98. The City has not conducted any sanitary landfill, waste-storage, waste-treatment, or waste-disposal operation, nor did it have any operating obligations with respect to the facility. Because there are no qualifying operations, procedures for prior conduct certification are also inapplicable. The City is not required to provide a chief operator.

99. Moreover, even if The City had an obligation to provide a chief operator, a chief operator is not required for a closed landfill unit. (*See* Ex. A. ¶ 12) (The Agency alleges that the acceptance of the final volume of waste has occurred)).

100. Accordingly, any alleged violation of 35 Ill. Adm. Code §745.181 is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 35 Ill. Adm. Code §745.181.

COUNT TEN: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO HAVE CHIEF OPERATOR AT FACILITY WITH PRIOR CONDUCT CERTIFICATION IN VIOLATION OF 35 ILL. ADM. CODE §745.201

101. In Violation Notice Number M-2013-1016 ¶ 10, the Agency alleges a violation of 35 Ill. Adm. Code §745.201. §745.201 which provides: "no person shall operate a waste disposal

site unless the site chief operator has prior conduct certification" and "no site owner or other named permittee shall cause or allow operation of a waste disposal site unless the site chief operator has prior conduct certification." 35 Ill. Adm. Code §745.201.

102. The Agency alleges a violation of §745.181 premised on its belief that the facility does not have a certified chief operator much less one with prior conduct certification. (Ex. A. ¶ 10. Cl. 2).

103. The City has not conducted any sanitary landfill, waste-storage, waste-treatment, or waste-disposal operation, nor did it have any operating obligations with respect to the facility. Because there are no qualifying operation and the City is not an owner or operator, procedures for prior conduct certification are also inapplicable. The City is not required to provide a chief operator with prior conduct certification.

104. Moreover, even if the City had an obligation to provide a chief operator, a chief operator with prior conduct certification is not required for a closed landfill unit. (*See* Ex. A. ¶ 12 (The Agency alleges that the acceptance of the final volume of waste has occurred)).

105. Accordingly, any alleged violation of 35 Ill. Adm. Code §745.201 is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 35 Ill. Adm. Code §745.201.

COUNT ELEVEN: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO PROVIDE WRITTEN CLOSURE PLAN AT TIME OF INSPECTION IN VIOLATION OF 35 ILL. ADM. CODE §811.110(d)(1)

106. In Violation Notice Number M-2013-1016 ¶ 11, the Agency alleges a violation of 35 Ill. Adm. Code §811.110(d)(1). §811.110(d)(1) which provides:

> The operator must maintain a written plan describing all actions that the operator will undertake to close the unit or facility in a manner that fulfills the provisions of the Act, of this Part and of all other applicable Parts of 35 Ill. Adm. Code: Chapter

> I. The written closure plan must fulfill the minimum information requirements of 35 Ill. Adm. Code 812. 114.

35 Ill. Adm. Code §811.110(d)(1).

107. The Agency alleges a violation of §811.110(d)(1) premised on its belief that a "Written Closure Plan was not available at the time of the inspection." (Ex. A. ¶ 11. Cl. 2).

108. The City has not conducted any sanitary landfill, waste-storage, waste-treatment, or waste-disposal operation, nor did it have any operating obligations with respect to the facility. Further, §811.110(d)(1) specifically applies to the operator of a landfill. The City is not the operator and therefore, §811.110(d)(1) along with its requirements to produce a written closure plan, are inapplicable.

109. Accordingly, any alleged violation of 35 Ill. Adm. Code §811.110(d)(1) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 35 Ill. Adm. Code §811.110(d)(1).

COUNT TWELVE: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO INITIATE CLOSURE ACTIVITIES AFTER RECEIPT OF THE FINAL VOLUME OF WASTE IN VIOLATION OF 35 ILL. ADM. CODE §811.110(e)

110. In Violation Notice Number M-2013-1016 ¶ 12, the Agency alleges a violation of 35 Ill. Adm. Code §811.110(e). §811.110(e) which provides:

> (1) The owner or operator of a MSWLF unit must begin closure activities for each MSWLF unit no later than the date determined as follows:
>
> > (A) 30 days after the date on which the MSWLF unit receives the final receipt of wastes; or
> >
> > (B) If the MSWLF unit has remaining capacity and there is a reasonable likelihood that the MSWLF unit will receive additional wastes, no later than one year after the most recent receipt of wastes.
>
> (2) the Agency must grant extensions beyond this one year deadline for beginning closure if the owner or operator demonstrates that:

(A) the MSWLF unit has the capacity to receive additional wastes; and

(B) the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed MSWLF unit.

35 Ill. Adm. Code §811.110(e).

111. The Agency alleges a violation of §811.110(e) premised on its belief that there was an "acceptance of final volume of waste" and "closure activities were not limited after receipt of the final volume of waste." (Ex. A. ¶ 12. Cl. 2).

112. The City was not operating the landfill nor did it have any operating obligations at the time the final volume of waste occurred nor did it have any obligation to initiate closure of the facility.

113. Accordingly, any alleged violation of 35 Ill. Adm. Code §811.110(e) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 35 Ill. Adm. Code §811.110(e).

COUNT THIRTEEN: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO COMPLETE CLOSURE ACTIVITIES WITHIN 180 DAYS OF BEGINNING CLOSURE IN VIOLATION OF 35 ILL. ADM. CODE §811.110(f)(1)

114. In Violation Notice Number M-2013-1016 ¶ 13, the Agency alleges a violation of 35 Ill. Adm. Code §811.11(f) (1). §811.110(f)(1) which provides "the owner or operator of a MSWLF unit must complete closure activities for each unit in accordance with closure plan no later than…within 180 days of beginning closure [.]" 35 Ill. Adm. Code §811.110(f)(1).

115. The Agency alleges a violation of §811.110(f)(1) premised on its belief that the "facility failed to complete closure activities with (sic) 180 days of beginning closure." (Ex. A. ¶ 13. Cl. 2).

116. The City was not operating the landfill nor did it have any operating obligations at the time the final volume of waste occurred nor did it have any obligation to initiate closure of the facility. Moreover, while the Agency alleges the facility failed to complete closure activities within 180 days of beginning closure, such allegations are premature since, at the time of the allegation, closure had not begun; beginning closure is a pre-requisite to any assertion of a violation of this section. Therefore, §811.110(f) cannot be violated and is inapplicable as applied to the City.

117. Accordingly, any alleged violation of 35 Ill. Adm. Code §811.110(f)(1) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 35 Ill. Adm. Code §811.110 (f)(1).

COUNT FOURTEEN: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO PROVIDE OPERATING RECORD AT TIME OF INSPECTION IN VIOLATION OF 35 ILL. ADM. CODE §811.112(c)

118. In Violation Notice Number M-2013-1016 ¶ 14, the Agency alleges a violation of 35 Ill. Adm. Code § 811.112 (c). § 811.112 (c) which provides, in relevant part,

> The owner or operator of a MSWLF unit shall record and retain near the facility in an operating record or in some alternative location specified by the Agency, the information submitted to the Agency pursuant to 35 Ill. Adm. Code 812 and 813, as it becomes available. At a minimum, the operating record shall contain the following information, even if such information is not required by 35 Ill. Adm. Code 812 or 813:
>
> > (c) gas monitoring results and any remediation plans required by §811.210 and 811. 311.

35 Ill. Adm. Code §811.112(c).

119. The Agency alleges a violation of §811.112(c) premised on its belief that "records were not available at the time of the inspection." (Ex. A. ¶ 14. Cl. 2).

120. The City was not operating the landfill nor did it have any operating obligations. Being neither the owner nor operator of the facility, the City had no obligation to record and/or retain the referenced operating records. Further, §811.112(c) does not require records to be retained at or near the facility where the inspection took place by the City.

121. Accordingly, any alleged violation of 35 Ill. Adm. Code §811.112(c) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 35 Ill. Adm. Code §811.112(c).

COUNT FIFTEEN: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO PROVIDE LEACHATE RELATED DOCUMENTS AT TIME OF INSPECTION IN VIOLATION OF 35 ILL. ADM. CODE §811.112(d)

122. In Violation Notice Number M-2013-1016 ¶ 15, the Agency alleges a violation of 35 Ill. Adm. Code §811.112(d). §811.112(d) which provides, in relevant part,

> The owner or operator of a MSWLF unit shall record and retain near the facility in an operating record or in some alternative location specified by the Agency, the information submitted to the Agency pursuant to 35 Ill. Adm. Code 812 and 813, as it becomes available. At a minimum, the operating record shall contain the following information, even if such information is not required by 35 Ill. Adm. Code 812 or 813:
>
> > (d) Any MSWLF unit design documentation for placement of leachate or gas condensate in a MSWLF unit required by §811.107 (m).

35 Ill. Adm. Code §811.112(d).

123. The Agency alleges a violation of §811.112(d) premised on its belief that "leachate related documents were not available at the time of the inspection." (Ex. A. ¶ 15. Cl. 2).

124. The City was not operating the landfill nor did it have any operating obligations. Being neither the owner nor operator of the facility, the City had no obligation to record and/or retain the referenced operating records. Further, §811.112(d) does not require records to be retained at or near the facility where the inspection took place by the City.

125. Accordingly, any alleged violation of 35 Ill. Adm. Code §811.112(d) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 35 Ill. Adm. Code §811.112(d).

COUNT SIXTEEN: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO PROVIDE CURRENT GROUNDWATER MONITORING RECORDS AT TIME OF INSPECTION IN VIOLATION OF 35 ILL. ADM. CODE §811.112(e)

126. In Violation Notice Number M-2013-1016 ¶ 16, the Agency alleges a violation of 35 Ill. Adm. Code §811.112(e). §811.112(e) which provides, in relevant part,

> The owner or operator of a MSWLF unit shall record and retain near the facility in an operating record or in some alternative location specified by the Agency, the information submitted to the Agency pursuant to 35 Ill. Adm. Code 812 and 813, as it becomes available. At a minimum, the operating record shall contain the following information, even if such information is not required by 35 Ill. Adm. Code 812 or 813:
>
> > (e) any demonstration, certification, monitoring results, testing, or analytical data relating to the groundwater monitoring program required by sections 811.319, 811.324, 811.325, and 811.326 and 35 Ill. Adm. Code 812.317, 813.501, and 813.502.

35 Ill. Adm. Code §811.112(e).

127. The Agency alleges a violation of §811.112(e) premised on its belief that the "last documented sampling event occurred in October of 2011" and "current groundwater monitoring records were not available at the time of the inspection." (Ex. A. ¶ 16. Cl. 2).

128. At no time did the City operate the Landfill, nor did it have any operating obligations relating to the same. Being neither the owner nor operator of the facility, the City then

had no obligation to record and/or retain the referenced records. Further, §811.112(e) does not require records to be retained at or near the facility where the inspection took place by the City.

129. Accordingly, any alleged violation of 35 Ill. Adm. Code §811.112(e) is thus defeated by the doctrines of res judicata, collateral estoppel, laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 35 Ill. Adm. Code §811.112(e).

COUNT SEVENTEEN: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO PROVIDE CLOSURE RELATED DOCUMENTS AT TIME OF INSPECTION IN VIOLATION OF 35 ILL. ADM. CODE §811.112(f)

130. In Violation Notice Number M-2013-1016 ¶ 17, the Agency alleges a violation of 35 Ill. Adm. Code §811.112(f). §811.112(f) which provides, in relevant part,

> The owner or operator of a MSWLF unit shall record and retain near the facility in an operating record or in some alternative location specified by the Agency, the information submitted to the Agency pursuant to 35 Ill. Adm. Code 812 and 813, as it becomes available. At a minimum, the operating record shall contain the following information, even if such information is not required by 35 Ill. Adm. Code 812 or 813:
>
> > (f) closure and post-closure care plans and any monitoring, testing, or analytical data required by sections 811.110 and 811.111, and 35 Ill. Adm. Code 812.114 (h), and 812.115, and 812 313.

35 Ill. Adm. Code §811.112(f).

131. The Agency alleges a violation of §811.112(f) premised on its belief that "closure related documents were not available at the time of the inspection." (Ex. A. ¶ 17. Cl. 2).

132. At no time did the City operate the Landfill, nor did it have any operating obligations relating to the same. Being neither the owner nor operator of the facility, the City had no obligation to record and/or retain the referenced records. Further, §811.112(f) does not require records to be retained at or near the facility where the inspection took place by the City.

133. Accordingly, any alleged violation of 35 Ill. Adm. Code §811.112(f) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 35 Ill. Adm. Code §811.112(f).

COUNT EIGHTEEN: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO PROVIDE CLOSURE COST ESTIMATES AND FINANCIAL ASSURANCE DOCUMENTS AT TIME OF INSPECTION IN VIOLATION OF 35 ILL. ADM. CODE §811.112(g)

134. In Violation Notice Number M-2013-1016 ¶ 18, the Agency alleges a violation of 35 Ill. Adm. Code §811.112(g). §811.112(g) which provides, in relevant part,

> The owner or operator of a MSWLF unit shall record and retain near the facility in an operating record or in some alternative location specified by the Agency, the information submitted to the Agency pursuant to 35 Ill. Adm. Code 812 and 813, as it becomes available. At a minimum, the operating record shall contain the following information, even if such information is not required by 35 Ill. Adm. Code 812 or 813:
>
> > (g) any cost estimates and financial assurance documentation required by Subpart G of this Part.

35 Ill. Adm. Code §811.112(g).

135. The Agency alleges a violation of §811.112(g) premised on its belief that "closure cost estimated and financial assurance documents were not available at the time of the inspection." (Ex. A. ¶ 18. Cl. 2).

136. At no time did the City operate the Landfill, nor did it have any operating obligations. Being neither the owner nor operator of the facility, the City had no obligation to record and/or retain the referenced records. Further, §811.112(g) does not require records to be retained at or near the facility where the inspection took place by the City.

137. Accordingly, any alleged violation of 35 Ill. Adm. Code §811.112(g) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 35 Ill. Adm. Code §811.112(g).

COUNT NINETEEN: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO PROVIDE LANDFILL GAS MONITORING FREQUENCY DOCUMENTS AT TIME OF INSPECTION IN VIOLATION OF 35 ILL. ADM. CODE §811.310(c)

138. In Violation Notice Number M-2013-1016 ¶ 19, the Agency alleges a violation of 35 Ill. Adm. Code §811.310(c) which provides:

> (1) All gas monitoring devices, including the ambient air monitors must be operated to obtain samples on a monthly basis for the entire operating period and for a minimum of five years after closure.
>
> (2) After a minimum of five years after closure, monitoring frequency may be reduced to quarterly sampling intervals.
>
> (3) The sampling frequency may be reduced to yearly sampling intervals upon the installation and operation of a gas collection system equipped with a mechanical device such as a compressor to withdraw gas.
>
> (4) Monitoring must be continued for a minimum period of: 30 years after closure at MSWLF units, except as otherwise provided by subsections (c) (5) and (c) (6); five years after closure at landfills, other than MSWLF units, which are used exclusively for disposing of wastes generated at the site; or 15 years after closure at all other landfills regulated under this Part. Monitoring beyond the minimum period, may be discontinued if the following conditions have been met for at least one year:
>
> > (A) The concentration of methane is less than five percent of the lower explosive limit in air for four consecutive quarters at all monitoring points outside the unit; and
> >
> > (B) Monitoring points within the unit indicate that methane is no longer being produced in quantities that would result in migration from the unit and exceed the standards of subsection (a) (1).
>
> (5) The Agency may reduce the gas monitoring period at an MSWLF unit upon a demonstration by the owner or operator that the reduced period is sufficient to protect human health and environment.

> (6) The owner or operator of an MSWLF unit must petition the Board for an adjusted standard in accordance with section 811.303, if the owner or operator seeks a reduction of the post-closure care monitoring period for all of the following requirements:
>
> (A) Inspection and maintenance (§811.111);
>
> (B) Leachate collection (§811. 309);
>
> (C) Gas monitoring (§811. 310); and
>
> (D) Groundwater monitoring (§811. 319).

35 Ill. Adm. Code §811.310(c)

139. The Agency alleges a violation of §811.310(c) premised on its belief that "documentation was not available at the time of the inspection to show landfill gas monitoring frequency." (Ex. A. ¶ 19. Cl. 2).

140. §811.310(c) is inapplicable to the City and the referenced landfill. §811.310 *et seq.* only applies to landfills in which chemical and putrescible wastes are to be placed; this is not such a landfill.

141. Further, §811.310(c) does not apply to the City because at no time did it operate the Landfill, nor did it have any operating obligations related to the same. Being neither the owner nor operator of the facility, the City had no obligation to record or retain such records. Further, even if the City did have such an obligation, §811.310(c) does not require records be retained at or near the facility where the inspection took place.

142. Accordingly, any alleged violation of 35 Ill. Adm. Code §811.310(c) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation 35 Ill. Adm. Code §811.310(c).

ATTACHMENT B ALLEGATIONS

COUNT TWENTY: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO PROVIDE FINANCIAL ASSURANCES IN VIOLATION OF 415 ILCS 5/21.1(a.5)

143. The Agency alleges a violation of the Illinois Environmental Protection Act and cites to 45 ILCS 5/21.1(a.5). The Illinois Environmental Protection Act is codified in 415 ILCS 5/21 *et seq.* (Typographical error will be assumed).

144. In Violation Notice Number M-2013-1016 ¶ 1, the Agency alleges a violation of 415 ILCS 5/21.1(a.5) which provides,

> On and after the effective date established by the United States Environmental Protection Agency for MSWLF units to provide financial assurance under Subtitle D of the Resource Conservation and Recovery Act, no person, other than the State of Illinois, its agencies and institutions, shall own or operate a MSWLF unit that requires a permit under subsection (d) of section 21 of this Act, unless that person has posted with the Agency a performance bond or other security for the purposes of:
>
> > (1) insuring closure of the site and post-closure care in accordance with this Act and its rules; and
> >
> > (2) insuring completion of a corrective action remedy when required by Board rules adopted under section 22.40 of this Act or when required by section 22.41 of this Act.
>
> The performance bond or other security requirement set forth in this section may be fulfilled by closure or post-closure insurance, or both, issued by an insurer licensed to transact the business of insurance by the Department of Insurance or at a minimum the insurer must be licensed to transact the business of insurance or approved to provide insurance as an excess or surplus lines insurer by the insurance department in one or more states.

415 ILCS 5/21.1(a.5).

145. The Agency alleges a violation of § 21.1 (a.5) premised on its erroneous belief that "The City of Morris as the owner and operator of a Municipal Solid Waste Landfill that requires a permit" under the Illinois Environmental Protection Act has not had compliant financial assurances for closure and post-closure care. (Ex. A. ¶ 1. Cl. 2).

146. On August 2, 2012, after the Third District held that the City of Morris was not conducting a waste disposal operation and was not civilly liable for the payment of closure and

post-closure care of the Landfill the State of Illinois amended Section 21.1 of the Act (the "Amendment") to change the requirement only those persons who "conduct" waste disposal operation must provide financial assurances of closure to require the "owner or operator" of a waste disposal operation to provide such financial assurances. *See* 415 ILCS 5/21.1.

147. The Amendment cannot be applied to the City of Morris, as such would usurp the Third District Appellate Court decision and violate the Separation of Powers Doctrine under Article II, Section 1, of the State of Illinois Constitution, which provides: "[t]he legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another."

148. If the Legislature enacts an amendment in response to a judicial decision which attempts to reverse the court's decision, it is a violation of the Separation of Powers Clause. *People ex rel. Ryan v. AgPro, Inc.*, 214 Ill. 2d 222, 229-31 (2005). The amendment to Section 21.1 (which the State of Illinois proposed and refers to as the "Morris Amendment") was in direct response to the *City of Morris v. Community Landfill Company* decision. The amendment cannot be properly used by the State to overrule or retroactively affect the Third District Appellate Court decision in favor of the City of Morris.

149. Further, the State asserts that the Amendment of August 2, 2012 imposes new duties upon the City and a "retroactive change in law that imposes a new duty is 'prohibited as a violation of the due process clause of the Illinois Constitution". *Lazenby v. Marks' Constr., Inc.,* 236 Ill.2d 83, 98 (2010).

150. Further, Section 21.1 as amended only applies to those who own a waste disposal operation and, as found by the Third District, the City merely owns the land beneath the disposal operation.

151. The violation alleged herein is therefore inapplicable to the City. The Agency notes its reason for the allegation is due to the City's status as the "owner and operator of a Municipal Solid Waste Landfill." (Ex. A. ¶ 1. Cl. 2). However, Not only is the City not an operator of the landfill, it is not the owner of the landfill either, but, rather, only the owner of the underlying land. The Third District previously held that the City was not conducting a waste disposal operation, was not involved in the day-to-day operations of the Landfill, and had no obligation to obtain financial assurance for the Landfill. *See The City of Morris v. Community Landfill Company*, 2011 Ill. App. 3d 090847 (3d Dist. 2011).

152. Accordingly, any alleged violation of §5/21.1(a.5) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 415 ILCS 5/21.1(a.5).

COUNT TWENTY-ONE: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO COMPLY WITH PERMIT CONDITIONS FOR PARCEL A AND PARCEL B ASSOCIATED WITH CLOSURE CARE COST ESTIMATES AND MAINTAINING ACCEPTABLE FINANCIAL ASSURANCES IN VIOLATION OF 415 ILCS 5/21(d)(1)

153. In Violation Notice Number M-2013-1016 ¶ 2, the Agency alleges a violation of 415 ILCS 5/21 (d) (1) which provides, in relevant part, "no person shall conduct any waste-storage, waste-treatment, or waste-disposal operation without a permit granted by the Agency or in violation of any conditions imposed by such permit [.]" 415 ILCS 5/21(d)(1).

154. The Agency alleges a violation of §21(d)(1) premised on its belief that The City failed to comply with the permit conditions and has not had or maintained compliant financial assurances for closure and post-closure care. (Ex. A. ¶ 2. Cl. 2).

155. The violation alleged herein is inapplicable to the City. Again, the Third District has already ruled that the City did not operate the facility or conduct a waste operation, nor does

it have any obligation to obtain, or in this case, maintain financial assurance for the landfill. *See The City of Morris v. Community Landfill Company*, 2011 Ill. App. 3d 090847 (3d Dist. 2011).

156. Accordingly, any alleged violation of §5/21(d)(1) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 415 ILCS 5/21(d)(1).

COUNT TWENTY-TWO: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO COMPLY WITH REGULATIONS AND/OR STANDARDS ADOPTED BY THE BOARD IN VIOLATION OF 415 ILCS 5/21(d)(2)

157. In Violation Notice Number M-2013-1016 ¶ 3, the Agency alleges a violation of 415 ILCS 5/21 (d) (2) which provides, in relevant part, "no person shall conduct any waste-storage, waste-treatment, or waste-disposal operation in violation of any regulations or standards adopted by the Board under this Act." 415 ILCS 5/21(d)(2).

158. The Agency alleges a violation of §21(d)(2) premised on its erroneous belief that,

> The City of Morris failed to comply with the provisions of 35 Ill. Adm. Code Subtitle G, Part 811, Subpart G. Specifically, the City of Morris failed to comply with section 811. 700 (a), (c), and (f), requiring the owner or the operator of a permitted landfill to provide financial assurance equal to or greater than the current cost estimate; section 811.701 (c), requiring the owner or operator of a landfill to make annual adjustments for inflation to the cost estimates; section 811. 705 (d), requiring an adjustment for the cost estimate for inflation on an annual basis; and section 811. 706 (d) requiring the owner or operator of the landfill to supply continuous financial assurance coverage until the owner or operator is released from the financial assurance requirements.

(Ex. A. ¶ 3. Cl. 2).

159. The violation alleged herein is inapplicable to the City. The Agency notes its reason for the allegation is due to the City's failure to comply with Board regulations that require the "owner or operator" to provide financial assurance. (Ex. A. ¶ 3. Cl. 2). First, the City is not the permit holder here, CLC is. Moreover, the Third District has already ruled that the City is neither an owner nor an operator of the landfill, and has no obligation to provide financial assurance. *See*

The City of Morris v. Community Landfill Company, 2011 Ill. App. 3d 090847 (3d Dist. 2011). Going further, the Agency also notes that the City had an obligation to "supply continuous financial assurance coverage until the owner or operator is released from the financial assurance requirements." (Ex. A. ¶ 3. Cl. 2). Again, the Third District unequivocally held that the City has no obligation to provide any such financial assurances. *See The City of Morris v. Community Landfill Company*, 2011 Ill. App. 3d 090847 (3d Dist. 2011).

160. Accordingly, any alleged violation of §5/21(d)(2) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 415 ILCS 5/21(d)(2).

COUNT TWENTY-THREE: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO PROVIDE ANNUAL REVISION OF COST ESTIMATE AND PROVIDE ACCEPTABLE CONTINUOUS FINANCIAL ASSURANCES IN VIOLATION OF 415 ILCS 5/21(o)(13)

161. In Violation Notice Number M-2013-1016 ¶ 4, the Agency alleges a violation of 415 ILCS 5/21(o)(13) which provides:

> No person shall conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this section, in a manner which results in a ...failure to submit any cost estimate for the site or any performance bond or other security for the site as required by this Act or Board rules."

415 ILCS 5/21(o)(13).

162. The Agency alleges a violation of §21(o)(13) premised on its belief that the City has failed to provide an annual revision of such cost estimate and has failed to provide acceptable continuous financial assurance coverage. (Ex. A. ¶ 4. Cl. 2).

163. The violation alleged herein is inapplicable to the City. The Agency notes its reason for the allegation is due to the City's "failure to provide continuous financial assurance." (Ex. A. ¶ 4. Cl. 2). The Third District has ruled in unequivocal fashion. The City is not conducting a sanitary landfill operation, nor does it have any obligation to obtain, or in this case continue,

financial assurance *See The City of Morris v. Community Landfill Company*, 2011 Ill. App. 3d 090847 (3d Dist. 2011).

164. Accordingly, any alleged violation of §5/21(o)(13) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 415 ILCS 5/21(o)(13).

COUNT TWENTY-FOUR: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO PROVIDE FINANCIAL ASSURANCES AS AN OWNER AND OPERATOR OF THE LANDFILL AS REQUIRED BY THE ILLINOIS ENVIRONMENTAL PROTECTION ACT IN VIOLATION OF 35 ILL. ADM. CODE §811.700(a)

165. In Violation Notice Number M-2013-1016 ¶ 5, the Agency alleges a violation of 35 Ill. Adm. Code §811.700(a) which provides "this Subpart provides procedures by which the owner or operator of a permitted waste disposal facility provides financial assurance satisfying the requirements of § 21.1 (a) of the Act." 35 Ill. Adm. Code §811.700(a).

166. The Agency alleges a violation of §811.700(a) premised on its erroneous belief that the City "as the owner and operator of the permitted waste disposal facility (landfill) failed to provide financial assurance that satisfies the requirements of the Environmental Protection Act." (Ex. A. ¶ 5. Cl. 2).

167. The violation alleged herein is inapplicable to the City. The Agency notes its reason for the allegation is due to the City's status as the "owner and operator." (Ex. A. ¶ 5. Cl. 2). Not only is the City not an operator of the Landfill, it is not the owner of the Landfill. The Third District has already addressed and ruled on this issue. *See The City of Morris v. Community Landfill Company*, 2011 Ill. App. 3d 090847 (3d Dist. 2011).

168. Accordingly, any alleged violation of 35 Ill. Adm. Code §811.700(a) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 35 Ill. Adm Code §811.700(a).

COUNT TWENTY-FIVE: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO PROVIDE FINANCIAL ASSURANCES IN VIOLATION OF 35 ILL. ADM. CODE §811.700(b)

169. In Violation Notice Number M-2013-1016 ¶ 6, the Agency alleges a violation of 35 Ill. Adm. Code §811.700(b) which provides "financial assurance shall be provided, as specified in §811.706, by a trust agreement, a bond guaranteeing payment, a bond guaranteeing payment or performance, a letter of credit, insurance, or self-insurance. The owner operator shall provide financial assurance to the Agency before the receipt of the waste." 35 Ill. Adm. Code §811.700(b).

170. The Agency alleges a violation of §811.700(b) premised on its erroneous belief that the City, as an owner operator, has not provided financial assurance as specified in 35 Ill. Adm. Code §811.706. (Ex. A. ¶ 6. Cl. 2).

171. The violation alleged herein is inapplicable to the City. The Third District has already ruled that the City does not have any obligation to provide financial assurance. *See The City of Morris v. Community Landfill Company*, 2011 Ill. App. 3d 090847 (3d Dist. 2011).

172. Accordingly, any alleged violation of 35 Ill. Adm. Code §811.700(b) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 35 Ill. Adm. Code §811.700(b).

COUNT TWENTY-SIX: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO PROVIDE FINANCIAL ASSURANCES AS AN OPERATOR OF THE LANDFILL IN VIOLATION OF 35 ILL. ADM. CODE §811.700(f)

173. In Violation Notice Number M-2013-1016 ¶ 7, the Agency alleges a violation of 35 Ill. Adm. Code §811.700(f) which provides:

> [N]o person, other than the State of Illinois, its agencies and institutions, shall conduct any disposal operation at an MSWLF unit that requires a permit under section 21 (d) of the Act, unless that person complies with the financial assurance requirements of this Part
>
> BOARD NOTE: Subsection (f) clarifies the applicability of the financial assurance requirements to units of local government, since the Subtitle D regulations exempt only federal and state governments from financial assurance requirements. (See 40 CFR 258.70 (1996).) P.A. 89-200, signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the deadline for financial assurance for MSWLFs from April 9, 1995 to the date that the federal financial assurance requirements actually become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg. 60327), USEPA added 40 CFR 258.70(c) (1996), codified here as subsection (g), to allow states to waive the compliance deadline until April 9, 1998.

35 Ill. Adm. Code §811.700(f).

174. The Agency alleges a violation of §811.700(f) premised on its erroneous belief that the City, "as the operator of the permitted waste disposal facility (landfill) failed to provide financial assurance that satisfies the requirements of 35 Ill. Adm. Code, part 811." (Ex. A. ¶ 7. Cl. 3).

175. The violation alleged herein is inapplicable to the City. The Third District has already ruled that the City is not conducting any operation, that it is not an operator of the facility, and that it has no obligation to provide financial assurance. *See The City of Morris v. Community Landfill Company*, 2011 Ill. App. 3d 090847 (3d Dist. 2011).

176. Accordingly, any alleged violation of 35 Ill. Adm. Code §811.700(f) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 35 Ill. Adm. Code §811.700(f).

COUNT TWENTY-SEVEN: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO MAINTAIN CONTINUOUS FINANCIAL ASSURANCES AND MAKE ADJUSTMENTS TO FINANCIAL ASSURANCES IN VIOLATION OF 35 ILL. ADM. CODE §811.701(a)

177. In Violation Notice Number M-2013-1016 ¶ 8, the Agency alleges a violation of 35 Ill. Adm. Code §811.701(a). §811.701(a), Upgrading Financial Assurances, states "the owner or operator shall maintain financial assurance equal to or greater than the current cost estimate calculated pursuant to §811.704 at all times, except as otherwise provided by subsection (b)." 35 Ill. Adm. Code §811.701(a).

178. The Agency alleges a violation of §811.701(a) premised on the following:

> The City of Morris and CLC attempted to provide financial assurance through the use of three performance bonds from Frontier Insurance Co., with a total penal sum on the bonds of $17, 427, 66.00. the bonds were received by the Illinois EPA in June of 2000. Two of the bonds had an effective date of May 31, 2000, and the third bond had an effective date of June 14, 2000. The City of Morris was the principal for one of the bonds with a penal sum of $10, 081,6630.00, and CLC was the principal for the other two bonds.
>
> The three bonds were never compliant with the regulations because the surety, Frontier Insurance Co., was removed from the list of acceptable sureties approved by the U.S. Department of Treasury in its Circular 570. On June 6, 2000, the U.S. Treasury issued notification that Frontier no longer qualified as an acceptable surety on Federal bonds and had been removed from Circular 570 effective May 31, 2000.

(Ex. A. ¶ 8. Cl. 2-9).

179. The violation alleged herein is inapplicable to the City, as it is not conducting any waste disposal operation at the landfill. The Third District has already ruled that the City has no obligation to provide financial assurance, much less maintain continuous financial assurance. *See The City of Morris v. Community Landfill Company*, 2011 Ill. App. 3d 090847 (3d Dist. 2011).

180. Accordingly, any alleged violation of 35 Ill. Adm. Code §811.701(a) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 35 Ill. Adm. Code §811.701(a).

COUNT TWENTY-EIGHT: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO MAKE ADJUSTMENTS TO FINANCIAL ASSURANCE FOR INFLATION IN VIOLATION OF 35 ILL. ADM. CODE §811.701(c)

181. In Violation Notice Number M-2013-1016 ¶ 9, the Agency alleges a violation of 35 Ill. Adm. Code §811.701(c) which provides "the owner or operator of a MSWLF unit shall annually make adjustments for inflation if required pursuant to §811.704(k)(2) or 811.705(d)." 35 Ill. Adm. Code §811.701(c).

182. The Agency alleges a violation of § 811.701 (c) premised on an erroneous belief that the City as an owner or operator "failed to make adjustments to financial assurance for inflation." (Ex. A. ¶ 9. Cl. 2).

183. The violation alleged herein is inapplicable to the City as it is not conducting a landfill operation. Moreover, the Third District has already ruled that the City has no obligation to provide financial assurance, much less make adjustments to financial assurance. *See The City of Morris v. Community Landfill Company*, 2011 Ill. App. 3d 090847 (3d Dist. 2011).

184. Accordingly, any alleged violation of 35 Ill. Adm. Code §811.701(c) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff. the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 35 Ill. Adm. Code §811.701(c).

COUNT TWENTY-NINE: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO PROVIDE ANNUAL REVISION OF COST ESTIMATE IN VIOLATION OF 35 ILL. ADM. CODE §811.705(d)

185. In Violation Notice Number M-2013-1016 ¶ 10, the Agency alleges a violation of 35 Ill. Adm. Code §811.705(d) Revision of Cost Estimates, which provides "the owner or operator

of a MSWLF unit shall adjust the cost estimates of closure, post-closure, and corrective action for inflation on an annual basis[.]" 35 Ill. Adm. Code §811.705(d).

186. The Agency alleges a violation of §811.705(d) premised on its erroneous belief that The City, as an owner operator, has not provided an annual revision of the cost estimate. (Ex. A. ¶ 10. Cl. 2-4).

187. The violation alleged herein is inapplicable to the City as the Third District has already ruled that it is neither an owner nor an operator of the facility. *See The City of Morris v. Community Landfill Company*, 2011 Ill. App. 3d 090847 (3d Dist. 2011). Obligations contained within §811.705(d) are inapplicable.

188. Accordingly, any alleged violation of 35 Ill. Adm. Code §811.705(d) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 35 Ill. Adm. Code §811.705(d).

COUNT THIRTY: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR FAILURE TO MAINTAIN CONTINUOUS FINANCIAL ASSURANCES UNTIL THE OWNER OR OPERATOR IS RELEASED FROM THE FINANCIAL ASSURANCES REQUIREMENT IN VIOLATION OF 35 ILL. ADM. CODE §811.706(d)

189. In Violation Notice Number M-2013-1016 ¶ 11, the Agency alleges a violation of 35 Ill. Adm. Code §811.706(d). §811.706(d), Mechanisms for Financial Assurance, states "the owner or operator shall provide continuous coverage until the owner or operator is released from the financial assurance requirements pursuant to 35 Ill. Adm. Code 813. 403 (b) or §811. 326." 35 Ill. Adm. Code §811.706(d).

190. The Agency alleges a violation of § 811.706 (d) premised on its erroneous belief that the City, as an owner or operator, has failed to maintain continuous financial assurance until it is released from the financial assurance requirements. (Ex. A. ¶ 11. Cl. 2-3).

191. The violation alleged herein is inapplicable to the City as the Third District has already ruled that it is not conducting a waste disposal operation, and that is it neither an owner nor an operator of the facility. *See The City of Morris v. Community Landfill Company*, 2011 Ill. App. 3d 090847 (3d Dist. 2011). Therefore, any obligations contained within §811.706(d) to provide continuous financial assurance coverage are inapplicable.

192. Accordingly, any alleged violation of 35 Ill. Adm. Code §811.706(d) is thus defeated by the Doctrines of Res Judicata, Collateral Estoppel, Laches, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of 35 Ill. Adm. Code §811.706(d).

COUNT THIRTY-ONE: DECLARATORY JUDGMENT AGAINST ANY CLAIM FOR VIOLATION OF ANY STATUTE OR ANY VIOLATION WHICH WAS RAISED OR COULD HAVE BEEN RAISED IN PCB 03-191, CASE NO. 06 CH 184 THIRTEENTH JUDICIAL CIRCUIT, PCB 11-050, VIOLATION NOTICE NO. M-2013-0106, OR RELATED TO AN INSPECTION BY THE AGENCY ON JULY 5, 2019

193. Since 2018 the State has threatened to issue new violation notices or file litigation on similar grounds as those raised in the October 30, 2013 Violation Notice re-raising the statutory and regulatory allegations contained therein or raise other statutes or regulations seeking to compel the City to cause or pay for regulatory maintenance and closure of the Landfill.

194. The City has not conducted any waste-storage, waste-treatment or waste-disposal operation, nor did it have any obligations with respect to the facility. Further, the City has been determined by the Third District Appellate Court not to be the owner of the Landfill but merely the owner of the land upon which the waste disposal operation was situated and, therefore, was not civilly liable for the alleged violations. *City of Morris v. Community Landfill Company,* 2011 Ill.App.3d 90847.

195. Accordingly, any allegation against the City arising out of the operation or ownership of a waste disposal operation is thus defeated by the Doctrines of Res Judicata,

Collateral Estoppel, Laches, the Separation of Powers, as well as the controlling Statute of Limitations.

WHEREFORE, Plaintiff, the City of Morris, prays this Court find and declare that the City of Morris is not liable for violation of any statute or regulation which was raised or could have been raised in PCB 03-191, Case No. 06 CH 184 Thirteenth Judicial Circuit, PCB 11-050, Violation Notice No. M-2013-0106, or related to an inspection by the Agency on July 5, 2019.

Dated: September 11, 2020

CITY OF MORRIS, Defendant

By: HINSHAW & CULBERTSON LLP

/s/ Richard S. Porter
One of Its Attorneys

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EXHIBIT A

LEASE AGREEMENT

Lease made this 1st day of July, 1982, by and between THE CITY OF MORRIS, ILLINOIS, A Municipal Corporation, hereinafter referred to as "LESSOR", and COMMUNITY LANDFILL CO., An Illinois Corporation, of Joliet, Illinois, hereinafter referred to as "LESSEE".

W I T N E S S E T H :

WHEREAS, Lessor presently owns a parcel of property in Morris Township, Grundy County, Illinois, which is presently licensed as a sanitary landfill; and

WHEREAS, Lessee is in the business of operating regional pollution control facilities, more commonly known as sanitary landfills; and

WHEREAS, Lessee desires to lease from Lessor those premises hereinafter described, as a sanitary landfill; and

WHEREAS, Lessor and Lessee believe that it will be in their mutual interest to enter into this Lease Agreement.

NOW, THEREFORE, in consideration of the promises hereinabove set forth and the mutual covenants hereinafter contained, the parties do hereby agree as follows:

SECTION I

The Lessor in consideration of the rent hereinafter required

to be paid by Lessee and of the agreements hereinafter contained, does hereby lease to Lessee exclusively during the term hereof for the sole purpose of operating a regional pollution control facility in accordance with and pursuant to all laws, rules and regulations promulgated and adopted by all agencies of the federal, state and county governments, including the Illinois Environmental Protection Agency for a Class II landfill, that real estate belonging to the Lessor and described on the attached Exhibit A.

SECTION II

This Lease shall commence on the 1st day of July, 1982, and shall terminate on the 30th day of June, 1999, or at such earlier date as the demised premises have reached full capacity for the collection of Permit II waste, whichever date is earlier; subject, however, to Section XVI hereof.

SECTION III

After the issuance of a Class II operating permit by the Illinois Environmental Protection Agency, Lessee shall pay to the Lessor, and the Lessor agrees to accept therefore for the operation of such regional pollution control facility an annual minimum royalty of Fifteen Thousand ($15,000.00) Dollars, the first payment to be made upon Lessee receiving its operating permit pursuant to Section VIII hereof, and thereaftor on or

.45 per yd Tax ?
Jan 1, 1987

each year of this Lease. Lessee forthwith agrees that Lessor shall be entitled to a royalty in the amounts as follows:

A. For a period from July 1, 1982, to June 30, 1983, the sum of $0.08 per cubic yard of compacted material and $0.02667 per cubic yard of uncompacted material;

B. For a period from July 1, 1983, to June 30, 1984, the sum of $0.0824 per cubic yard of compacted material and $0.02747 per cubic yard of uncompacted material;

C. For a period from July 1, 1984, to June 30, 1985, the sum of $0.0849 per cubic yard of compacted material and $0.02829 per cubic yard of uncompacted material;

D. For a period from July 1, 1985, to June 30, 1986, the sum of $0.0874 per cubic yard of compacted material and $0.02914 per cubic yard of uncompacted material;

E. For a period from July 1, 1986, to June 30, 1987, the sum of $0.0900 per cubic yard of compacted material and $0.03001 per cubic yard of uncompacted material;

F. For a period from July 1, 1987, to June 30, 1988, the sum of $0.0927 per cubic yard of compacted material and $0.03091 per cubic yard of uncompacted material.

Thereafter Lessor shall be entitled to receive as a royalty per cubic yard of compacted material and per cubic yard of uncompacted material an amount equal to the royalty paid for the period referred to in Paragraph F above multiplied by the following fraction in effect at the time the material is deposited.

1. For Compacted Material:

Lessee's dumping charge per cubic yard of compacted material charged to its customers at the time the yardage is deposited divided by Lessee's weighted average dumping charge per cubic yard of compacted material for the period set forth in Subparagraph F

above.

2. For Uncompacted Material:

Lessee's dumping charge per cubic yard of uncompacted material charged to its customers at the time the yardage is deposited divided by Lessee's weighted average dumping charge per cubic yard of uncompacted material for the period set forth in Subparagraph F above.

The denominator in the above fractions shall remain the same at all times but the numerator shall change whenever the dumping charge changes. Lessee shall be entitled to receive credit against the minimum annual royalty payment for yardage deposted until the yardage of material collected during any year exceeds the annual minimum royalty payment. Thereafter, any royalty amounts in excess of the minimum annual royalty shall be paid to Lessor within ten (10) days after the end of the first month and for each successive month thereafter that such yardage amounts deposited exceed the minimum annual royalty.

SECTION IV

During the term of this Lease, Lessee agrees to keep accurate books, records and invoices on all yardage of refuse deposited at the landfill site hereinbefore described. Within forty-five (45) days of the end of each annual term hereof, Lessee shall submit to Lessor a statement to be certified as correct, which sets forth the yardage of refuse authorized to be deposited under Illinois Environmental Protection Agency Permit

II upon Lessor's premises. Lessor may once in any calendar year cause an audit of the business of Lessee to be made by a certified public accountant of Lessor's own selection, and if the statements of yardage previously made by Lessee to Lessor shall be found to be less than the amount of Lessee's yardage as shown by such audit, Lessee shall immediately pay the cost of such audit, as well as the additional compensation therein shown to be payable by Lessee to Lessor; otherwise, the cost of such audit shall be paid by Lessor.

SECTION V

Lessee agrees to use consecutively numbered tickets for all dumping on the premises during the term of this Lease. Lessee further agrees to submit copies of all dumping tickets to Lessor monthly and to provide Lessor with access to its records during normal business hours.

SECTION VI

Lessee shall, with the prior written consent of Lessor, have the right, at its own expense, to construct buildings upon the premises for its own use at any time during the lease term and to make alterations to such buildings. Lessor assumes no liability of any kind for such construction or alterations to any contractor or subcontractor or laborer or materialmen. Such buildings constructed on the premises shall become a part of the

premises and shall belong to Lessor without compensation to Lessee at the expiration of this Lease. Such construction, alterations and additions may be made under the following conditions:

A. That the total market value of the premises shall not be lessened by reason of any such construction, alteration or addition.

B. That the work shall be done in a good and workmanlike manner.

C. That all such construction, additions and alterations shall be expeditiously completed in compliance with all legal requirements applicable thereto.

D. That all work done in connection with such construction, additions or alterations shall be done in accordance with the requirements of all fire prevention and building codes as may be applicable to the City of Morris and general public liability insurance for the benefit of Lessor and Lessee as their interests may appear, and shall be maintained by Lessee at all times when any such work is in progress in connection with such construction, additions or alterations.

E. Lessee will not permit any mechanic's liens or liens to be placed upon the premises or any building or improvement thereon during the term hereof, and in case of the filing of any such lien, Lessee will promptly pay the same. If default in

payment thereof shall continue for thirty (30) days after written notice thereof from Lessor to the Lessee, the Lessor shall have the right and privilege at Lessor's option of paying the same or any portion thereof with out inquiry as to the validity thereof, and any amount so paid, including expenses and interest, shall be so much additional indebtedness hereunder due from Lessee to Lessor and shall be repayed to Lessor immediately on rendition of a bill therefore.

SECTION VII

It is the understanding of the parties hereto that Lessee shall keep the lease premises insured as follows:

A. All insurance provided for in this Paragraph VII shall be procured by Lessee at its sole cost and expense under valid and enforceable standard form policies issued by insurance companies licensed to do business in the State of Illinois.

B. Lessee shall carry fire and extended coverage insurance on any buildings that it may construct upon the premises during the entire term of this Lease in an amount equal to at least eighty (80%) percent of the valuation of the buildings, land and all additions or improvements made thereon by either party, written by a reliable insurance company or companies authorized to do business in the State of Illinois. The policy shall be written in the names of and for the benefit of Lessor and Lessee as their respective interests may appear.

C. Lessee agrees to maintain in effect throughout the term of this Lease public liability insurance covering the demised premises and appurtenances utilized by it in the amount of Five Hundred Thousand ($500,000.00) Dollars for injury to or death of any one person, One Million ($1,000,000.00) Dollars for injury to or death of any number of persons in one occurrence, property liability insurance in the amount of One Hundred Thousand ($100,000.00) Dollars, and an umbrella policy for liability for injury to person or property in the amount of $2,000,000.00. Such insurance shall be the standard form liability policy and shall specifically insure Lessee against all liability assumed hereunder, as well as liability imposed by law, and shall insure both Lessor and Lessee. The insurance companies shall agree by endorsement on the policy or policies issued by it or by independent instruments furnished to the Lessor that it will give to the Lessor fifteen (15) days written notice before the policy or policies in question shall be altered or canceled. Premiums paid by Lessee on such liability insurance obtained by Lessee shall not be considered as additional rental under this Lease.

D. Lessee agrees to obtain workman's compensation insurance which shall provide coverage for all of its employees who work upon the demised premises in an amount of not less than the statutory requirements. Lessee agrees to submit to Lessor a certificate of insurance evidencing the fact that the Lessee has

secured such insurance. The insurance company shall agree to furnish to Lessor by endorsement on the policy or policies issued by it or by independent instruments that it will give to Lessor written notice before policy or policies in question shall be altered or canceled. Premiums paid by Lessee shall not be considered as an additional rental under this Lease.

E. Insurance claims by reason of damage or destruction to any portion of the leased premises shall be adjusted by Lessee and Lessor.

SECTION VIII

The parties hereto do hereby understand and agree that the use of the premises as a Class II permit regional pollution control facility requires the issuance of two permits by the Illinois Environmental Protection Agency. The first permit is referred to as a development permit. This permit allows the applicant to develop the demised premises in accordance with the rules and regulations of the agency in order to determine ultimately whether such site is suitable for use as a sanitary landfill. If the Environmental Protection Agency determines that such site is suitable, it will thereupon issue to the development permitee an Operating Permit. Lessor agrees to cooperate with Lessee, at no expense to Lessor, for the purpose of renewing the permits previously issued to Lessor. If it is required by the

Illinois Environmental Protection Agency, Lessor agrees to execute all applications and other documents that may be required to secure such permits. In addition, Lessor further agrees to execute all applications and other documentation that may be required by the County of Grundy to approve such site as a regional pollution control facility. Lessor and Lessee do hereby agree that Lessee's obligation for the payment of any rental under the terms of this Lease is contingent upon Lessee receiving an Operating Permit for the use of this facility as a Class II sanitary landfill under and pursuant to the terms, provisions, rules and regulations of the Illinois Environmental Protection Agency. In the event Lessee is unable to obtain such operating permit within ninety (90) days of the date of this Lease Agreement, such Agreement shall become null and void.

SECTION IX

Lessor further agrees to co-operate with Lessee in amending the Operating Permit previously issued to Lessor to permit above-grade fill on the site to a maximum height of forty-five (45) feet, rather than the present twenty-five (25) feet.

SECTION X

Lessee has examined and knows the condition of the premises and has received the same in good order and repair and acknowledges that no representations as to the condition and the

repair thereof have been made by Lessor, or their agents prior to or at the execution of this Lease that are not herein expressed. Lessor shall not be obligated to incur any expenses for repairing any improvements upon said demised premises or connected therewith, and Lessee at its own expense will keep the demised premises including all appurtenances in good repair and in compliance with all local rules, general regulations, laws, statutes and ordinances of all federal, state and county government having jurisdiction over the demised premises, including all rules and regulations of the Illinois Environmental Protection Agency. Lessee will, as far as possible, keep said improvements from deterioration due to ordinary wear and from falling temporarily out of repair. If Lessee does not make repairs as required hereto promptly and adequately Lessor may, but need not make, such repairs and the cost thereof, and such costs shall be so much additional rental immediately due from and payable by Lessee to Lessor. At the termination of this Lease, Lessee will cover the landfill site with materials approved by the Illinois Environmental Protection Agency.

SECTION XI

Lessor and Lessee do hereby agree that nothing contained herein shall be interpreted to convey any interest that Lessor may have in the mineral rights upon the demised premises to Lessee, and that Lessor shall have full and unrestricted right to

the use and benefit of such mineral rights; provided that during the term of this Lease any methane gas that may be generated as a result of the operation of the sanitary landfill shall be the sole and exclusive property of the Lessee.

SECTION XII

Lessee will pay in addition to the rent above specified all water rents, sewerage charges, gas and electric light and power bills taxes, levied or charged on the premises, for and during the time for which this Lease is granted, and in case water rents and bills for gas, electric light and power shall not be paid when due, Lessor shall have the right to pay the same, which amount so paid together with any sums paid by Lessor to keep the premises in a clean and healthy condition as above specified, are declared so much additional rent and payable with the installment of rent next due thereafter; provided that in no event shall Lessor be obligated for any water rents, sewerage charges, gas and electric light and power bills that may be taxed or levied or charged.

SECTION XIII

All operations shall be conducted in a safe and prudent manner, and it is agreed that should any dispute arise between Lessor and Lessee regarding the conduct of operations in a safe and prudent manner, such dispute shall be referred to the

Illinois Environmental Protection Agency for decision, such decision to be final and binding on both parties. In addition, Lessee will comply with all laws, rules and regulations of any governmental authority affecting Lessee's operations in the leased premises, and will on request, furnish Lessor with supporting evidence of such compliance.

SECTION XIV

Lessor acknowledges that Lessee intends to operate the landfill on the premises six (6) days per week, fourteen (14) hours per day, or such additional days and hours as the Lessee determines necessary. Lessor agrees not to adopt any ordinances, rules, regulations or other limitations affecting the ability of Lessee to operate the landfill less than six (6) days per week, fourteen (14) hours per day.

SECTION XV

Lessor acknowledges that it is Lessee's intention to attempt to acquire an additional parcel of real estate immediately adjacent to, and southeast of, the leased premises and consisting of approximately eighteen acres. If Lessee acquires said real estate, Lessee agrees to convey it to Lessor for a nominal consideration of Ten Dollars. Said parcel shall become part of the demised premises upon conveyance to Lessor and shall be subject to all of the terms and conditions of this Lease

Agreement.

SECTION XVI

Lessee agrees to accept all qualified waste collected from residents and commercial establishments of Lessor for deposit in the landfill operated on the premises for a period of fourteen (14) years from the date of this Agreement. Lessee shall be obligated to accept said waste regardless of the entity collecting the waste and delivering it to the landfill. This waste shall be received by Lessee at the same charges as applicable to other similar waste deposited in the landfill, which charges shall not be excessive.

Lessee agrees the City of Morris engineer shall monitor the use of the landfill by Lessee. In the event the City engineer shall determine that the capacity of the landfill is being utilized at a rate which could affect the ability of Lessee to accept Class II waste from the City of Morris for the fourteen year period above required, Lessor shall so notify Lessee and Lessee shall affirmatively show to Lessor its policy for future utilization of the landfill so as to establish its ability to satisfy Lessee's obligation to accept Class II waste from the City of Morris for the fourteen year period above required.

SECTION XVII

Each of the following events shall constitute a default or

breach of this Lease by Lessee:

A. If Lessee or any successor assignee of Lessee while in possession shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act or shall voluntarily take advantage of any such act by answer or otherwise.

B. If involuntary proceedings under any bankruptcy law or insolvency act shall be instituted against Lessee, or if a receiver or trustee shall be appointed for all or substantially all of the property of Lessee and such proceedings shall not be dismissed or the receivership or trusteeship vacated within thirty (30) days after the institution or appointment.

C. If Lessee shall fail to pay Lessor any rent or additional rent when the rent shall become due and shall not make the payment within thirty (30) days after notice thereof by Lessor to Lessee.

D. If Lessee shall fail to perform or comply with any of the conditions of this Lease and if the non-performnce shall continue for a period of thirty (30) days after notice thereof by Lessor to Lessee, or if the performance cannot be reasonably had within the thirty (30) day period and Lessee shall not in good faith have commenced performance within the thirty (30) day period and shall not diligently proceed to completion of performance.

E. If Lessee shall vacate or abandon the lease premises.

F. If Lessee fails to obtain an operating permit for a Class II landfill from the Illinois Environmental Protection Agency.

SECTION XVIII

In the event of any default hereunder as set forth in paragraph XVII, the rights of Lessor shall be as follows:

A. Lessor shall have the right to cancel and terminate this Lease as well as all of the right, title and interest of Lessee hereunder by giving to Lessee not less than five (5) days notice of cancellation and termination. On expiration of the time fixed in the notice this Lease and the right title and interest of Lessee hereunder shall terminate in the same manner and with the same force and effect, except as to Lessee's liability as if the date fixed in the notice of cancellation and termination were the end of the term herein originally determined.

B. Lessor may reenter the premises immediately and remove the property and personnel of Lessee and store the property in a public warehouse or a place selected by Lessor at the expense of Lessee. After reentry Lessor may terminate the Lease in giving five (5) days written notice of termination to Lessee. Without the notice, reentry will not terminate the Lease. On termination Lessor may recover from Lessee all damages proximately resulting

from the breach, including the cost of recovering the premises, which sum shall be immediately due Lessor from Lessee.

C. Lessee shall be liable for all expenses of the reletting, and for all costs that may be incurred in properly covering the landfill site and other events of closure according to the rules and regulations of the Illinois Environmental Protection Agency; provided that in the event Lessor relets the site to another party for the purpose of continuing a sanitary landfill operation, Lessee shall not be responsible for the cost of the closure of the landfill.

SECTION XIX

Lessee will allow Lessor free access to the premises for the purpose of examining or exhibiting the same or to make any needful repairs or alterations thereof which Lessor may see fit to make and will allow to have placed upon the premises at all times ntoices of "For Sale" and "To Rent" and will not interfere with the same.

SECTION XX

The parties acknowledge that the drainage of surface water for the premises leased hereunder is to the east through ditches constructed by the Lessor around property owned by it which was formerly used for the City of Morris Landfill.

Lessee agrees to maintain said drainage ditches as they now

exist at its own expense during the term of this Lease.

Lessor hereby grants to Lessee an easement for drainage purposes and for the purpose of maintaining said ditches across that real estate described in the attached Exhibit B.

XXI.

Lessee covenants and agrees that it will protect and save and keep the Lessor forever harmless and indemnified against and from any penalty or damages or charges imposed for any violation of any laws or ordinances, whether occasioned by the neglect of Lessee or those holding under Lessee and that Lessee will at all times protect, indemnify and save and keep harmless the Lessor against and from any and all loss, costs, damage or expenses, arising out of or from any accident or other occurrence on or about the premises, causing injury to any person or property whomsoever or whatsoever and will protect, indemnify and save and keep harmless the Lessor against and from any and all claims and against and from any and all loss, cost, damage or expense arising out of any failure of Lessee in any respect to comply with and perform all the requirements and provisions hereof.

SECTION XXII

Lessee will pay and discharge all reasonable costs, attorneys' fees and expenses that may be incurred by Lessor, in enforcing the convenants and agreements of this Lease and Lessor

will pay and discharge all reasonable costs, attorneys' fees and expenses that may be incurred by Lessee in enforcing the covenants and agreements of this Lease.

SECTION XXIII

Lessee shall not sublease any part of the demised premises, or assign this Lease, without the prior written consent of Lessor, their heirs or assigns and if Lessee shall violate this provision, it shall be lawful for Lessor, their heirs or assigns to reenter the premises hereby leased or any part thereof and to repossess the premises, anything herein contained to the contrary notwithstanding.

SECTION XXIV

All the covenants and conditions and obligations herein contained shall be binding upon and enure to the benefit of the respective heirs and successors and assigns of the parties hereto to the same extent as if each such heir, successor and assign were in each case named as a party to this Lease. This Lease may not be changed, modified or discharged except by writing signed by Lessor and Lessee.

SECTION XXV

In the event permits to operate Class II sanitary landfills are suspended, revoked or canceled because of substantial changes of any governmental law, rule, or policy, this Lease shall become

null and void and Lessee shall no longer be obligated to Lessor except for any rents that may be due and for the proper closure of the landfill site.

SECTION XXVI

Lessor agrees to do everything within its power to maintain the tax exempt status of the real estate leased hereunder. In the event the lease hold interest of Lessee or any part of the real estate is assessed for real estate tax purposes, Lessee agrees to pay all real estate taxes resulting from said assessment. Lessee shall pay for all legal expenses and costs incurred by Lessor in maintaining the tax exempt status of the real estate leased hereunder.

SECTION XXVII

All notices required or permitted hereunder shall be in writing and may be given by certified mail, first class mail, or during regular business hours by delivery by messenger or by delivering in person to the person named below until further notice to the contrary is given by any one of the parties hereto:

LESSOR:	LESSEE:
City of Morris Morris City Hall Morris, IL 60450	Community Landfill Company 25 North Ottawa Street Joliet, IL

All notices by mail shall be deemed delivered when deposited with the United States Postal Service.

SECTION XXVIII

For the purposes of this Lease Agreement, the term "Class II Landfill" shall mean a sanitary landfill operated in accordance with the Illinois Environmental Protection Act and all regulations issued thereunder for the sole purpose of accepting "municipal waste" as that term is defined in the Illinois Environmental Protection Act.

SECTION XXVIX

To guarantee the fulfillment of all terms and conditions of this Lease Agreement, Lessee agrees to deposit with Lessor within ten (10) days after the execution of this Lease Agreement a letter of credit issued by a financial institution licensed by the State of Illinois or by the United States Government in the amount of $50,000.00. This letter of credit shall remain in effect the entire term of this Lease Agreement and shall be conditioned on the Lessee duly performing all conditions and obligations under this Lease Agreement. Said letter of credit shall provide in the event of a default by Lessee, which default shall remain uncured for thirty (30) days after written notice to Lessee, that Lessor shall be entitled to immediately draw against said letter of credit in the amount of the default or the sum of $50,000.00, whichever is less.

SECTION XXX

Lessee agrees not to transfer a controlling interest of the stock of Lessee without the prior written consent of Lessor, which consent shall not be reasonably withheld. It is the intent of this provision that Lessor be aware of the principals of Lessee and have an opportunity to object to a transfer of controlling interest if Lessor believes it would adversely affect it under this Lease Agreement.

The parties agree that this provision shall not be applicable to a public offering of stock by Lessee or to the merger of Lessee into a publicly held corporation.

SECTION XXXI

This Lease Agreement will be governed both as to interpretation and performance under the Laws of the State of Illinois.

IN WITNESS WHEREOF, the Lessor and the Lessee by and through its President and Corporate Secretary have executed this Lease Agreement on the day and year first above written.

CITY OF MORRIS

BY: James R. Wackerlin

ATTEST:

Marjorie Walters by
Clerk Audrey Hyduke, Dep.

COMMUNITY LANDFILL COMPANY, An Illinois Corporation

BY: Robert J. Crum

Its President

ATTEST:

Robert A. Branch
Corporate Secretary

GUARANTEE OF ROYALTY

In consideration of the execution of this Lease Agreement by Lessor, the undersigned hereby personally guarantee the royalty payments to be paid by Lessee to Lessor as required by Section III of this Lease Agreement.

DATED: July 1, 1982

Robert J. Brown

Edward H. Bruns

Robert A. Bruner

LEGAL DESCRIPTION
LANDFILL, WEST SIDE

Commencing at the northeast corner of Section 3, Township 33 North, Range 7 East of the Third Principal Meridian, said point being the POINT OF BEGINNING; thence due South along the east line of said Section 3 for a distance of 156.00 feet; thence South 48° 00' 44" West for a distance of 1777.80 feet; thence South 89° 34' 40" West for a distance of 1016.00 feet to a point which falls on the east right-of-way line of the Chicago, Rock Island and Pacific Railroad spur line; thence North 00° 39' 20" West along said east right-of-way line for a distance of 454.20 feet; thence North 05° 38' 00" East along said east right-of-way line for a distance of 100.00 feet; thence North 18° 04' 00" East along said east right-of-way line for a distance of 100.00 feet; thence North 27° 48' 00" East for a distance of 50.00 feet to a point which falls on the southerly right-of-way line of the main tracks of the Chicago, Rock Island and Pacific Railroad; thence North 50° 44' 00" East along said southerly right-of-way line for a distance of 369.27 feet; thence due South along said southerly right-of-way line for a distance of 38.75 feet; thence North 50° 44' 00" East along said southerly right-of-way line for a distance of 1813.00 feet; thence South 39° 16' 00" East along said southerly right-of-way line for a distance of 70.00 feet; thence North 50° 44' 00" East for a distance of 700.00 feet to a point which falls on the east line of Section 34, Township 34 North, Range 7 East of the Third Principal Meridian; thence due South along said east line for a distance of 1069.90 feet to the point of beginning, containing 64.03 acres, more or less, all located in the Northeast Quarter (NE¼) of Section Three (3) Township Thirty-three (33) North, Range Seven (7) East and the Southeast Quarter (SE¼) of Section Thirty-four (34), Township Thirty-four (34) North, Range Seven (7) East of the Third Principal Meridian, City of Morris, County of Grundy, and State of Illinois.

June 29, 1982

EXHIBIT A

ADDENDUM TO LEASE AGREEMENT

THIS ADDENDUM entered into this 1st day of July, 1982, by and between THE CITY OF MORRIS, ILLINOIS, A Municipal Corporation, hereinafter referred to as "Lessor", and COMMUNITY LANDFILL CO., An Illinois Corporation, of Joliet, Illinois, hereinafter referred to as "Lessee".

WITNESSETH:

WHEREAS, Lessor and Lessee have negotiated a Lease Agreement for premises to be operated by Lessee as a Sanitary Landfill; and

WHEREAS, the parties hereto, in consideration of entering into said Lease Agreement and covenants contained herein, desire to add the following provisions to said Lease Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED as follows:

1. ESTABLISHMENT OF CONTINGENCY FUND. Lessor has indicated its intention of establishing a contingency fund by setting aside $5,000. of the annual minimum royalty required by Section III of the Lease Agreement, which contingency fund would be used solely to satisfy contingent liabilities resulting from the operation of a Sanitary Landfill on the leased premises by Lessee or, if not necessary for said purpose, to be used to improve the leased premises at the termination of the Lease Agreement for recreational uses by residents of the City of Morris.

2. CONTRIBUTIONS TO FUND BY LESSEE. In the event Lessor establishes a contingency fund as referred to in

Paragraph 1 above, within 120 days from the date of this Addendum to Lease Agreement, by adopting any and all necessary ordinances or resolutions;, and in the further event Lessor makes annual contributions to said fund as referred to in Paragraph 1 above, Lessee hereby agrees to contribute to said fund an amount equal to 1/2 of the contribution by Lessor up to a maximum contribution by Lessee of $2,500. in any 12-month period. Payments by Lessee shall be made within 30 days after being advised by Lessor that Lessor has made its annual contribution. Lessee agrees that this contribution shall be over and above any sums required to be paid by it under the Lease Agreement.

3. TERM. This Addendum shall remain in full force and effect during the term of the Lease Agreement.

4. EFFECT OF ADDENDUM. This Addendum shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, The Lessor and the Lessee by and through its President and Secretary have executed this Addendum to Lease Agreement on the day and year first above written.

CITY OF MORRIS

BY: _____

ATTEST:

_____ CLERK
Audrey Hedael
Dep. Clk.

COMMUNITY LANDFILL COMPANY, An Illinois Corporation

ATTEST:

BY: _____

Its President

_____
Corporate Secretary

FINAL FINAL
June 17, 1987

AMENDMENT TO JULY 1, 1982 LEASE AGREEMENT

THIS AMENDMENT to the July 1, 1982 Lease Agreement as added to by Addendum to Lease Agreement dated July 1, 1982, is made on May 26, 1987 by and between CITY OF MORRIS (LESSOR) and COMMUNITY LANDFILL CO., an Illinois corporation, (LESSEE). The parties agree as follows:

1. Section IX is amended to read as follows:

Lessor further agrees to cooperate with Lessee in amending the Operating Permit previously issued to Lessor to permit above grade fill on the leased site to a maximum height of sixty (60) feet. However, in no event shall the Lessee exceed 60 feet or the amount actually permitted by the issued Illinois EPA permit, whichever is less. Lessee shall prepare all applications, revised site plans and studies and pay all costs and expenses incurred in amending the present permit to a maximum height of sixty (60) feet on the leased site. Lessee shall proceed immediately with all deliberate speed and due diligence to obtain the permit for 60 feet height on the leased site. Lessee shall not have any right to possess, use or dump anything on the Landfill east of Ashley Road. Lessee shall obtain a Closure Plan which is approved by the Illinois EPA prior to exceeding the elevation now permitted. Lessee shall comply with the Closure Plan and provide the final cover on the landfill in phases in accordance with the Closure Plan and Illinois EPA Rules and Regulations. The Health and Sanitation Committee shall meet at least every six months to determine whether that part of the final cover provided in the preceding six

months is propertly in place in accordance with the Closure Plan and Illinois EPA Rules and Regulations. In the event the Health and Sanitation Committee determines that such final cover is not properly in place in accordance with said Plan, Rules and Regulations and that fact is confirmed in writing by the Illinois EPA, then Lessee shall have thirty (30) days to put such final cover properly in place from the date of such written confirmation.

2. Section III is amended to read as follows:

Lessee shall pay to the Lessor and the Lessor agrees to accept therefore for the operation of such regional pollution control facility an annual minimum royalty of Fifteen Thousand Dollars ($15,000.00), the first payment to be made on July 1, 1987 and thereafter on July 1st of each year of this Lease. Lessee forthwith agrees that Lessor shall be entitled to, for refuse accepted at such facility, a royalty in the amounts as follows:

For the period from May 1, 1987 until June 30, 1988, vehicle charge amounts equal to the following:

1. $12.50 per 20 ton capacity transfer trailer and $12.50 per vehicle with capacity exceeding a 6 wheeler.
2. $2.50 per 6 wheeler and $2.50 per vehicle with capacity exceeding pick up truck.
3. $1.50 per pick up truck.
4. $1.00 per vehicle for vehicles with a capacity of less than 2 yards.

The above charges apply per vehicle regardless of how much refuse is on the vehicle. There is no reduction whatsoever if the vehicle is filled at less than its capacity. Thus, for ex-

ample, for a 20 ton capacity transfer trailer, the charge is $12.50 even if there is only 1 yard of refuse on it.

The amount of royalty in the above paragraph shall never be decreased except as hereinafter provided. However, after June 30, 1988, the Lessor shall be entitled to receive for the yearly period commencing each July 1 thereafter, including July 1, 1988, the following amount if it is higher:

An amount equal to the royalty per vehicle the previous July 1, increased by an amount determined as follows: that amount per vehicle for the previous July 1, multiplied by the weighted average percentage increase, if any, of the current July 1 posted dumping charges (compacted cubic yard or tonnage rate, whichever is applicable), compared to such charges in effect on the preceding July 1, of the CDT Landfill (Joliet), Environtech Landfill (Morris) and the Ottawa Landfill; provided that, for the yearly period commencing July 1, 1988, the July 1, 1987 rates shall be considered to be as follows:

CDT Landfill (Joliet) $3.70 per compacted cubic yard or $13.00 per ton;

Envriontech Landfill (Morris) $4.00 per compacted cubic yard or $_____per ton (to be inserted by the parties when such rate is established); and

Ottawa Landfill $3.80 per compacted cubic yard.

For example, if on July 1, 1988 the charges are as follows:

CDT Landfill (Joliet) 4.07 per compacted cubic yard

Environtech Landfill (Morris) $4.80 per compacted cubic yard

Ottawa Landfill $3.80 per compacted cubic yard.

Then, the weighted average percentage increase is 10% (10% for CDT and 20% for Environtech and 0% for Ottawa) and the vehicle charge amounts for July 1, 1988 through June 30, 1989 would be:

1. $13.75 per 20 ton capacity transfer trailer and $13.75 per vehicle with capacity exceeding a 6 wheeler.
2. $2.75 per 6 wheeler and $2.75 per vehicle with capcity exceeding pick up truck.
3. $1.65 per pick up truck.
4. $1.10 per vehicle for vehicle with a capcity of less than 2 yards.

Assuming the July 1, 1988 charges are as set forth above and the July 1, 1989 charges are as follows:

CDT Landfill (Joliet) $4.88 per compacted cubic yard.

Environtech Landfill (Morris) $5.76 per compacted cubic yard.

Ottawa Landfill $3.99 per compacted cubic yard.

Then, the weighted average percentage increase is 15% (20% for CDT and 20% for Environtech and 5% for Ottawa) and the vehicle charge amounts for July 1, 1989 through June 30, 1990 would be:

1. $15.81 per 20 ton capacity transfer trailer and $15.81 per vehicle with capacity exceeding a 6 wheeler.
2. $3.16 per 6 wheeler and $3.16 per vehicle with capacity exceeding pick up truck.
3. $1.90 per pick up truck
4. $1.27 per vehicle for vehicle with capacity of less than 2 yards.

In the event either the CDT Landfill (Joliet), Environtech Landfill (Morris) or the Ottawa Landfill does not have posted dumping charges, then the said weighted average percentage increase shall be determined by substituting the posted dumping charges at the next landfill closest to the City of Morris other than Lessee's Landfill.

In the event that the maximum highway weight limit for vehicles using the landfill is increased over and above the present maximum limit of 80,000 pounds, then, effective on the date of such increase and provided such increase is applicable to all highways extending to the landfill, the vehicle charge per 20 ton capacity transfer trailer shall be increased by the same percentage that such increase is over such present maximum weight limit of 80,000 pounds and such increased vehicle charge shall be applicable to such twenty (20) ton or higher capacity transfer trailers. For purposes of determining any future royalty increases under the provisions of this Paragraph 2, such increased vehicle charge shall be considered to have been in effect the previous July 1.

Lessee shall be entitled to receive credit against the minimum annual royalty payment for the vehicle charges until the vehicle charges during any year exceed the annual minimum royalty payment. Thereafter, any royalty amounts in excess of the minimum annual royalty shall be paid to Lessor within 10 days after the end of the first month and for each successive month thereafter that such vehicle charge amounts exceed the

minimum annual royalty. In the event that the height increase to sixty (60) feet is not granted in accordance with the provisions of Paragraph 1 of this Amendment, then on and after the date of such non granting the rate structure provided in this Paragraph 2 shall be null and void and the effective rate structure on and after the date of non granting shall be the rate structure provided in Section III of the July 1, 1982 Lease Agreement.

3. Section XVII of the July 1, 1982 Lease Agreement is amended to show the address of the Lessee as follows:

Community Landfill Co.
4330 West 137th Place
Crestwood, Illinois 60445

4. The following sections are added to read as follows:

XXXIII. Lessee shall not allow or permit any of its owned or leased or contracted vehicles to, and shall instruct and direct any other vehicles not to, use Armstrong Street or any other City Street (other than Route 6 and Route 47) except for vehicles which are carrying refuse or garbage generated in the City of Morris. Lessee shall instruct all drivers except for the vehicles which carry refuse or garbage generated in the City of Morris to enter from and exit on Ashley Road and Route 6. Notwithstanding the above, in the event that Saratoga Township posts a weight limit on Ashley Road, then the vehicles may use Armstrong Street during the time the road is posted and traffic is prohibited.

XXXIV. Lessor shall install at its own cost all monitoring wells on the landfill east of Ashley Road as required by the Illinois EPA. Lessee shall pay all costs of testing, monitoring and repairing the wells for the life of this Lease Agreement.

Lessor shall remain fully responsible for complying with any and all laws and regulations applicable to that part of the landfill east of Ashley Road. Lessee shall reamin fully responsible for complying with any and all laws and regulations applicable to that part of the landfill west of Ashley Road.

XXXV. Lessee shall not accept more than the following amounts of waste:

(A) During periods that Ashley Road is posted and traffic is prohibited:

2,000 gate yards per day or 33 twenty ton capacity transfer trailers, whichever is less.

12,000 gate yards per week or 200 twenty ton capacity trailers, whichever is less.

B. During periods that Ashley Road is not posted and traffic is permitted:

2,500 gate yards per day or 42 twenty ton capacity transfer trailers, whichever is less.

15,000 gate yards per week or 252 twenty ton capacity trailers, whichever is less.

XXXVI. Lessee shall not open the landfill prior to sunrise and the landfill shall be closed after sunset or 8:00 p.m., whichever is later.

XXXVII. The landfill shall remain open at least until March 1, 1995 and shall continue to accept all City of Morris refuse and garbage delivered during this period of time at rates no greater than the rates then in effect for any City of Morris refuse and garbage delivered to the Environtech Landfill (Morris).

XXXVIII. During the term of this July 1, 1982 Lease Agreement, as amended, Lessor agrees not to establish any fees or charges for any purpose with regard to the receipt or disposal of refuse and garbage at the landfill and not to adopt any ordinances, rules, regulations or other limitations contrary to the provisions of the July 1, 1982 Lease Agreement, as amended, unless required by federal or state laws and regulations.

5. All other terms and conditions of the July 1, 1982 Lease Agreement, as amended, not specifically modified by this Amendment shall remain in full force and effect.

COMMUNITY LANDFILL COMPANY,

By: Robert J. Reuss
President

ATTEST:

Edward L. Reuss
Secretary

CITY OF MORRIS

By: James R. Washburn
Mayor

ATTEST:

John D. Engel
City Clerk

GUARANTEE OF ROYALTY

In consideration of executing this Amendment, the undersigned guarantee the royalty payments to be made by Lessee to Lessor as required by Section III of the Lease, and as amended by Paragraph Two (2) of this Amendment.

Dated: May 27, 1987

Edward H. Pinn

Robert J. Pinn

AMENDMENT TO JULY 1, 1982 LEASE AGREMENT

This amendment is made on October 26, 1987 to the July 1, 1982 Lease Agreement and added to by Addendum to Lease Agreement dated July 1, 1982 and the Amendment made on May 26, 1987 by and between the City of Morris (Lessor) and Community Landfill Company, an Illinois Corporation (Lessee). The parties agree as follows:

1. Lessor hereby consents to the construction of the building upon the premises in accordance with the terms and specifications of the attached Agreement between Community Landfill Company and C.W. Lamping General Contractors, Inc. All terms and conditions and provisions of Section VI of the Lease Agreement dated July 1, 1982 shall apply to and be in full force and effect regarding this building, including the provisions that Lessee shall pay the entire cost of the building and Lessor shall own the building at the expiration of the lease at no cost to Lessor.

CITY OF MORRIS

By: _____
MAYOR

ATTEST: _____
CITY CLERK

COMMUNITY LANDFILL COMPANY

By: _____
ITS PRESIDENT

ATTEST:

_____
CORPORATE SECRETARY

Proposal

Page No. of Pages

C. W. LAMPING
GENERAL CONTRACTORS, INC.
[redacted]
MORRIS, ILLINOIS 60450 730 W. Dupont Rd.
Phone (815) 942-4474

PROPOSAL SUBMITTED TO	PHONE	DATE
STREET Community Landfill Co.	942-3941	October 21,1987
CITY, STATE AND ZIP CODE Ashley Road	JOB NAME 60' x 60' x 16' Lester's Post Frame Bldg.	
ARCHITECT Morris, Il. 60450	JOB LOCATION Ashley Road	
Owner	DATE OF PLANS	JOB PHONE

We Propose hereby to furnish material and labor — complete in accordance with specifications below, for the sum of:

Twenty One Thousand, Six Hundred Eighty One dollars ($ 21,681.00).

Payment to be made as follows:

$6504.30-On order of building. $8672.40-On delivery of materials. $6504.30-On completion of erection.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from specifications below involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized Signature Clarence W. Lamping

Note: This proposal may be withdrawn by us if not accepted within 5 days.

We hereby submit specifications and estimates for:

One 60' x 60' x 16' Lester's Post Frame Building;

ith a 20# L.L. on roof, 4# dead load for roof and no ceiling load. Building includes (2) 24' x 4' steel overhead non-insulated doors with electric operators on endwall. (1) 9' x 8' steel overhead non-nsulated door on sidewall without operator. (1) 3' walk door on sidewall, 2' insulated eave ite on both sidewalls. Building will be insulated with 2"vinyl faced fiberglass insulation on idewalls, endwalls and roof. Building will be connected to existing building; on South endwall.

This proposal subject to owners selection of colors. Owner shall be responsible for engneered drawings if needed. Owner to provide level building site. Owner to provide building ermits. Owner to provide electrical outlet for building crew. Owner shall be responsible for aterial after delivery to jobsite, in case of fire, theft, wind damage, and damage of any kind cluding damage caused by said erectors. If underground obstructions of any kind are encountered uring construction, an additional charge shall result, such as stone,rocks,electric,gas,telehone lines,sewer lines,water lines,septic lines or fields,pipe lines, including all labor equired to reconstruct, including acts of god.

One year warranty on workmanship through erector.

(Note) Due to possible variations in roof pitches and eave heights, because of differant onstruction methods in the structures,.we cannot guarantee a matched eave height or matched oof line height. Construction to commence approximately Dec. 28, 1987 or possibly sooner, in ase of any cancellations in builders schedule.

Approved by City Council 11/16/87

Acceptance of Proposal — The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of Acceptance: _____

Signature James Edwards

Signature _____

ADDENDUM TO JULY 1, 1982 LEASE AGREEMENT, AS AMENDED,
BETWEEN CITY OF MORRIS (LESSOR) AND COMMUNITY LANDFILL COMPANY (LESSEE)

In consideration fo the mutual covenants contained herein, it is agreed that the following provisions are added as of the first day of October, 1990:

1. Paragraph XXXVIII is amended to read as follows: LESSOR shall have the right at all times (both before and after the date of this addendum) to charge and collect fees, taxes or surcharges which are authorized by State of Illinois statutes. LESSOR agrees not to adopt any ordinances, rules, regulations or other limitations contrary to the provisions of the July 1, 1982 Lease Agreement, as amended, unless required by federal or state laws and regulations.

2. LESSEE is authorized to accept and receive non-hazardous and non-special waste resulting from the tornado which swept through Will County in accordance with the following terms and conditions:

A. All such waste shall be received at the landfill no later than November 1, 1990.

B. All trucks coming into the landfill shall be dump trucks with a capacity not to exceed 15 cubic yards. All trucks shall use Interstate 55 to Rt. 6 to Ashley Road both coming and going to the landfill site. Total truck entries to the landfill shall not exceed 6,000.

C. LESSEE shall not accept any such waste prior to 6:00 a.m. or after sunset or 8:00 p.m., whichever is later. If LESSEE can obtain approval from the State of Illinois, then it shall have the right to be open on Sunday.

D. LESSEE shall remove all metals and concrete from the waste and haul it out of the Lanfill no later than October 1, 1991. The amount hauled out shall not reduce the payment due LESSOR.

E. LESSEE shall pay to LESSOR the greater of:

Seventy Five Thousand Dollars ($75,000.00) or $18.75 per truck (regardless) of whether the truck is loaded to capacity) multiplied by the number of truck entries to the Landfill.

F. LESSEE shall make the payment to LESSOR no later than December 1, 1990.

G. LESSEE shall not allow the waste to scatter or be blown off the site.

H. LESSEE shall comply with all Illinois EPA rules and regulations regarding this waste and shall apply an interim cover approved by the Illinois EPA on all the waste received.

I. LESSEE shall keep separate tickets for all of these trucks and provide duplicate copies of all tickets to LESSEE at the end of each week.

3. This addendum shall not in any way effect the royalty payments due for waste other than this specific waste resulting from the tornado which swept through Will County.

COMMUNITY LANDFILL COMPANY,

By: _____
President

ATTEST:

_____
Secretary

CITY OF MORRIS

By: _____

ATTEST:

_____
City Clerk

ADDENDUM TO JULY 1, 1982 LEASE AGREEMENT

This amendment to the July 1, 1982 Lease Agreement as added to by addendum to Lease Agreement dated July 1, 1982 is made on November 14 , 1994 by and between the City of Morris (hereinafter referred to as Lessor) and Community Landfill Corporation, an Illinois corporation (hereinafter referred to as Lessee). Parties agree as follows:

1. That this addendum applies to the landfill east of Ashley Road for the purpose of receiving construction and demolition refuse and contaminated soil said contaminated soil being defined as follows:

a. Soils generated from Leaking Underground Storage Tank (LUST) sites contaminated with any petroleum products, including petroleum motor fuels, waste oil, heavy fuel oils (#3 - #6) which are not RCRA listed hazardous wastes.

b. Soils generated from non-LUST sites, e.g., above ground storage tanks, above ground spills, contaminated with any petroleum products including petroleum motor fuels, waste oil, heavy fuel oils (#3 - #6), which are not RCRA listed hazardous wastes.

2. That this addendum and agreement shall not be binding or in full force and effect until the Lessee's west side landfill is closed in its entirety. The Lessee shall comply with all closure and post closure requirements of the Illinois EPA.

3. Lessor further agrees to cooperate with Lessee in amending and/or obtaining the operating permit necessary to permit above

grade fill as described above on the leased site to a maximum height of sixty (60) feet. However, in no event shall the Lessee exceed sixty (60) feet or the amount actually permitted by the issued Illinois E.P.A. permit whichever is less. Lessee shall prepare all applications, revised site plans and studies and pay all costs and expenses incurred in amending the present permit or obtaining a new permit to a maximum height of sixty (60) feet on the leased site. Lessee shall proceed immediately with all deliberate speed and due diligence to obtain the permit for sixty (60) feet height on the leased site. Lessee shall obtain a Closure Plan which is approved by the Illinois E.P.A. prior to exceeding the elevation now permitted. Lessee shall comply with the Closure Plan and provide the final cover on the landfill in phases in accordance with the Closure Plan and Illinois E.P.A. Rules and Regulations. The Health and Sanitation Committee shall meet at least every six months to determine whether that part of the final cover provided in the preceding six months is properly in place in accordance with the Closure Plan and Illinois E.P.A. Rules and Regulations. In the event the Health and Sanitation Committee determines that such final cover is not properly in place in accordance with said Plan, Rules and Regulations and that fact is confirmed in writing by the Illinois E.P.A., then Lessee shall have thirty (30) days to put such final cover properly in place from the date of such written confirmation.

4. That Lessee agrees to allow the Lessor to utilize the building currently in existence on the west side landfill site and

Lessee further agrees not to alter, demolish or otherwise destroy said building or constrict access to said building unless otherwise agreed in writing between the Lessor and Lessee. It is further agreed that the Lessee shall provide for a perimeter clearance and/or access surrounding said building as per attached Exhibit A.

5. Lessee shall pay to the Lessor and the Lessor agrees to accept, therefore for the operation of such regional pollution control facility for the purposes of accepting construction and demolition refuse and contaminated soil as described in 1(a) and 1(b) above the annual minimum royalty of $15,000 the first payment to be made upon the closure of the west landfill as described above and prior to commencement of operation of the east landfill and on the first of each anniversary date. Lessee forthwith agrees that Lessor shall be entitled to for demolition and construction waste accepted at such a facility a royalty in the amount as follows: For the period encompassed in this Addendum vehicle charges amounts equal to the following:

a. That the royalty applicable to the construction and demolition refuse shall be the same as that in effect currently for general refuse.

The amount of royalty in the above paragraph shall never be decreased except as hereinafter provided.

6. That the tax rate applicable to the construction and demolition refuse shall be the same as that in effect currently pursuant to the July 1, 1982 Lease Agreement and all addendum entered into concerning said Lease Agreement. In the event that

such construction and demolition refuse is declared tax exempt the Lessee agrees to pay a royalty per vehicle as it applies to contaminated soil as stated in this Addendum.

That Lessee shall pay to Lessor and the Lessor agrees to accept therefore for the operation of such facility as it pertains to contaminated soil as previously described the following as and for royalty amounts:

For the period encompassed in this Addendum vehicle charge amounts equal to the following:

a. For a load of contaminated soil the sum of $28.11 per load.

b. That an additional royalty would be charged at the rate of $15.00 per vehicle.

7. Lessee shall be entitled to receive credit against the minimum annual royalty payment for the vehicle charges until the vehicle charges during any year exceed the annual minimum royalty payment. Thereafter any royalty amounts in excess of the minimum annual royalty shall be paid to Lessor within ten days after the end of the first month and for each successive month thereafter that such vehicle charge amounts exceed the minimum annual royalty.

8. That Lessee shall pay all costs of testing, monitoring and repairing the monitoring wells on the landfill east of Ashley Road for the life of this Lease Agreement.

9. That Lessee shall remain fully responsible for complying with any and all laws and regulations applicable to the landfill east and west of Ashley Road.

10. The landfill shall remain open at least until July 1999 and shall continue to accept all City of Morris refuse of whatsoever nature delivered during this period of time free of charge. That upon this term expiring July 1999, the term of this lease may be extended by agreement of the parties to July 2010.

11. That all of the terms and conditions of the July 1, 1982 Lease and any amendments and/or addendum thereto not specifically modified by this Amendment shall remain in full force and effect.

COMMUNITY LANDFILL CO.

By: _____
President

ATTEST:

_____
Secretary

CITY OF MORRIS

BY: _____
Mayor

ATTEST:

_____
City Clerk

GUARANTEE OF ROYALTY

In consideration of executing this Amendment the undersigned guarantee the royalty payments to be made by Lessee to Lessor as required by Section 3 of the Lease and any amendments thereto including the amendments of this agreement.

DATED: 12/9/94

Robert J. Pr...

Edward H. Pr...

ADDENDUM TO THE LEASE DATED JULY 1, 1982

This Addendum to Lease Agreement dated July 1, 1982 is made on July 20th, 1999 by and between the City of Morris (hereinafter referred to as Lessor) and Community Landfill Co., an Illinois corporation (hereinafter referred to as Lessee).

1. The parties are presently co-permittees of Morris Community Landfill under Permit No. 1996-21-SP, dated October 11, 1996, and various other supplemental permits issued by the IEPA.

2. The parties are co-applicants under an application for significant modification of Parcel A (east side) and Parcel B (west side), IEPA permit application log nos. 1996-255 and 1996-256. This permit application is presently under consideration by the IEPA, and a decision is expected to be rendered by the IEPA in calendar year 1999.

3. Pursuant to the provisions of paragraph 10 of the November 14, 1994 amendment, the landfill may remain open and operating, subject to the terms and conditions of any permit or permits issued by the IEPA, until no later than July 2010. Should the parcels reach final disposal capacity prior to July 2010, the landfill shall close but this lease shall continue for lessee to conduct closure and post closure care and remedial activities as required by applicable IEPA permits.

4. That the present closure/post-closure care plans submitted to the IEPA for both parcels require the collection and treatment of leachate, ground water, and gas condensate from the landfill. The closure/post-closure care plans presently allow the Lessee to hold the leachate, contaminated ground water, and gas condensate in an equalization tank on site, and to pump it to the City of Morris POTW via the City of Morris sewer system, pursuant to IEPA Permit No. 1999-EE-3440, and specifically subject to any limitations and provisions imposed by the City of Morris. In consideration of the rents, royalties, disposal privileges, methane gas production rentals, the Lessor

agrees subject to any limitations and provisions issued by the City of Morris POTW, that it will accept and treat the groundwater and condensate without charge, and accept and treat the leachate without charge for up to 3,500 gallons per day and at a charge of $1.60 per thousand gallons for any leachate in excess of 3,500 gallons per day.

5. This Agreement does not relieve Lessee of the responsibility of complying with the provisions of IEPA Permit No. 1999-EF-3440, or the provision of any other permit relating to the operation, closure or post-closure care of the landfill, and specifically any limitations and provisions imposed by the City of Morris POTW.

6. This Agreement shall inure to the benefit of Lessee, its successors and assigns, and specifically to the State of Illinois Environmental Protection Agency, or its designee, in the event it is required to perform closure/post-closure activities.

7. All of the closure and post-closure responsibilities for the site as set forth in a closure/post-closure plan approved by the IEPA, shall remain the responsibility of the lessee.

8. All of the terms and conditions of the July 1, 1982 lease, and any amendments and/or addendum thereto not specifically modified by this Addendum shall remain in full force and effect.

COMMUNITY LANDFILL CO., Lessee

By: Robert G. Prein
Its President

CITY OF MORRIS

By: Robert T. Feeney
Its Mayor

AGREEMENT FOR TREATMENT OF LIQUID FROM MORRIS COMMUNITY LANDFILL

This Agreement is made this 20th day of July, 1999 by and between the City of Morris (hereinafter the City) and Community Landfill Co., an Illinois corporation (hereinafter CLC).

1. Pursuant to the provisions of a July 1999 Addendum to the Lease between the City and CLC, regarding Morris Community Landfill, the City has agreed to accept and treat leachate, groundwater and gas condensate from Morris Community Landfill at the City's publicly owned treatment works (POTW).

2. The City and CLC expressly agree that the City's ability to accept and treat leachate, groundwater and gas condensate at the City's POTW may be limited by capacity of the POTW, or restrictions put on the POTW by the Illinois Environmental Protection Agency (IEPA). The City may have to impose future limitations on its ability to accept and treat the leachate, groundwater and gas condensate, from Morris Community Landfill, based on capacity considerations or restrictions imposed by the Illinois Environmental Protection Agency.

3. Notwithstanding anything in the Addendum to the Lease dated July ___, 1999, CLC agrees that the City may place future limitations or conditions on its acceptance of leachate, groundwater, or gas condensate at the City's POTW based on capacity considerations or restrictions imposed by the Illinois Environmental Protection Agency.

COMMUNITY LANDFILL CO.

By: Robert J Previ
Its President

CITY OF MORRIS

By: Robert T. Feeney
Its Mayor

ADDENDUM TO THE LEASE DATED JULY 1, 1982

This Addendum to Lease Agreement dated July 1, 1982 is made on ~~October~~ December 13, 1999 by and between the City of Morris (hereinafter referred to as Lessor) and Community Landfill Co., an Illinois corporation (hereinafter referred to as Lessee).

WHEREAS, Lessor and Lessee are presently co-permittees of Morris Community Landfill under Permit No. 1996-21-SP, dated October 11, 1996, and were co-applicants under applications for significant modification of Parcel A (east side) and Parcel B (west side) under IEPA Permit Application Log Nos. 1996-255 and 1996-256.

WHEREAS, on September 1, 1999, the IEPA issued denial letters for the significant modification permit applications under both Log Nos. 1996-255 and 1996-256.

WHEREAS, on October 5, 1999, the Lessor and Lessee filed appeals of the permit denials before the Illinois Pollution Control Board, PCB Nos. 00-65 and 00-66. The Lessor and the Lessee believe that the permits were improperly denied, that the permits should have been issued, and that issuance of the permits is in the best interest of the Lessor, the Lessee, the people of the City of Morris and the environment of the State of Illinois.

WHEREAS, in a letter dated October 4, 1999, the IEPA has stated that it would resolve the permit appeals and issue the signed permits for both Parcels A and B if the Lessor and the Lessee obtained performance bonds in the total aggregate amount of $17,159,346.00. See Exhibit A, attached hereto.

WHEREAS, while the Lessor and the Lessee disagree with the IEPA that $17,159,346.00 is necessary for financial assurance for Parcels A and B, and believe that the proper financial assurance number is $7,077,716.00, in an effort to resolve the permit appeals presently pending and to have the significant modification permits issued for the landfill, the Lessor and the Lessee are

willing to post the IEPA required $17,159,346.00 in performance bonds with the IEPA, and have the IEPA issue the significant modification permits.

THEREFORE, for good and valuable consideration, including, but not limited to the mutual covenants and promises contained herein, the Lessor and the Lessee agree as follows:

1. Lessee shall obtain a performance bond from Frontier Insurance Company or its agent in the amount of $7,077,716.00 to insure performance of closure and post-closure care for Parcels A and B for all matters except the treatment of leachate and groundwater. Lessee will pay all costs, collateral and premiums associated with this bond.

2. Lessor will purchase a performance bond from Frontier Insurance Company or its agent in the amount of $10,081,630.00 to insure performance of the City of Morris' treatment of leachate and groundwater at the City of Morris POTW. Lessee shall pay for all costs and premiums associated with this bond.

3. The effective date of the bonds described in paragraphs 1 and 2, above, shall be the date upon which the IEPA issues the significant modification permits for Parcels A and B.

4. The initial annual premium and costs for the Lessor's $10,081,630.00 million performance bond shall be paid directly by Lessee to Frontier Insurance Company or its agent prior to the effective date of the bond. Regarding future premium payments on the Lessor's bond:

(a) During the operating life of the landfill, Lessee shall pay the Lessor on the 15th of each month an amount of money equal to 1/12th of the bond premium for the following year. Lessor shall hold this money solely for the purpose of paying the bond premium, and so shall pay the premium when due using said funds. Any shortfall in the bond payment fund shall be supplemented by Lessee as is necessary to pay the bond premiums.

(b) If the landfill operation ceases, and the bond of $10,081,630.00 is still in effect, Lessee shall provide a financial mechanism or mechanisms sufficient to fund the bond premium for the entire post closure care period.

5. Lessor and Lessee will file an application with the IEPA to reduce the financial assurance from $17,159,346.00 to $7,077,716.00 after the significant modification permit applications have been approved for Parcels A and B. If the IEPA agrees to reduce the financial assurance to $7,077,716.00 or less, then the Lessor's $10,081,630.00 bond will be terminated and Lessee shall have no further responsibility for it. If the IEPA denies the applications to reduce the bond amount, the lessor and the lessee shall jointly file an appeal with the Pollution Control Board and prosecute the same through the Illinois courts, if necessary. If, as a result of this action, the financial assurance is reduced to $7,077,716.00 or less, Lessor's $10,081,630.00 bond shall terminate and the Lessee shall have no further responsibility for it.

6. Lessor agrees to comply with the July 20, 1999 Addendum to the Lease dated July 1, 1982 regarding treatment of the leachate and groundwater at the Morris POTW for the entire post closure period.

7. All of the closure and post-closure responsibilities for the site as set forth in a closure/post-closure plans approved by the IEPA, shall remain the responsibility of the Lessee.

8. All of the terms and conditions of the July 1, 1982 lease, and any amendments and/or addendum thereto not specifically modified by this Addendum shall remain in full force and effect.

COMMUNITY LANDFILL CO., Lessee

By: _____
Its President

CITY OF MORRIS, Lessor

By: Robert T. Feeney
Its Mayor

ADDENDUM TO THE LEASE DATED JULY 1, 1982

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WHEREAS, while the Lessor and the Lessee disagree with the IEPA that $17,159,346.00 is necessary for financial assurance for Parcels A and B, and believe that the proper financial assurance number is $7,077,716.00, in an effort to resolve the permit appeals presently pending and to have the significant modification permits issued for the landfill, the Lessor and the Lessee are

willing to post the IEPA required $17,159,346.00 in performance bonds with the IEPA, and have the IEPA issue the significant modification permits.

THEREFORE, for good and valuable consideration, including, but not limited to the mutual covenants and promises contained herein, the Lessor and the Lessee agree as follows:

1. Lessee shall obtain a performance bond from Frontier Insurance Company or its agent in the amount of $7,077,716.00 to insure performance of closure and post-closure care for Parcels A and B for all matters except the treatment of leachate and groundwater. Lessee will pay all costs, collateral and premiums associated with this bond.

2. Lessor will purchase a performance bond from Frontier Insurance Company or its agent in the amount of $10,081,630.00 to insure performance of the City of Morris' treatment of leachate and groundwater at the City of Morris POTW. Lessee shall pay for all costs and premiums associated with this bond.

3. The effective date of the bonds described in paragraphs 1 and 2, above, shall be the date upon which the IEPA issues the significant modification permits for Parcels A and B.

4. The initial annual premium and costs for the Lessor's $10,081,630.00 million performance bond shall be paid directly by Lessee to Frontier Insurance Company or its agent prior to the effective date of the bond. Regarding future premium payments on the Lessor's bond:

(a) During the operating life of the landfill, Lessee shall pay the Lessor on the 15th of each month an amount of money equal to 1/12th of the bond premium for the following year. Lessor shall hold this money solely for the purpose of paying the bond premium, and so shall pay the premium when due using said funds. Any shortfall in the bond payment fund shall be supplemented by Lessee as is necessary to pay the bond premiums.

(b) If the landfill operation ceases, and the bond of $10,081,630.00 is still in effect, Lessee shall provide a financial mechanism or mechanisms sufficient to fund the bond premium for the entire post closure care period.

5. Lessor and Lessee will file an application with the IEPA to reduce the financial assurance from $17,159,346.00 to $7,077,716.00 after the significant modification permit applications have been approved for Parcels A and B. If the IEPA agrees to reduce the financial assurance to $7,077,716.00 or less, then the Lessor's $10,081,630.00 bond will be terminated and Lessee shall have no further responsibility for it. If the IEPA denies the applications to reduce the bond amount, the lessor and the lessee shall jointly file an appeal with the Pollution Control Board and prosecute the same through the Illinois courts, if necessary. If, as a result of this action, the financial assurance is reduced to $7,077,716.00 or less, Lessor's $10,081,630.00 bond shall terminate and the Lessee shall have no further responsibility for it.

6. Lessor agrees to comply with the July 20, 1999 Addendum to the Lease dated July 1, 1982 regarding treatment of the leachate and groundwater at the Morris POTW for the entire post closure period.

7. All of the closure and post-closure responsibilities for the site as set forth in a closure/post-closure plans approved by the IEPA, shall remain the responsibility of the Lessee.

8. All of the terms and conditions of the July 1, 1982 lease, and any amendments and/or addendum thereto not specifically modified by this Addendum shall remain in full force and effect.

COMMUNITY LANDFILL CO., Lessee

By: Robert J. Powis
Its President

CITY OF MORRIS, Lessor

By: Robert T. Kenny
Its Mayor

APPLICATION FOR PERMIT TRANSFER

All information submitted as part of the Application is available to the public except when specifically designated by the Applicant to be treated confidentially as regarding a trade secret or secret process in accordance with Section 7(a) of the Environmental Protection Act.

APPLICATION MUST BE SUBMITTED IN DUPLICATE

DO NOT WRITE IN THIS SPACE - FOR E.P.A. USE ONLY

Grundy COUNTY - LAND POLLUTION CONTROL

Morris ~~Municipal~~/ Municipal Region Northern

Application Received: 29 June 1982

Reviewed by: L J Withers Permit No. 1974-22

Operating Permit Transfer

Date 7/30/82 Date _____

Granted YES Denied _____

Thomas E. Cavanagh

Manager, Land Permit Section

PART I - APPLICANT INFORMATION

A. SITE IDENTIFICATION

1. Name of Applicant COMMUNITY LANDFILL CO.
(Person responsible for operation)

2. Address of Applicant 25 N. Ottawa St.
(Street, P.O. Box, or R.R. #)

Joliet (City) Illinois (State) 60431 (Zip Code)

Telephone: 815/726-2767 or 815/726-7407
(Area Code) (Number)

3. Name of Land Owner CITY OF MORRIS
(If same as above, so indicate)

4. Address of Land Owner 320 Wauponsee St.
(Street, P.O. Box, or R.R. #)

Morris (City) Illinois (State) 60450 (Zip Code)

RECEIVED
JUN 29 1982
E.P.A. — D.L.P.C.
STATE OF ILLINOIS

EXHIBIT B

5. Name of Site COMMUNITY LANDFILL CO.
CITY OF MORRIS LANDFILL

6. Address of Site Ashley Road
(Street, P.O. Box, or R.R. #)

Morris (City) Illinois (State) 60450 (Zip Code)

7. Land Ownership (Check Applicable Boxes)

( ) Presently Owned by Applicant
( ) To Be Purchased by Applicant
(X) To Be Leased by Applicant For 17 Years
( ) _____ Years of Lease Remaining: termination date of lease

Operated by: Ill. Corporation (X) Partnership ( ) Government ( )
Individual ( ) Other ( )

B. SITE BACKGROUND

8. This is an existing operation begun July 30 (mo.) 1976 (yr.)

9. This is a proposed transfer of an existing permit:

Illinois E.P.A. Permit No. 1974-22-OP

Supplemental Permit No. (List all) 78 - 1148

1980 - 160

PART II

The applicant reaffirms and adopts the information provided by the transferor in the original application for Permit (Parts II-VI) and all supplemental permits. (No change is permitted. Any such change must be the subject of a supplemental Permit Application).

I hereby affirm that all information contained in this Application is true and accurate to the best of my knowledge and belief.

Signature of Applicant: _____ 6/28/82 Date

Attest: _____ 6-28-82 Date

Signature of Landowner(s): MAYOR James R. Washburn 6/28/82 Date

Attest: _____ 6/28/82 Date

I hereby request that Permit No. 1974-22-OP and all supplemental permits listed in Part I, Section B-9 issued by the Illinois Environmental Protection Agency be transferred to the above named applicant.

Signature of Transferor: MAYOR James R. Washburn 6/28/82 Date

Attest: _____ 6/28/82 Date

TT:jb/5999A/1-4sp

Illinois Environmental Protection Agency · 2200 Churchill Road, Springfield, IL 62706

217/782-6760

Refer to: 0630600I Grundy County - Morris/Municipal
Permit No. 1974-22-OP

July 30, 1976

July 20, 1982 (Revised to Reflect Permit Transfer)

City of Morris
222 Mauponsee Street
Morris, Illinois 60450

Gentlemen:

Permit is hereby granted to Community Landfill Company to operate a solid waste disposal site consisting of 119.2 acres in parts of Section 2 and 3, T.33N, R.7E, all of the 3rd Principal Meridian to handle general solid waste, excluding all liquid and hazardous wastes unless a supplemental permit is obtained to handle these materials all in accordance with the application and plans prepared by Chamlin & Associates, Inc. Said application consisting of 10 pages, dated December 31, 1973, and received by the Environmental Protection Agency on January 14, 1974, said plans consisting of 7 pages and 4 addenda dated December 27, 1973 and March 1, 1974 and received January 14, 1974 and March 8, 1974 respectively. The permit is issued subject to the standard conditions set forth on page 3, attached hereto and incorporated herein by reference, and further subject to the following special conditions:

1. Site surface drainage, during operation, and after the site is closed, shall be such that no adverse effects are encountered by adjacent property owners relative to their existing drainageways.

2. The best available technology (mufflers, berms, and other sound shielding devices) shall be employed to minimize equipment noise impacts on property adjacent to the site during both development and operation. (See standard condition number 4, attached.)

3. The monitor well shall be sampled and analyzed quarterly (January, April, July, October) for the following parameters: Residue on Evaporation (ROE), and Iron (Fe), Boron (B), and Ammonia (NH_3). Results shall be forwarded to the Illinois Environmental Protection Agency, Division of Land Pollution Control, Compliance Assurance Section.

4. Daily operations must be in general compliance with the Solid Waste Rules and Regulations.

Very truly yours,

Thomas E Cavanagh Jr

Thomas E. Cavanagh, Jr., Manager
Permit Section
Division of Land Pollution Control

TEC:JW:sc/4702c/15

cc: Northern Region
Grundy County Health Department
Chamlin & Associates

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217)782-2829
PAT QUINN, GOVERNOR LISA BONNETT, DIRECTOR

217/524-3300
TDD 217/782-9143

7009 2820 0001 7486 9649
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

October 30, 2013

City of Morris
Mayor Richard Kopczick
700 N. Division Street
Morris, Illinois 60450

Re: **Violation Notice, M-2013-01016**
0630600001 – Grundy County
Morris/Community Landfill
Compliance File

Dear Mayor Kopczick:

This constitutes a Violation Notice pursuant to Section 31(a)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/31(a)(1), and is based on an inspection completed on May 23, 2013 and a financial record review completed on October 10, 2013 by representatives of the Illinois Environmental Protection Agency ("Illinois EPA").

The Illinois EPA hereby provides notice of alleged violations of environmental laws, regulations, or permits as set forth in the attachments to this notice. The attachments include an explanation of the activities that the Illinois EPA believes may resolve the specified alleged violations, including an estimate of a reasonable time period to complete the necessary activities. Due to the nature and seriousness of the alleged violations, please be advised that resolution of the violations may also require the involvement of a prosecutorial authority for purposes that may include, among others, the imposition of statutory penalties.

A written response, which may include a request for a meeting with representatives of the Illinois EPA, must be submitted via certified mail to the Illinois EPA within 45 days of receipt of this notice. If a meeting is requested, it shall be held within 60 days of receipt of this notice. The response must include information in rebuttal, explanation, or justification of each alleged violation and a statement indicating whether or not you wish to enter into a Compliance Commitment Agreement ("CCA") pursuant to Section 31(a) of the Act. If you wish to enter into a CCA, the written response must also include proposed terms for the CCA that includes dates for achieving each commitment and may include a statement that compliance has been achieved for some or all of the alleged violations. The proposed terms of the CCA should contain sufficient detail and must include steps to be taken to achieve compliance and the necessary dates by which compliance will be achieved.

The Illinois EPA will review the proposed terms for a CCA provided by you and, within 30 days of receipt, will respond with either a proposed CCA or a notice that no CCA will be issued by the Illinois EPA. If the Illinois EPA sends a proposed CCA, you must respond in writing by either

EXHIBIT
C

agreeing to and signing the proposed CCA or by notifying the Illinois EPA that you reject the terms of the proposed CCA.

If a timely written response to this Violation Notice is not provided, it shall be considered a waiver of the opportunity to respond and meet, and the Illinois EPA may proceed with referral to a prosecutorial authority.

Written communications should be directed to:

Illinois EPA – Bureau of Land#24
Attn: Brian White
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

Please include the Violation Number **M-2013-01016** and the Site Identification Number **0630600001** on all written communications.

The complete requirements of the Illinois Environmental Protection Act and any Illinois Pollution Control Board regulations cited herein or in the inspection report can be viewed at:

http://www.ipcb.state.il.us/SLR/TheEnvironmentalProtectionAct.asp
and
http://www.ipcb.state.il.us/SLR/IPCBandIEPAEnvironmentalRegulations-Title35.asp

Questions regarding Attachment A should be directed to **Mark Retzlaff** at **847/294-4070.**
Questions regarding Attachment B should be directed to **Brian White** at **217/782-9887.**

Sincerely,

Paul M. Purseglove, Manager
Field Operations Section
Bureau of Land

PMP:MR:dv01016

cc: Division File
Des Plaines Region File
Mark Retzlaff
Robert Mathis, Jr.
Deanne Virgin

ATTACHMENT A

1. Pursuant to Section 21(a) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(a)), no person shall cause or allow the open dumping of any waste.

   A violation of Section 21(a) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(a)) is alleged for the following reason: **Acceptance of wastes without necessary permits. Based on an Agency file review from a June 16, 2010 inspection report, and the fact that Parcels A and B are developed and accepted waste.**

2. Pursuant to Section 21(d)(1) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(d)), no person shall conduct any waste-storage, waste-treatment, or waste-disposal operation without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder... This subsection (d) shall not apply to hazardous waste.

   A violation of Section 21(d)(1) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(d)) is alleged for the following reason: **Facility does not have a valid permit in place for the Landfill.**

3. Pursuant to Section 21(d)(2) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(d)), no person shall conduct any waste-storage, waste-treatment, or waste-disposal operation: In violation of any regulations or standards adopted by the Board under this Act. This subsection (d) shall not apply to hazardous waste.

   A violation of Section 21(d)(2) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(d)) is alleged for the following reason: **Facility does not have a written closure plan and related supporting documents.**

4. Pursuant to Section 21(o)(6) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(o)), no person shall conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section [21], in a manner which results in failure to provide final cover within time limits established by Board regulations.

   The prohibitions specified in this subsection (o) shall be enforceable by the Agency either by administrative citation under Section 31.1 of this Act or as otherwise provided by this Act. The specific prohibitions in this subsection do not limit the power of the Board to establish regulations or standards applicable to sanitary landfills.

   A violation of Section 21(o)(6) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(o)) is alleged for the following reason: **Failure to provide final cover within time limits.**

5. Pursuant to Section 21(o)(7) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(o)), no person shall conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section [21], in a manner which results in acceptance of wastes without

necessary permits.

The prohibitions specified in this subsection (o) shall be enforceable by the Agency either by administrative citation under Section 31.1 of this Act or as otherwise provided by this Act. The specific prohibitions in this subsection do not limit the power of the Board to establish regulations or standards applicable to sanitary landfills.

A violation of Section 21(o)(7) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(o)) is alleged for the following reason: **Acceptance of wastes without necessary permits. Based on an Agency file review from a June 16, 2010 inspection report, and the fact that Parcels A and B are developed and accepted waste.**

6. Pursuant to Section 21(o)(11) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(o)), no person shall conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section [21], in a manner which results in failure to submit reports required by permits or Board regulations.

The prohibitions specified in this subsection (o) shall be enforceable by the Agency either by administrative citation under Section 31.1 of this Act or as otherwise provided by this Act. The specific prohibitions in this subsection do not limit the power of the Board to establish regulations or standards applicable to sanitary landfills.

A violation of Section 21(o)(11) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(o)) is alleged for the following reason: **The Agency has not received the required reports.**

7. Pursuant to Section 21(o)(13) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(o)), no person shall conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section [21], in a manner which results in failure to submit any cost estimate for the site or any performance bond or other security for the site as required by this Act or Board rules.

The prohibitions specified in this subsection (o) shall be enforceable by the Agency either by administrative citation under Section 31.1 of this Act or as otherwise provided by this Act. The specific prohibitions in this subsection do not limit the power of the Board to establish regulations or standards applicable to sanitary landfills.

A violation of Section 21(o)(13) of the [Illinois] Environmental Protection Act (415 ILCS 5/21(o)) is alleged for the following reason: **The Agency has not received current closure cost estimates or evidence of a performance bond.**

8. Pursuant to 225 ILCS 230/1004 of the Solid Waste Site Operator Certification Law, no person shall cause or allow the operation of a landfill permitted or required to be permitted by the Agency unless the landfill has on its operational staff at least one natural person certified as competent by the Agency under the provisions of this Act [Solid Waste Site Operator Certification Law].

(a) For landfill sites which accept non-hazardous solid waste other than clean construction or demolition debris, the landfill shall have a Class A Solid Waste Site Operator certified by the Agency who is responsible for directing landfill operations or supervising other operational staff in performing landfill operations.

A violation of 225 ILCS 230/1004 [Solid Waste Site Operator Certification Law] is alleged for the following reason: **Landfill does not have a certified operator for the site.**

9. Pursuant to 35 Ill. Adm. Code 745.181, Chief Operator Requirements:

a) The individual who is chief operator of a waste disposal site, as defined pursuant to Section 745.102(c), shall have prior conduct certification.

b) The owner or other named permitee shall designate one or more chief operators for each waste disposal site.

1) One certified chief operator may serve in that capacity for multiple waste disposal units located at one waste disposal site.

2) One certified chief operator shall not serve in that capacity for units located at two or more waste disposal sites.

3) A certified waste operator need not be present during all hours a site is operating, provided that the chief operator retains responsibility for site operations during the period of absence, and can be contacted by waste disposal site personnel during the absence.

A violation of 35 Ill. Adm. Code Section 745.181 is alleged for the following reason: **Facility does not have a Chief Operator.**

10. Pursuant to 35 Ill. Adm. Code 745.201, Prohibitions [under Prior Conduct Certitication]:

a) No person shall operate a waste disposal site unless the site chief operator has prior conduct certification.

b) No site owner or other named permittee shall cause or allow operation of a waste disposal site unless the site chief operator has prior conduct certification.

c) No person shall own or operate a waste disposal site if the person has had prior conduct certification denied, cancelled or revoked, unless the person has a current, valid prior conduct certification.

d) No person shall serve as an officer or director of the owner or operator of a waste disposal site if the person has had prior conduct certification denied,

cancelled or revoked, unless the person has a current, valid prior conduct certification.

e) No person shall serve as an employee at a waste disposal site if the person has had prior conduct certification denied, cancelled or revoked, unless the person has a current, valid prior conduct certification.

A violation of 35 Ill. Adm. Code 745.201 is alleged for the following reason: **Facility does not have a certified chief operator and because the landfill does not have a chief operator with prior conduct certification.**

11. Pursuant to 35 Ill. Adm. Code 811.110(d)(1), Written Closure Plan, the operator shall maintain a written plan describing all actions that the operator will undertake to close the unit or facility in a manner that fulfills the provisions of the Act, of this Part and of other applicable Parts of 35 Ill. Adm. Code: Chapter I. The written closure plan shall fulfill the minimum information requirements of 35 Ill. Adm. Code 812.114.

A violation of 35 Ill. Adm. Code 811.110(d)(1) is alleged for the following reason: **Written Closure Plan was not available at the time of the inspection.**

12. Pursuant to 35 Ill. Adm. Code 811.110(e), the owner or operator of a MSWLF unit shall begin closure activities for each MSWLF unit no later than the date determined as follows:

1) 30 days after the date on which the MSWLF unit receives the final receipt of wastes; or

2) If the MSWLF unit has remaining capacity and there is a reasonable likelihood that the MSWLF unit will receive additional wastes, no later than one year after the most recent receipt of wastes.

3) The Agency shall grant extensions beyond this one year deadline for beginning closure if the owner or operator demonstrates that:

A) The MSWLF unit has the capacity to receive additional wastes; and

B) The owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed MSWLF unit.

A violation of 35 Ill. Adm. Code 811.110(e) is alleged for the following reason: **Acceptance of final volume of waste occurred. Closure activities were not initiated after receipt of the final volume of waste.**

13. Pursuant to 35 Ill. Adm. Code 811.110(f)(1), the owner or operator of a MSWLF unit shall complete closure activities for each unit in accordance with closure plan no later than within 180 days of beginning closure, as specified in subsection (e) of this Section.

A violation of 35 Ill. Adm. Code 811.110(f)(1) is alleged for the following reason: **Facility failed to complete closure activities with 180 days of beginning closure.**

14. Pursuant to 35 Ill. Adm. Code 811.112(c), the owner or operator of a MSWLF unit shall record and retain near the facility in an operating record or in some alternative location specified by the Agency, the information submitted to the Agency pursuant to 35 Ill. Adm. Code 812 and 813, as it becomes available. At a minimum, the operating record shall contain the ... gas monitoring results and any remediation plans required by Section 811.310 record and retain near the facility in an operating record or in some alternative location and 811.311.

A violation of 35 Ill. Adm. Code 811.112(c) is alleged for the following reason: **Records were not available at the time of the inspection.**

15. Pursuant to 35 Ill. Adm. Code 811.112(d), the owner or operator of a MSWLF unit shall record and retain near the facility in an operating record or in some alternative location specified by the Agency, the information submitted to the Agency pursuant to 35 Ill. Adm. Code 812 and 813, as it becomes available. At a minimum, the operating record shall contain ... any MSWLF unit design documentation for placement of leachate or gas condensate in a MSWLF unit required by Section 811.107(m).

A violation of 35 Ill. Adm. Code 811.112(d) is alleged for the following reason: **Leachate related documents were not available at the time of the inspection.**

16. Pursuant to 35 Ill. Adm. Code 811.112(e), the owner or operator of a MSWLF unit shall record and retain near the facility in an operating record or in some alternative location specified by the Agency, the information submitted to the Agency pursuant to 35 Ill. Adm. Code 812 and 813, as it becomes available. At a minimum, the operating record shall contain ... any demonstration, certification, monitoring results, testing, or analytical data relating to the groundwater monitoring program required by Sections 811.319, 811.324, 811.325, and 811.326 and 35 Ill. Adm. Code 812.317, 813.501, and 813.502.

A violation of 35 Ill. Adm. Code 811.112(e) is alleged for the following reason: **Last documented sampling event occurred in October of 2011. Current groundwater monitoring records were not available at the time of the inspection.**

17. Pursuant to 35 Ill. Adm. Code 811.112(f), the owner or operator of a MSWLF unit shall record and retain near the facility in an operating record or in some alternative location specified by the Agency, the information submitted to the Agency pursuant to 35 Ill. Adm. Code 812 and 813, as it becomes available. At a minimum, the operating record shall contain ... closure and post-closure care plans and any monitoring, testing, or analytical data required by Sections 811.110 and 811.111, and 35 Ill. Adm. Code 812.114(h), 812.115, and 812.313.

A violation of 35 Ill. Adm. Code 811.112(f) is alleged for the following reason: **Closure related documents were not available at the time of the inspection.**

18. Pursuant to 35 Ill. Adm. Code 811.112(g), the owner or operator of a MSWLF unit shall record and retain near the facility in an operating record or in some alternative location specified by the Agency, the information submitted to the Agency pursuant to 35 Ill. Adm. Code 812 and 813, as it becomes available. At a minimum, the operating record shall contain ... any cost estimates and financial assurance documentation required by Subpart G of this Part.

A violation of 35 Ill. Adm. Code 811.112(g) is alleged for the following reason: **Closure cost estimated and financial assurance documents were not available at the time of the inspection.**

19. Pursuant to 35 Ill. Adm. Code 811.310(c):

1) All gas monitoring devices, including the ambient air monitors must be operated to obtain samples on a monthly basis for the entire operating period and for a minimum of five years after closure.

2) After a minimum of five years after closure, monitoring frequency may be reduced to quarterly sampling intervals.

3) The sampling frequency may be reduced to yearly sampling intervals upon the installation and operation of a gas collection system equipped with a mechanical device such as a compressor to withdraw gas.

4) Monitoring must be continued for a minimum period of: thirty years after closure at MSWLF units, except as otherwise provided by subsections (c)(5) and (c)(6) of this Section; five years after closure at landfills, other than MSWLF units, which are used exclusively for disposing of wastes generated at the site; or fifteen years after closure at all other landfills regulated under this Part. Monitoring, beyond the minimum period, may be discontinued if the following conditions have been met for at least one year:

A) The concentration of methane is less than five percent of the lower explosive limit in air for four consecutive quarters at all monitoring points outside the unit; and

B) Monitoring points within the unit indicate that methane is no longer being produced in quantities that would result in migration from the unit and exceed the standards of subsection (a)(1) of this Section.

5) The Agency may reduce the gas monitoring period at an MSWLF unit upon a demonstration by the owner or operator that the reduced period is sufficient to protect human health and environment.

6) The owner or operator of an MSWLF unit must petition the Board for an adjusted standard in accordance with Section 811.303, if the owner or operator seeks a reduction of the post closure care monitoring period for all of the following

requirements:

A) Inspection and maintenance (Section 811.111);

B) Leachate collection (Section 811.309);

C) Gas monitoring (Section 811.310); and

D) Groundwater monitoring (Section 811.319).

A violation of 35 Ill. Adm. Code 811.310(c) is alleged for the following reason: **Documentation was not available at the time of the inspection to show landfill gas monitoring frequency.**

Suggested Resolutions

1. **Immediately stop accepting waste without a permit.**
2. **Immediately maintain the required information in the landfill operating record.**
3. **By December 15, 2013, the City of Morris must submit to the IEPA, a renewal permit application including an updated closure plan.**
4. **By December 15, 2013, the City of Morris must have a Certified Operator with the proper competency certificate.**
5. **By December 15, 2013, perform the required groundwater monitoring, leachate monitoring and gas monitoring activities in accordance with the existing expired permit conditions and regulations.**
6. **By January 15, 2014, submit to the IEPA, the most recent results/reports for the groundwater monitoring, leachate monitoring and gas monitoring.**

The written response to this Violation Notice must include information in rebuttal, explanation, or justification of each alleged violation and a statement indicating whether or not you wish to enter into a Compliance Commitment Agreement ("CCA") pursuant to Section 31(a) of the Act. If you wish to enter into a CCA, the written response must also include proposed terms for the CCA that includes dates for achieving each commitment and may include a statement that compliance has been achieved for some or all of the alleged violations. The written response must be submitted to the Illinois EPA by certified mail within 45 days of receipt of this Violation Notice.

ATTACHMENT B

1. Pursuant to Section 21.1(a.5) of the Environmental Protection Act, on and after the effective date established by the United States Environmental Protection Agency for Municipal Solid Waste Landfill (MSWLF) units to provide financial assurance under Subtitle D of the Resource Conservation and Recovery Act, no person, other than the State of Illinois, its agencies and institutions, shall own or operate a MSWLF unit that requires a permit under subsection (d) of Section 21 of this Act, unless that person has posted with the Agency [Illinois EPA] a performance bond or other security for the purposes of:
   (1) insuring closure of the site and post-closure care in accordance with the Act and its rules; and
   (2) insuring completion of a corrective action remedy when required by Board rules....

   A violation of Section 21.1(a.5) of the [Illinois] Environmental Protection Act (45 ILCS 5/21.1(a.5) is alleged for the following reason: **The City of Morris as the owner and operator of a Municipal Solid Waste Landfill that requires a permit under subsection (d) of Section 21 of the Environmental Protection Act has not posted a performance bond or other security for the purpose of insuring closure of the landfill and post-closure care in accordance with the Environmental Protection Act and its rules. The landfill has not had compliant financial assurance since prior to May 31, 2000.**

   Please Note: In the 1970s, the City of Morris owned and operated the Morris Community Landfill. In 1982, the City of Morris leased the operation of the landfill to Community Landfill Co. (CLC) and remained the owner of the landfill. CLC paid the City of Morris dumping related royalties for its use of the landfill. In 1999, the City of Morris and CLC entered into an agreement that required the City of Morris to become active in the operation of the landfill and treat leachate from the landfill at its publically owned treatment works plant at no cost to CLC. The corporation CLC was "involuntarily dissolved" on May 14, 2010. Pursuant to 35 Ill. Adm. Code, Section 810.103: "The 'owner' is the 'operator' if there is no other person who is operating and maintaining a solid waste disposal facility." Therefore, the City of Morris once again became the sole operator of the landfill on May 14, 2010.

2. Pursuant to Section 21(d)(1) of the Environmental Protection Act, no person shall conduct any waste-storage, waste-treatment, or waste-disposal operation ... in violation of any conditions imposed by such permit ....

   A violation of Section 21(d)(1) of the [Illinois] Environmental Protection Act (45 ILCS 5/21(d)(1)) is alleged for the following reason: **Failure to comply with the permit conditions for Parcel A and Parcel B associated with updating closure and post-closure care cost estimates and with providing and maintaining acceptable financial assurance equal to or greater than the amount of the approved cost estimate.**

3. Pursuant to Section 21(d)(2) of the Environmental Protection Act, no person shall conduct any waste-storage, waste-treatment, or waste-disposal operation in violation of any regulations or standards adopted by the Board under this Act.

   A violation of Section 21(d)(2) of the [Illinois] Environmental Protection Act (45 ILCS 5/21(d)(2)) is alleged for the following reason: **The City of Morris failed to comply with the provisions of 35 Ill. Adm. Code Subtitle G, Part 811, Subpart G. Specifically, the City of Morris failed to comply with Section 811.700(a), (c), and (f), requiring the owner or the operator of a permitted landfill to provide financial assurance; Section 811.701(a), requiring the owner or operator of a landfill to supply financial assurance equal to or greater than the current cost estimate; Section 811.701(c), requiring the owner or operator of a landfill to make annual adjustments for inflation to the cost estimates; Section 811.705(d), requiring an adjustment of the cost estimate for inflation on an annual basis; and Section 811.706(d) requiring the owner or operator of the landfill to supply continuous financial assurance coverage until the owner or operator is released from the financial assurance requirements.**

4. Pursuant to Section 21(o)(13) of the Environmental Protection Act, no person shall conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section, in an manner which results in failure to submit any cost estimate for the site or any performance bond or other security for the site as required by this Act or Board rules.

   A violation of Section 21(o)(13) of the Illinois Environmental Protection Act (45 ILCS 5/21(o)(13)) is alleged for the following reason: **Failure to provide an annual revision of the cost estimate and for failure to provide acceptable continuous financial assurance coverage. The landfill has not had compliant financial assurance since prior to May 31, 2000.**

5. Pursuant to 35 Ill. Adm. Code 811.700(a), this Subpart [Part 811, Subpart G] provides procedures by which the owner or operator of a permitted waste disposal facility provides financial assurance satisfying the requirements of Section 21.1(a) of the Act.

   A violation of 35 Ill. Adm. Code 811.700(a) is alleged for the following reason: **The City of Morris as the owner and the operator of the permitted waste disposal facility (landfill) failed to provide financial assurance that satisfies the requirements of the Environmental Protection Act. The landfill has not had compliant financial assurance since prior to May 31, 2000.**

6. Pursuant to 35 Ill. Adm. Code 811.700(b), financial assurance shall be provided, as specified in Section 811.706, by a trust agreement, a bond guaranteeing payment, a bond guaranteeing payment or performance, a letter of credit, insurance or self-insurance.

A violation of 35 Ill. Adm. Code 811.700(b) is alleged for the following reason: **The City of Morris has not provided financial assurance as specified in 35 Ill. Adm. Code, 811.706. The landfill has not had compliant financial assurance since prior to May 31, 2000.**

7. Pursuant to 35 Ill. Adm. Code 811.700(f), on or after April 9, 1997, no person, other than the State of Illinois, its agencies and institutions, shall conduct any disposal operation at an MSWLF unit that requires a permit under Section 21(d) of the Act, unless that person complies with the financial assurance requirements of this Part [811].

   BOARD NOTE: Subsection (f) clarifies the applicability of the financial assurance requirements to units of local government, since the Subtitle D regulations exempt only federal and state governments from financial assurance requirements. (See 40 CFR 258.70 (1996).) P.A. 89-200, signed by the Governor on July 21, 1995 and effective January 1, 1996, amended the deadline for financial assurance for MSWLFs from April 9, 1995 to the date that the federal financial assurance requirements actually become effective, which was April 9, 1997. On November 27, 1996 (61 Fed. Reg. 60327), USEPA added 40 CFR 258.70(c) (1996), codified here as subsection (g), to allow states to waive the compliance deadline until April 9, 1998.

   A violation of 35 Ill. Adm. Code 811.700(f) is alleged for the following reason: **The City of Morris as the operator of the permitted waste disposal facility (landfill) failed to provide financial assurance that satisfies the requirements of 35 Ill. Adm. Code, Part 811. The landfill has not had compliant financial assurance since prior to May 31, 2000.**

8. Pursuant to 35 Ill. Adm. Code 811.701(a), Upgrading Financial Assurance, the owner or operator shall maintain financial assurance equal to or greater than the current cost estimate calculated pursuant to Section 811.704 all times…

   A violation of 35 Ill. Adm. Code 811.701(a) is alleged for the following reason: **Failure to maintain continuous financial assurance. The landfill has not had compliant financial assurance since prior to May 31, 2000.**

   The City of Morris and CLC attempted to provide financial assurance through the use of three performance bonds from Frontier Insurance Co., with a total penal sum on the bonds of $17,427,366.00. The bonds were received by the Illinois EPA in June of 2000. Two of the bonds had an effective date of May 31, 2000 and the third bond had an effective date of June 14, 2000. The City of Morris was the principal for one of the bonds with a penal sum of $10,081,630.00, and CLC was the principal for the other two bonds.

   The three bonds were never compliant with the regulations because the surety, Frontier Insurance Co., was removed from the list of acceptable sureties approved by the U.S. Department of Treasury in its Circular 570. On June 6, 2000, the U.S. Treasury issued notification that Frontier no longer qualified as an acceptable

surety on Federal bonds and had been removed from Circular 570 effective May 31, 2000.

In addition, because the cost estimate has not been updated annually since prior to 2000, it cannot be determined if the amount of financial assurance previously approved in 2000 and adjusted for inflation is sufficient to cover the costs of closure and post-closure care.

9. Pursuant to 35 Ill. Adm. Code 811.701(c), Upgrading Financial Assurance, the owner or operator of a MSWLF unit shall annually make adjustments for inflation if required pursuant to Section 811.704(k)(2) or 811.705(d).

   A violation of 35 Ill. Adm. Code 811.701(c) is alleged for the following reason: **The City of Morris has failed to make adjustments to financial assurance for inflation as required. The landfill has not had compliant financial assurance since prior to May 31, 2000.**

10. Pursuant to 35 Ill. Adm. Code 811.705(d), Revision of Cost Estimate, the owner or operator of a MSWLF unit shall adjust the cost estimates of closure, post-closure, and corrective action for inflation on an annual basis.

    A violation of 35 Ill. Adm. Code 811.705(d) is alleged for the following reason: **Failure to provide an annual revision of the cost estimate. The permits for Parcel A and Parcel B require that the annual update be submitted in the form of a permit application for a significant modification by June 1st of each year and either update the cost estimate or certify that there are no changes to the current cost estimate. The most recent permit applications with cost estimate revisions (Permit No. 2000-155-LFM, Log No. 2009-424 and Permit No. 2000-156-LFM, Log No. 2009-425) were received on August 18, 2009 and October 13, 2009 and were denied on January 10, 2010.**

11. Pursuant to 35 Ill. Adm. Code 811.706(d), Mechanisms for Financial Assurance, the owner or operator [of a Municipal Solid Waste Landfill] shall provide continuous coverage until the owner or operator is released from the financial assurance requirements pursuant to 35 Ill. Adm. Code Section 813.403(b) or Section 811.326(g).

    A violation of 35 Ill. Adm. Code 811.706(d) is alleged for the following reason: **Failure to maintain continuous financial assurance until the owner or operator is released from the financial assurance requirements. The landfill has not provided financial assurance compliant with the Environmental Protection Act and the regulations since prior to May 31, 2000.**

Suggested Resolutions

Within 30 days of receipt of this Violation Notice, the City of Morris as both the owner and the operator of the landfill is required by statute, regulation, and permit

to submit a permit application for a significant modification to update the cost estimate or certify that there are no changes to the cost estimate that was previously approved in 2000. The last update was due June 1st of this year and the updates are required to be submitted on an annually on June 1st of each year. See http://www.epa.state.il.us/land/regulatory-programs/permits-and-management/forms/pa1.html for instructions on submitting a significant modification to a permit.

Immediately submit financial assurance that complies with the requirements of 35 Ill. Adm. Code, Subtitle G, Part 811, Subpart G to the Illinois EPA in the amount of at least $22,739,617.15 - the last approved cost estimate adjusted for inflation to current dollars.

The written response to this Violation Notice must include information in rebuttal, explanation, or justification of each alleged violation and a statement indicating whether or not you wish to enter into a Compliance Commitment Agreement ("CCA") pursuant to Section 31(a) of the Act. If you wish to enter into a CCA, the written response must also include proposed terms for the CCA that includes dates for achieving each commitment and may include a statement that compliance has been achieved for some or all of the alleged violations. The written response must be submitted to the Illinois EPA by certified mail within 45 days of receipt of this Violation Notice.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
811 Solid Waste Landfill Inspection Checklist

County: Grundy LPC#: 0630600001 Region: 2 - Des Plaines

Location/Site Name: Morris/Community Landfill

Date: 05/23/2013 Time: From 10:30 am To 12:15 pm Previous Inspection Date: 06/16/2010

Inspector(s): Mark Retzlaff Weather: 50 F, Cloudy

No. of Photos Taken: # 12 Samples Taken: Yes # ____ No ☒

Interviewed: Caleb Moore Facility Phone No.: 815-942-0103

Permitted Owner Mailing Address

City of Morris
Attn: Mayor Richard Kopczick
700 N. Division Street
Morris, Illinois 60450

Permitted Operator Mailing Address

City of Morris
Attn: Mayor Richard Kopczick
700 N. Division Street
Morris, Illinois 60450

Chief Operator Mailing Address

Not Available

Certified Operator Mailing Address

Not Available

AUTHORIZATION:
Significant Modification Permit
Initial: 1974-22-DE/OP
Latest ____

OPERATIONAL STATUS:
☐ Operating
☒ Closed-Not Certified.
Closed-Date Certified: ____

TYPE OF OPERATION:
Existing Landfills 814-Subpart C ☐
814-Subpart D ☒
New Landfills: 811-Putres./Chem. ☐

	SECTION	DESCRIPTION	VIOL
		ILLINOIS ENVIRONMENTAL PROTECTION ACT REQUIREMENTS	
1.	9(a)	CAUSE, THREATEN OR ALLOW AIR POLLUTION IN ILLINOIS	☐
2.	9(c)	CAUSE OR ALLOW OPEN BURNING	☐
3.	12(a)	CAUSE, THREATEN OR ALLOW WATER POLLUTION IN ILLINOIS	☐
4.	12(d)	CREATE A WATER POLLUTION HAZARD	☐
5.	12(f)	CAUSE, THREATEN OR ALLOW DISCHARGE WITHOUT OR IN VIOLATION OF AN NPDES PERMIT	☐
6.	21(a)	CAUSE OR ALLOW OPEN DUMPING	☒
7.	21(d)	CONDUCT ANY WASTE-STORAGE, WASTE-TREATMENT, OR WASTE- DISPOSAL OPERATION:	
	(1)	Without a Permit or in Violation of Any Conditions of a Permit (See Permit Provisions)	☒
	(2)	In Violation of Any Regulations or Standards Adopted by the Board	☒
8.	21(e)	DISPOSE, TREAT, STORE, OR ABANDON ANY WASTE, OR TRANSPORT ANY WASTE INTO THE STATE AT/TO SITES NOT MEETING REQUIREMENTS OF ACT AND REGULATIONS	☐
9.	21(f)(1)	CONDUCT ANY HAZARDOUS WASTE-STORAGE, TREATMENT OR DISPOSAL OPERATION WITHOUT A RCRA PERMIT.	☐

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10.	21(o)	CONDUCT A SANITARY LANDFILL OPERATION WHICH RESULTS IN ANY OF THE FOLLOWING CONDITIONS:	
	(1)	Refuse in Standing or Flowing Water	☐
	(2)	Leachate Flows Entering Waters of the State	☐
	(3)	Leachate Flows Exiting the Landfill Confines	☐
	(4)	Open Burning of Refuse in Violation of Section 9 of the Act	☐
	(5)	Uncovered Refuse Remaining From Any Previous Operating Day or at the Conclusion of Any Operating Day	☐
	(6)	Failure to Provide Final Cover Within Time Limits	☒
	(7)	Acceptance of Wastes Without Necessary Permits	☒
	(8)	Scavenging as Defined by Board Regulations	☐
	(9)	Deposition of Refuse in Any Unpermitted Portion of the Landfill	☐
	(10)	Acceptance of Special Waste Without a Required Manifest	☐
	(11)	Failure to Submit Reports Required by Permits or Board Regulations	☒
	(12)	Failure to Collect and Contain Litter by the End of each Operating Day	☐
	(13)	Failure to Submit Any Cost Estimate, Performance Bond or Other Security	☒
11.	21(t)	CAUSE OR ALLOW A LATERAL EXPANSION OF A MUNICIPAL SOLID WASTE LANDFILL (MSWLF) UNIT WITHOUT A PERMIT MODIFICATION	☐
12.	21.6(b)	ACCEPTANCE OF LIQUID USED OIL FOR FINAL DISPOSAL (EFFECTIVE JULY 1, 1996)	☐
13.	22.01	FAILURE TO SUBMIT ANNUAL NONHAZARDOUS SPECIAL WASTE	☐
14.	22.17	LANDFILL POST-CLOSURE CARE	
	(a)	Failure to Monitor Gas, Water, Settling	☐
	(b)	Failure to Take Remedial Action	☐
15.	22.22(c)	ACCEPTANCE OF LANDSCAPE WASTE FOR FINAL DISPOSAL	☐
16.	22.23(f)(2)	CAUSE OR ALLOW THE DISPOSAL OF ANY LEAD-ACID BATTERY	☐
17.	22.28(b)	ACCEPTANCE OF WHITE GOODS FOR FINAL DISPOSAL	☐
18.	55(b)(1)	ACCEPTANCE OF ANY USED OR WASTE TIRE FOR FINAL DISPOSAL (UNLESS LANDFILL MEETS EXEMPTION OF 55(b)(1))	☐
19.	56.1(a)	CAUSE OR ALLOW THE DISPOSAL OF ANY POTENTIALLY INFECTIOUS MEDICAL WASTE	☐
		SOLID WASTE SITE OPERATOR CERTIFICATION LAW REQUIREMENTS	
20.	225 ILCS 230/1004	CAUSING OF ALLOWING OPERATION OF A LANDFILL WITHOUT PROPER COMPETENCY CERTIFICATE	☒
		35 ILLINOIS ADMINISTRATIVE CODE REQUIREMENTS SUBTITLE G	
		PRIOR CONDUCT CERTIFICATION REQUIREMENTS	
21.	745.181	CHIEF OPERATOR REQUIREMENTS	☒
22.	745.201	PRIOR CONDUCT CERTIFICATION PROHIBITIONS	☒
		SPECIAL WASTE HAULING REQUIREMENTS	
23.	809.301	REQUIREMENTS FOR DELIVERY OF SPECIAL WASTE TO HAULERS	☐

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24.	809.302(a)	REQUIREMENTS FOR ACCEPTANCE OF SPECIAL WASTE FROM HAULERS	☐
25.	809.501	MANIFESTS, RECORDS, ACCESS TO RECORDS, REPORTING REQUIREMENTS AND FORMS	
	(a)	Delivery of Special Waste to Hauler	☐
	(e)	Retention of Special Waste Manifests	☐
		NEW SOLID WASTE LANDFILL REQUIREMENTS	
	PART 811 SUBPART	**GENERAL STANDARDS FOR ALL LANDFILLS**	
26.	811.103	SURFACE WATER DRAINAGE	
	(a)	Runoff from Disturbed Areas	☐
	(b)	Diversion of Runoff from Undisturbed Areas	☐
27.	811.104	SURVEY CONTROL	
	(a)	Boundaries Surveyed and Marked	☐
	(b)	Stakes and Monuments Marked	☐
	(c)	Stakes and Monuments Inspected	☐
	(d)	Control Monument Established and Maintained	☐
28.	811.105	COMPACTION	☐
29.	811.106	DAILY COVER	
	(a)	Six Inches Soil	☐
	(b)	Alternative Daily Cover	☐
30.	811.107	OPERATING STANDARDS	
	(a)	Phasing of Operations	☐
	(b)	Work Face Size and Slope	☐
	(c)	Equipment	☐
	(d)	Utilities	☐
	(e)	Maintenance	☐
	(f)	Open Burning	☐
	(g)	Dust Control	☐
	(h)	Noise Control	☐
	(i)	Vector Control	☐
	(j)	Fire Protection	☐
	(k)	Litter Control	☐
	(l)	Mud Tracking	☐
	(m)	Liquid Restrictions for MSWLF Units	☐
31.	811.108	SALVAGING	
	(a)	Salvaging Interferes with Operation	☐
	(b)	Safe and Sanitary Manner	☐
	(c)	Management of Salvagable Materials	☐
32.	811.109	BOUNDARY CONTROL	
	(a)	Access Restricted	☐
	(b)	Proper Sign Posted	☐

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33.	**811.110**	**CLOSURE AND WRITTEN CLOSURE PLAN**	
	(a)	Final Slopes and Contours	☐
	(b)	Drainage Ways and Swales	☐
	(c)	Final Configuration	☐
	(d)	Written Closure Plan	☒
	(e)	Initiation of Closure Activities at MSWLF Units	☒
	(f)	Completion of Closure Activities at MSWLF Units	☒
	(g)	Deed Notation for MSWLF Units	☐
34.	**811.111**	**POST-CLOSURE MAINTENANCE**	
	(a)	Procedures After Receipt of Final Volume of Waste	☐
	(b)	Remove All Equipment of Structures	☐
	(c)	Maintenance and Inspection of the Final Cover and Vegetation	☐
	(d)	Planned Uses of Property at MSWLF Units	☐
35.	**811.112**	**RECORDKEEPING REQUIREMENTS FOR MSWLF UNITS**	
	(a)	Location Restriction Demonstration	☐
	(b)	Load Checking Requirements	☐
	(c)	Gas Monitoring Records	☒
	(d)	MSWLF Liquid Restriction Records	☒
	(e)	Groundwater Monitoring Program Requirements	☒
	(f)	Closure and Post Closure Care Requirements	☒
	(g)	Cost Estimates and Financial Assurance Requirements	☒
	PART 811 SUBPART C	**PUTRESCIBLE AND CHEMICAL WASTE LANDFILLS**	
36.	**811.302**	**FACILITY LOCATION**	
	(c)	Site Screening (Does Not Apply To Part 814-Subpart D Sites)	☐
37.	**811.309**	**LEACHATE TREATMENT AND DISPOSAL SYSTEM**	
	(a)	General Requirements	☐
	(c)	Standards for On-Site Treatment and Pretreatment	☐
	(d)	Standards for Leachate Storage System	☐
	(e)	Standards for Discharge to Off-Site Treatment	☐
	(f)	Standards for Leachate Recycling Systems	☐
	(g)	Standards for Leachate Monitoring Systems	☐
38.	**811.310**	**LANDFILL GAS MONITORING (FOR SITES ACCEPTING PUTRESCIBLE WASTE)**	
	(b)	Location and Design of Gas Monitoring Wells	☐
	(c)	Monitoring Frequency for Landfill Gas	☒
	(d)	Monitoring Parameters	☐
39.	**811.311**	**LANDFILL GAS MANAGEMENT SYSTEM (FOR CHEMICAL AND PUTRESCIBLE LANDFILLS)**	
	(a)	Conditions for Installation of Gas Management System	☐
	(b)	Notification and Implementation Requirements	☐
	(c)	Standards for Gas Venting	☐
	(d)	Standards for Gas Collection	☐

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40.	811.312	**LANDFILL GAS PROCESS AND DISPOSAL SYSTEM**	
	(c)	No Unpermitted Gas Discharge	☐
	(d)	Gas Flow Rate Measurements into Treatment of Combustion Device	☐
	(e)	Standards for Gas Flares	☐
	(f)	Standards for On-Site Combustion of Landfill Gas Using Devices Other Than Flares	☐
	(g)	Gas Transported Off-Site	☐
41.	811.313	**INTERMEDIATE COVER**	
	(a)	Requirements for the Application for Intermediate Cover	☐
	(b)	Runoff and Infiltration Control	☐
	(c)	Maintenance of Intermediate Cover	☐
42.	811.314	**FINAL COVER SYSTEM (DOES NOT APPLY TO PART 814 SITES THAT HAVE CLOSED, COVERED AND VEGETATED PRIOR TO SEPTEMBER 18, 1990)**	
	(a)	General Requirements	☐
	(b)	Standards for Low Permeability Layer	☐
	(c)	Standards for Final Protective Layer	☐
43.	811.316	**PLUGGING AND SEALING OF DRILL HOLES**	☐
44.	811.321	**WASTE PLACEMENT**	
	(a)	Phasing of Operations	☐
	(b)	Initial Waste Placement	☐
45.	811.322	**FINAL SLOPE AND STABILIZATION**	
	(a)	Grade Capable of Supporting Vegetation and Minimizing Erosion	☐
	(b)	Slopes Required to Drain	☐
	(c)	Vegetation	☐
	(d)	Structures Built over the Unit	☐
46.	811.323	**LOAD CHECKING PROGRAM**	
	(a)	Load Checking Program Implemented	☐
	(b)	Load Checking Program for PCB's at MSWLF Units	☐
	(c)	Load Checking Program Components	☐
	(d)	Handling Regulated Hazardous Wastes	☐
	PART 811 SUBPART D	**MANAGEMENT OF SPECIAL WASTES AT LANDFILLS**	
47.	811.402	**NOTICE TO GENERATORS AND TRANSPORTERS**	☐
48.	811.403	**SPECIAL WASTE MANIFESTS REQUIREMENTS**	☐
49.	811.404	**IDENTIFICATION RECORD**	
	(a)	Special Waste Profile Identification Sheet	☐
	(b)	Special Waste Recertification	☐
50.	811.405	**RECORDKEEPING REQUIREMENTS**	☐
51.	811.406	**PROCEDURES FOR EXCLUDING REGULATED HAZARDOUS WASTES**	☐

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	PART 811 SUBPART G	FINANCIAL ASSURANCE	
52.	811.700	COMPLY WITH FINANCIAL ASSURANCE REQUIREMENTS OF PART 811, SUBPART G	☐ NE
53.	811.701	UPGRADING FINANCIAL ASSURANCE	☐ PNF 10/23/13
54.	811.704	CLOSURE AND POST-CLOSURE CARE COST ESTIMATES	☐
55.	811.705	REVISION OF COST ESTIMATE	☐
		SOLID WASTE FEE SYSTEM REQUIREMENTS	
56.	Part 858 Subpart B	MAINTAINED, RETAINED & SUBMITTED DAILY & MONTHLY SOLID WASTE RECORDS AND QUARTERLY SOLID WASTE SUMMARIES WHERE INCOMING WASTE IS WEIGHED (LIST SPECIFIC SECTION	☐
57.	Part 858 Subpart C	MAINTAINED, RETAINED & SUBMITTED DAILY & MONTHLY SOLID WASTE RECORDS AND QUARTERLY SOLID WASTE SUMMARIES WHERE INCOMING WASTE IS NOT WEIGHED (LIST SPECIFIC	☐
		OTHER REQUIREMENTS	
58.	OTHER:	APPARENT VIOLATION OF: (☐) PCB; (☐) CIRCUIT COURT CASE NUMBER: ORDER ENTERED ON:	☐
59.			☐
			☐
			☐
			☐
			☐

Mark Retzlaff
Signature of Inspector(s)

Informational Notes

1. [Illinois] Environmental Protection Act: 415 ILCS 5/4.
2. Illinois Pollution Control Board: 35 Ill. Adm. Code, Subtitle G.
3. Statutory and regulatory references herein are provided for convenience only and should not be construed as legal conclusions of the Agency or as limiting the Agency's statutory or regulatory powers. Requirements of some statutes and regulations cited are in summary format. Full text of requirements can be found in references listed in 1. and 2. above.
4. The provisions of subsection (o) of Section 21 of the [Illinois] Environmental Protection Act shall be enforceable either by administrative citation under Section 31.1 of the Act or by complaint under Section 31 of the Act.
5. This inspection was conducted in accordance with Sections 4(c) and 4(d) of the [Illinois] Environmental Protection Act: 415 ILCS 5/4(c) and (d).
6. Items marked with an "NE" were not evaluated at the time of this inspection.

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Morris/Community Landfill
May 23, 2013
Mark Retzlaff

NARRATIVE

On May 23, 2013, I conducted a routine landfill inspection at Community Landfill Parcels A and B. I briefly met with Caleb Moore, Laborer with the Department of Public Works for the City of Morris. Moore was observed pumping leachate from a sump along the southeast corner of Parcel A. Moore stated in summary, that the City of Morris still pumps leachate, however, no longer mows or maintains the Landfill. Moore further added that the City no longer cleans out or maintains the drainage ditches nor repairs erosion cuts and areas lacking vegetation. The temperature was approximately 50 degrees Fahrenheit and soil conditions were wet.

Parcel A, clearly lacks routine or any ongoing maintenance, access roads are not maintained nor are drainage ditches. Erosion cuts were observed along the east slope, and various locations at the central to south end on top lacked vegetation. The top portion does not appear to be properly graded with spoil piles of soil observed in various locations.

At Parcel B, the gas flare was not working at the time of the inspection. It was evident that the access roads are not maintained and drainage ditches are neglected. The leachate manholes located at the southwest corner of Parcel B and northeast portion of Parcel B were full, not covered with the potential to overflow onto the ground. Based on an Agency document review, the last groundwater sampling event occurred in October of 2011, with those results received by the Agency in November of 2011.

At the southern and western portion, mature trees have established themselves on the cap. Erosion cuts were observed along the eastern, western and southern slopes. Erosion cuts observed were approximately 35 feet by 3 feet wide by 18 inches deep, 30 by 3 by 18 inches deep on average. Along the north-slope, areas lacked vegetation roughly 35 feet by 20 feet in size and 20 by 15 feet in size. The top of Parcel B is not properly graded with piles of concrete blocks observed from previous site inspections.

Documents required to be maintained and available on site were not available and or accessible at the time of the inspection. This includes a Written Closure Plan, Financial Assurance Documentation, Closure Cost Estimates and Leachate and Gas Management Records to name a few. No landfill site personnel were on site at the time of the inspection. Per Moore, the buildings are now used by the City of Morris Department of Public Works. Moore further added that landfill site personnel left approximately two years ago when they were no longer paid to perform their work related duties.

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Apparent Violations Observed or Cited from May 23, 2013, Site Inspection:

Section 21(a) of the Act: Cause or Allow Open Dumping. Acceptance of Wastes without Necessary Permits. Based on an Agency file review from a June 16, 2010 inspection report, and the fact that Landfill Parcels A & B are developed and accepted waste.

Section 21(d)(1) of the Act: Conduct any Waste-Storage, Waste-Treatment or Waste-Disposal Operation: Without a Permit or in Violation of any Conditions of a Permit. Facility does not have a valid Permit in place for the Landfill.

Section 21(d)(2) of the Act: Conduct any Waste-Storage, Waste-Treatment or Waste-Disposal Operation: In Violation of Any Regulations or Standards Adopted by the Board. Facility does not have a written closure plan and related supporting documents.

Section 21(o)(6) of the Act: Conduct a Sanitary Landfill Operation Which Results in any of the Following Conditions: Failure to Provide Final Cover Within Time Limits.

Section 21(o)(7) of the Act: Conduct a Sanitary Landfill Operation Which Results in any of the Following Conditions: Acceptance of Wastes without Necessary Permits. Based on an Agency file review from a June 16, 2010 inspection report, and that fact that Landfill Parcels A & B are developed and accepted waste.

Section 21(o)(11) of the Act: Conduct a Sanitary Landfill Operation Which Results in any of the Following Conditions: Failure to Submit Reports Required by Permits or Board Regulations: Agency has not received required reports.

Section 21(o)(13) of the Act: Conduct a Sanitary Landfill Operation Which Results in any of the Following Conditions: Failure to Submit Any Cost Estimate, Performance Bond or Other Security. Agency has not received current closure cost estimates or evidence of a performance bond.

225 ILCS 230/1004: Solid Waste Site Operator Certification Law Requirements: Causing or Allowing the Operation of a Landfill without a Proper Competency Certificate. Beginning January 1, 1992, no person shall cause or allow the operation of a landfill permitted or required to be permitted by the Agency unless the landfill has on its operational staff at least one natural person certified as competent by the Agency under the provisions of this Act.
(a) For landfill sites which accept non-hazardous solid waste other than clean construction or demolition debris, the landfill shall have a Class A Solid Waste Site Operator certified by the

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Agency who is responsible for directing landfill operations or supervising other operational staff in performing landfill operations. Landfill does not have a certified operator.

Section 745.181 of the Regulations: Chief Operator Requirements. Facility does not have a Chief Operator.

Section 745.201 of the Regulations: Prior Conduct Certification Prohibitions. No Chief Operator, No Prior Conduct Certification can be performed.

Section 811.110(d) of the Regulations: Closure and Written Closure Plan. Written Closure Plan was not available at the time of the inspection.

Section 811.110(e) of the Regulations: Closure and Written Closure Plan, Initiation of Closure Activities at MSWLF Units. Acceptance of final volume of waste occurred. Closure Activities were not initiated after receipt of the final volume of waste.

Section 811.110(f) of the Regulations: Closure and Written Closure Plan, Completion of Closure Activities at MSWLF. Facility failed to complete closure within 180 days of beginning closure.

Section 811.112(c) of the Regulations: Record Keeping Requirements for MSWLF Units: Gas Monitoring Records. Records were not available at the time of the inspection.

Section 811.112(d) of the Regulations: Record Keeping Requirements for MSWLF Units: MSWLF Liquid Restriction Records. Leachate related documents were not available at the time of the inspection.

Section 811.112(e) of the Regulations: Record Keeping Requirements for MSWLF Units: Groundwater Monitoring Program Requirements. Last documented sampling event occurred in October 2011. Current groundwater monitoring records were not available at the time of the inspection.

Section 811.112(f) of the Regulations: Record Keeping Requirements for MSWLF Units: Closure and Post Closure Care Requirements. Closure related documents were not available at the time of the inspection.

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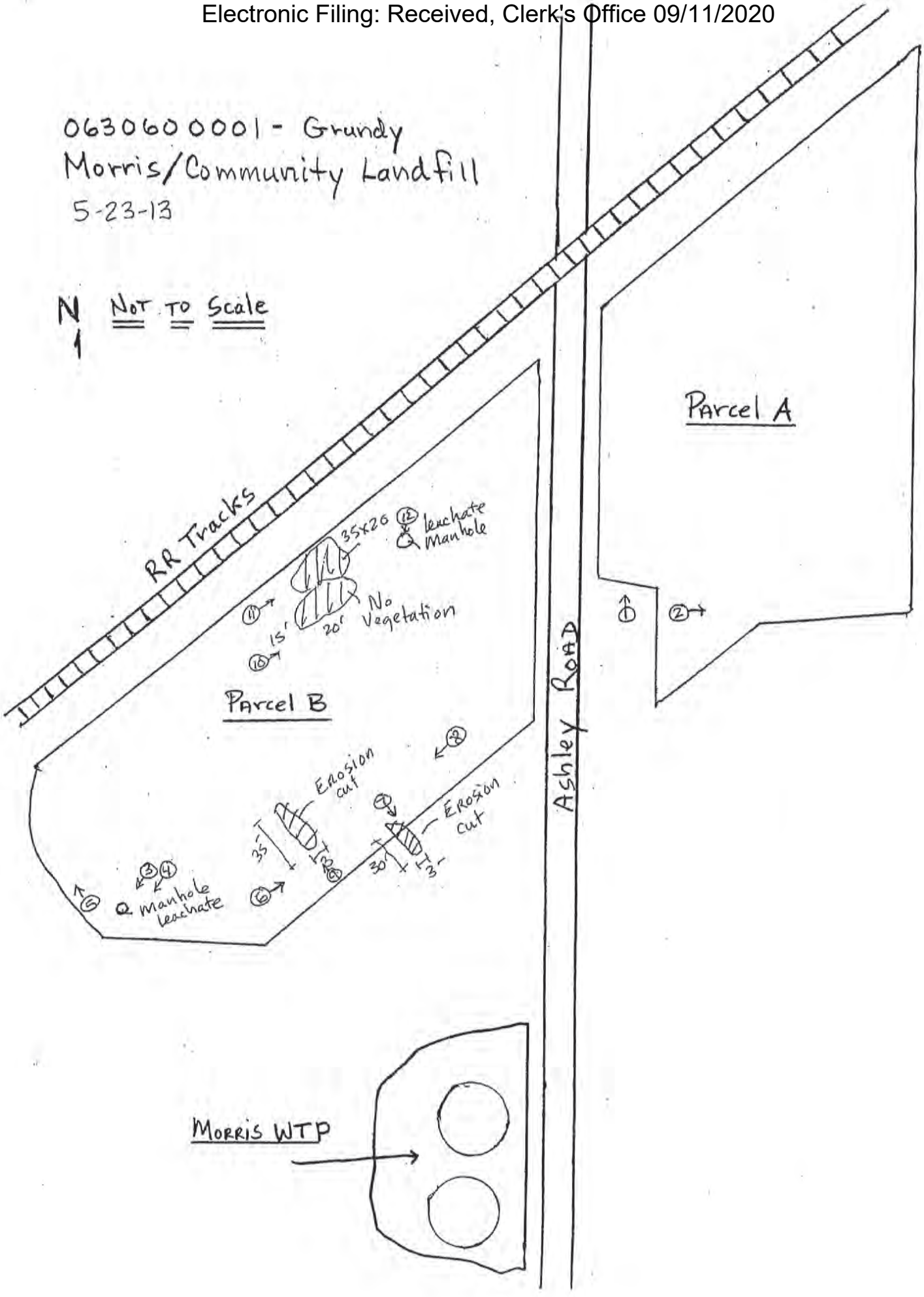
Section 811.112(g) of the Regulations: Record Keeping Requirements for MSWLF Units: Cost Estimates and Financial Assurance Requirements: Closure cost estimates and financial assurance documents were not available at the time of the inspection.

Section 811.310(c) of the Regulations: Landfill Gas Monitoring, monitoring frequency for landfill gas. Documentation was not available at the time of the inspection to show landfill gas monitoring frequency.



Illinois Environmental Protection Agency
Bureau of Land
Division of Land Pollution Control

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Morris/Community Landfill
FOS File

DIGITAL PHOTOGRAPHS

File Names: 0630600001 ~05232013-[Exp. #].jpg

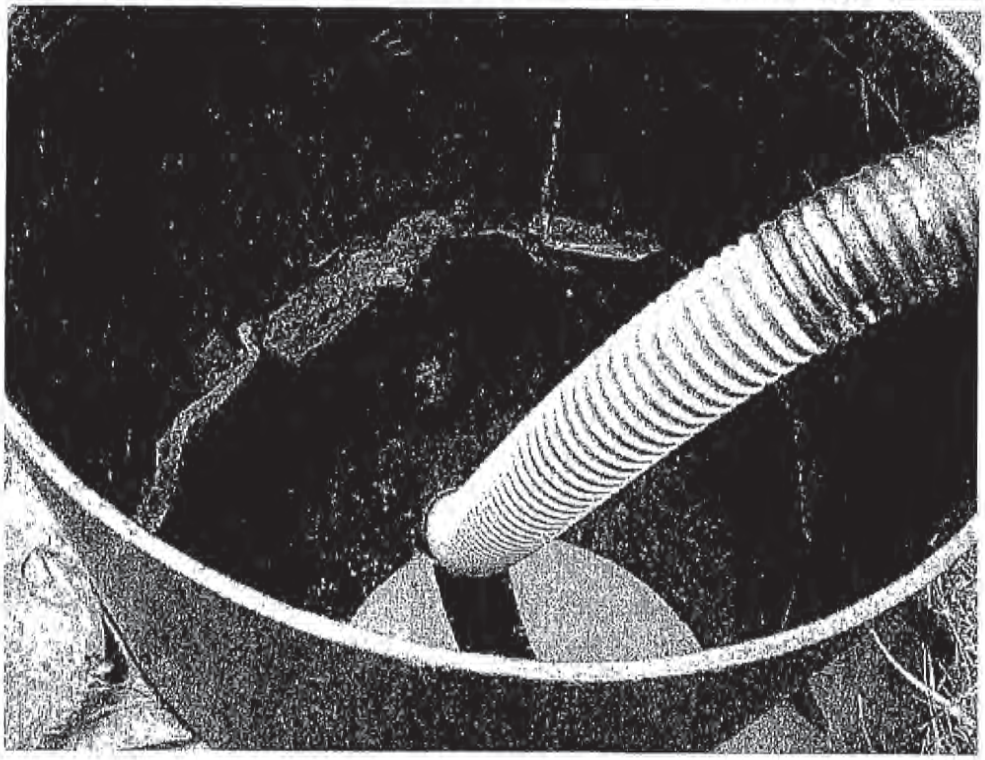
Date: 05/23/13
Time: 10:30 12:15 pm
Direction: North
Photo by: M. Retzlaff
Exposure #: 1
Comments: Parcel A, North at SW portion of site.

Date: 05/23/13
Time: 10:30 12:15 pm
Direction: East
Photo by: M. Retzlaff
Exposure #: 2
Comments: Parcel A, east at south slope or portion of site.

DIGITAL PHOTOGRAPHS

File Names: 0630600001 ~05232013-[Exp. #].jpg

Date: 05/23/13
Time: 10:30 12:15 pm
Direction: SW
Photo by: M. Retzlaff
Exposure #: 3
Comments: Parcel B, SW corner leachate manhole, leachate levels high. Manhole not covered.



Date: 05/23/13
Time: 10:30 12:15 pm
Direction: SW
Photo by: M. Retzlaff
Exposure #: 4
Comments: Parcel B, close up of leachate levels in manhole. Unit is not covered.

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DIGITAL PHOTOGRAPHS

File Names: 0630600001~05232013-[Exp. #].jpg

Date: 05/23/13
Time: 10:30 12:15 pm
Direction: North
Photo by: M. Retzlaff
Exposure #: 5
Comments: Parcel B, north at western slope. Trees growing through vegetative cap.

Date: 05/23/13
Time: 10:30 12:15 pm
Direction: NE
Photo by: M. Retzlaff
Exposure #: 6
Comments: Parcel B, looking NE along southern slope. Mature trees established on protective cover or cap.

DIGITAL PHOTOGRAPHS

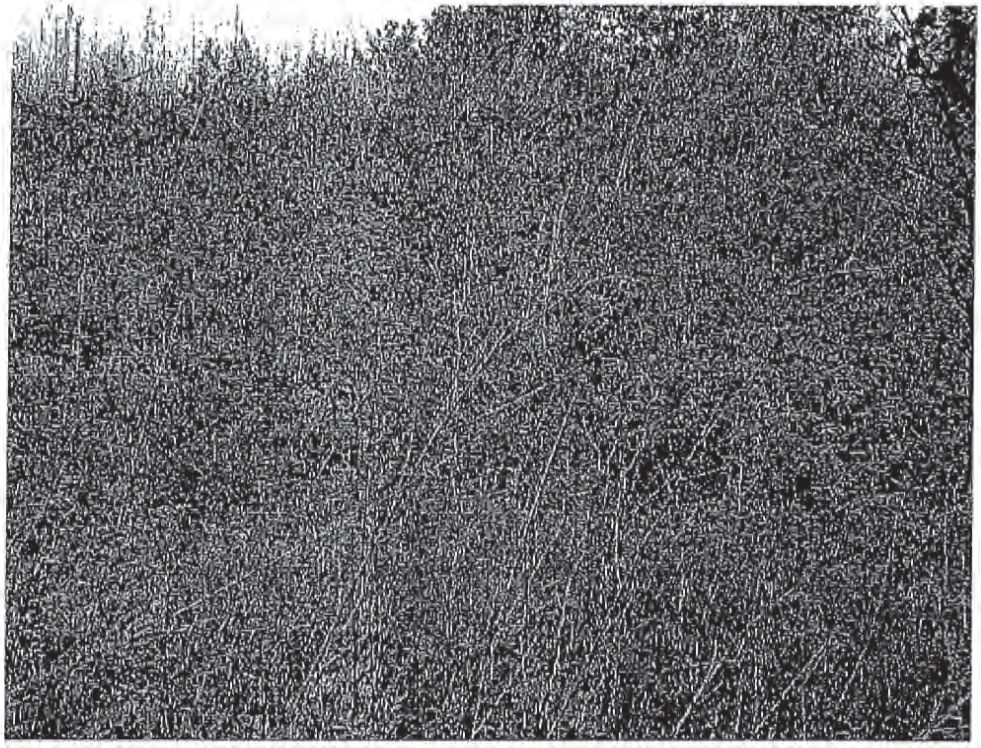
File Names: 0630600001~05232013-[Exp. #].jpg

Date: 05/23/13
Time: 10:30 12:15 pm
Direction: South
Photo by: M. Retzlaff
Exposure #: 7
Comments: Parcel B, erosion cut observed along southern slope. About 30 feet long by 3 feet wide by 18 inches deep.

Date: 05/23/13
Time: 10:30 12:15 pm
Direction: SW
Photo by: M. Retzlaff
Exposure #: 8
Comments: Parcel B, looking SW along southern slope. Mature trees established on protective cover or cap.

DIGITAL PHOTOGRAPHS

File Names: 0630600001 –05232013-[Exp. #].jpg



Date: 05/23/13
Time: 10:30 12:15 pm
Direction: NW
Photo by: M. Retzlaff
Exposure #: 9
Comments: Parcel B, Erosion cut observed along south slope. About 35 feet long by 3 feet wide by 18 inches deep.

Date: 05/23/13
Time: 10:30 12:15 pm
Direction: NE
Photo by: M. Retzlaff
Exposure #: 10
Comments: Parcel B, north slope, area lacks vegetation about 20 feet by 15 feet in size.

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File Names: 0630600001~05232013-[Exp. #].jpg

Date: 05/23/13
Time: 10:30 12:15 pm
Direction: NE
Photo by: M. Retzlaff
Exposure #: 11
Comments: Parcel B, north slope, area lacks vegetation, about 35 feet by 20 feet in size.

Date: 05/23/13
Time: 10:30 12:15 pm
Direction: SW
Photo by: M. Retzlaff
Exposure #: 12
Comments: Parcel B, along north slope. Leachate manhole full and not covered.

HINSHAW
& CULBERTSON LLP

February 10, 2014

ATTORNEYS AT LAW
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389

815-490-4900
815-490-4901 (fax)
www.hinshawlaw.com

Via Certified Mail
Illinois EPA - Bureau of Land #24
Attention: Brian White
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Re: Violation Number M-2013-01016
Site Identification Number 630600001

Dear Mr. White:

Please allow this correspondence to serve as the 21-day written response following the meeting on January 28, 2014. The City of Morris ("City") hereby incorporates by reference as though stated verbatim herein its December 16, 2013 response to Violation Notice M-2013-01016 ("VN") attached hereto as Exhibit 1. In addition to the responses to the alleged violations contained in Exhibit 1, the City makes the following response:

I. The Amendment of 415 ILCS 5/21.1 Does Not Create any Liability to the City of Morris.

During the January 28, 2014 meeting, counsel for the Illinois Environmental Protection Agency ("IEPA") indicated that it was IEPA's position that the amendment to Section 21.1 of the Act effective August 2, 2012 somehow removes this case from the purview of the decision of the Third District Appellate Court on August 5, 2011 in the *City of Morris v. Community Landfill Company*, 2011 IL App (3d) 090847. That decision held that the City of Morris was not conducting a waste disposal operation, was not involved in the day-to-day operation of the landfill, had no obligation to close or provide financial assurance for closure of the landfill, and was not the owner of the landfill and rather was merely the owner of the land upon which the landfill was located. *Id.* The amendment of Section 21.1 in August of 2012, was in response to the Third District opinion, and is commonly referred to as the "Morris Amendment," and changed the language of the statute to provide that no person shall "own or operate" a municipal solid waste landfill ("MSWLF") unit without first posting financial assurance which IEPA apparently somehow believes gives rise to a violation by the City. The language previously provided that no person shall "… conduct any disposal operation at …" a MSWLF unit without posting financial assurance.

First, this amendment did not change the language of Section 21 upon which Attachment A to the VN is essentially based. Section 21 of the Act provides no person shall "conduct" any waste storage or disposal operation without a permit. 415 ILCS 5/21 (2013). That language was not

amended, and continues to this date. Again, the Third District has already held that the City of Morris did not conduct a waste disposal operation. Accordingly, the allegations made in Attachment A to the VN are denied for the reasons stated in the December 16, 2013 correspondence and have in no way been affected by the amendment of Section 21.1 of the Act.

Second, the amendment of Section 21.1 does not create any liability on the part of the City of Morris to post financial assurance as alleged in Attachment B to the VN because as noted in detail above, the City of Morris did not, and does not, own nor operate a MSWLF unit. Again, the Third District explicitly found and held that "the City transferred its interest in the landfill to CLC, but retained ownership of the land on which the landfill was situated." *City of Morris,* 2011 IL App (3d) 090747, at ¶ 2. Section 21.1 of the Act as amended, does not impose any liability upon the City of Morris as the Act does not require anyone which merely owns the land upon which a MSWLF unit is situated to post financial assurance. If the Legislature had intended this result it could have, and would have, so stated. Accordingly, as pointed out in the original December 16, 2013 correspondence, the Third District's decision is binding precedent which bars the claims raised in Attachment B.

Third, even if the amendment of Section 21.1 in any way created liability for one who merely owns the land upon which a landfill is situated (which, again, it did not), the amendment could not be applied to the City of Morris. To the extent the amendment is a substantive change it cannot be applied retroactively and the amendment only takes effect upon becoming law on August 2, 2012. There was no indication within the amendment that it was intended to be applied retroactively. *Doe A. v. Diocese of Dallas,* 234 Ill.2d 393, 405 (2009); Statute on Statutes, 5 ILCS 70/4 (2012). Further, retroactive application of the statute against the City of Morris would be inequitable. *Id.* at 406; *Landgraph v. USI Film Prod.,* 511 U.S. 211 (1994).

Fourth, Section 21.1 explicitly provides that "no person other than the State of Illinois, its agencies and institutions, or a unit of local government shall own or operate a MSWLF unit...unless such person has posted [financial assurances]". 415 ILCS 5/21.1(a) (2012) (emphasis added). Therefore, the statute itself exempts units of local government from its application. The City of Morris is obviously a unit of local government.

Fifth, the regulations under Section 21.1 have not been amended and still explicitly provide that only a person who "conduct[s] a waste disposal operation" is required to post financial assurances for closure or post-closure care. 35 Ill.Admin.Code 811.700(c) and (f). Once again, the Third District has already held that the City of Morris was not conducting a waste disposal operation at that time and there is no evidence in any of the materials submitted by the EPA in its violation notice that the City has conducted a waste disposal operation since the Third District opinion.

Sixth, even if the amendment of Section 21.1 somehow imposed liability upon one who merely owns land where an MSWLF unit is located for posting financial assurances (which it does not), such an amendment cannot be applied to the City of Morris without violating the separation of powers required under Article II, Section 1, of the Illinois Constitution. The separation of powers clause provides: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." If the Legislature enacts an

amendment in response to a judicial decision which attempts to reverse the court's decision, it is a violation of the separation of powers clause. *People ex rel. Ryan v. AgPro, Inc.*, 214 Ill.2d 222, 229-31 (2005). The amendment to Section 21.1 (which the State of Illinois proposed and refers to as the "Morris Amendment") constitutionally was in direct response to the *City of Morris v. CLC, Inc.* decision. That amendment cannot be used by the State to overrule the August 5, 2011 Third District decision in favor of the City.

II. The State of Illinois Is Barred from Bringing any Enforcement Action as It Deposited Material at the Landfill After the Operator Reported Capacity Had Been Reached, and the State Failed to Timely Compel CLC to Perform Closure of the Facility.

The State of Illinois is barred from bringing an enforcement action against the City of Morris because gate tickets which have been acquired by the City from the Community Landfill Company indicate that the State through the Illinois Department of Transportation deposited substantial material at the landfill during the years 2001 through 2009. CLC, Inc., filed forms with the Environmental Protection Agency indicating that zero capacity was available at the landfill during the years of 1995 to 1996 and on multiple occasions since January 1, 2004. Despite the receipt of these forms, the State, through IDOT, deposited material at the site and the IEPA failed to issue any cease and desist order against the Community Landfill Company from accepting waste. Furthermore, the IEPA failed to compel CLC to close the landfill within 90 days of capacity being reached and the cessation of waste being accepted at the facility as required by the regulations. Therefore, as a matter of equity and pursuant to the doctrines of laches and waiver the State is barred from pursuing violations against the City of Morris.

III. Conclusion

For the reasons stated herein, as well as in Exhibit 1, the violation notice should be dismissed and no legal action should be taken by the State of Illinois. A proposed Compliance Commitment Agreement is attached hereto as Exhibit 2 which is consistent with this correspondence and Exhibit 1.

Sincerely,

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December 16, 2013

Via Certified Mail
Illinois EPA - Bureau of Land #24
Attention: Brian White
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Re: Violation Number M-2013-01016
Site Identification Number 630600001

Dear Mr. White:

The City of Morris ("City") received Violation Notice M-2013-01016 ("VN") dated October 30, 2013. The VN provides that pursuant to an inspection report dated June 16, 2010, an inspection completed on May 23, 2013 and a financial record review completed on October 10, 2013 that the City of Morris has allegedly violated certain environmental laws, regulations or permits as set forth in Attachments A and B to the VN. The VN was received on or about November 1, 2013 and therefore this response is timely as it is being sent via certified mail within 45 days of receipt of the VN. **As provided by Section 31(a)(2), the City requests a meeting with the representatives of the Illinois Environmental Protection Agency ("IEPA") to discuss the allegations as set forth in the VN.**

I. GENERAL RESPONSE TO ALL VIOLATIONS

a. Attachment A

The violations alleged under Attachment A arise under 415 ILCS 5/21 which relate to the conduct of a waste storage facility and stem from allegations of acceptance of waste on or about June 16, 2010 at the "Morris/Community Landfill" and Section 225 ILCS 230/1004 which is the Solid Waste Site Operator Certification Law and regulates who is permitted to operate a solid waste management facility; and 35 Ill.Admin.Code 745 concerning the requirement of a facility to have a chief operator; and Section 811.110 which addresses closing procedures required of an owner or operator of a municipal solid waste landfill (MSWLF). None of these laws or regulations apply to the City of Morris as the Third District of the Appellate Court of Illinois determined on August 5, 2011 that the City of Morris is not an operator of the Community Landfill Company and did not conduct a waste disposal operation and the City of Morris is not the owner of the facility. Pursuant to the doctrines of res judicata, collateral estoppel, judicial estoppel, equitable estoppel, waiver, laches and double jeopardy the State is barred from pursuing these notices of violation as they arise out of allegations that the City of Morris was the operator of the Community Landfill and the Third District Appellate Court has already ruled that

the City is not an operator. City of Morris v. Community Landfill Company, Docket Number 3-09-0847, 3-09-0864 consolidated, August 5, 2011 (attached hereto as Exhibit 1).

Furthermore, the allegations contained in Attachment A all arise from a June 16, 2010 inspection. (Exhibit 2) However, the Agency failed to issue any Violation Notice within 180 days of becoming aware of the alleged violations as required by 415 ILCS 5/31(a)(1) and, therefore, all alleged violations of Attachment A are untimely.

The alleged violations are also barred by the doctrines of judicial estoppel, equitable estoppel, waiver and laches because at the time of the alleged violations the State of Illinois was the Plaintiff in a lawsuit brought in the County of Grundy, Case Number 06 CH 184 of which the City of Morris was a named Defendant. The allegations of the June 16, 2010 investigation report was the subject of an Agreed Order entered in that case. Specifically, on June 25, 2010 an Agreed Order was entered in 06 CH 184, with the knowledge and concurrence of the State of Illinois whereby the Third Party Defendants, Robert Pruim, Ed Pruim, and Community Landfill Company, who were the sole operators of Community Landfill, were temporarily restrained from accepting or depositing any waste, product, soil or other waste material in any form at the Morris Community Landfill. (See Agreed Order attached hereto as Exhibit 3) That temporary restraining order was made permanent on September 21, 2010, when an Agreed Order was entered with the knowledge and concurrence of the State, under which Robert Pruim, Ed Pruim and Community Landfill Company would not accept or deposit any waste, product, soil or other material in any form at Morris Community Landfill until further order of the court (See Agreed Order of September 21, 2010, attached hereto as Exhibit 4). These orders were entered in direct response to the Attorney General's office informing the City of Morris that materials had been seen by an inspector on or about June 16, 2010 at the Morris Community Landfill. There is no allegation nor evidence that any material was accepted or placed at that site since the entry of the temporary restraining order on June 25, 2010 and as of September 21, 2010 pursuant to the Agreed Order, Robert Pruim, Edward Pruim and CLC employees did not have any access to the landfill site and they did not seek to acquire access authorization from the court. (Exhibit 4, para 3). 06 CH 184 explicitly addressed the issue of whether the City was an owner of the facility and after having been denied any preliminary injunctive relief against the City and after having been denied summary judgment, the State dismissed the claims against the City.

Furthermore, on June 29, 1982 the State of Illinois, and specifically the Illinois Environmental Protection Agency, approved the transfer of the operating permit for the landfill at issue from the City of Morris to Community Landfill Company Inc. At no time was said operating permit ever transferred back to the City of Morris. Specifically, "Permit Number 1974-22 and all supplemental permits in Part 1, Section V-9 issued by the Illinois Environmental Protection Agency" were transferred to Community Landfill Company. (Exhibit 5). Pursuant to an Agreement dated July 1, 1982 the right to accept waste, operate and maintain the landfill at issue was transferred solely to Community Landfill Company from the City of Morris. From that point forward, the Community Landfill Company was required to keep the premises including all appurtenances in good repair and in compliance with all rules, regulations, laws, statutes and ordinances of all federal, state and county agencies having jurisdiction over the demised premises, including all rules and regulations of the Illinois Environmental Protection Agency.

(Exhibit 6). Addendums to that contract required Community Landfill Company to provide for "all of the closure and post-closure responsibilities for the site". (Exhibit 7) . Accordingly, since 1982 the facility has been the sole responsibility of CLC, which is the sole permit holder of the facility and the facility has not been a possession of the City of Morris. In addition, under a binding court decision, the City is not the owner or operator of the landfill facility and it has no obligation to post financial assurances of any kind including for closure or post-closure care. Finally, there is no evidence or allegation that the City has deposited any waste at the facility which was the subject of the June 10, 2010 inspection or any subsequent inspection.

b. Attachment B

As to Attachment B, which asserts the failure to post financial assurances, once again the very claims upon which this VN have been based were rejected by the Third District in the City of Morris v. Community Landfill Company, Consolidated Numbers 3-09-0847, 3-09-0864, August 5, 2011. The court held that the City of Morris was not conducting a waste disposal operation, was not involved in the day-to-day operations of the landfill, and had no obligation to obtain financial assurance for the landfill. The inclusion of the alleged violations of Attachment B is a direct violation of the doctrines of res judicata, collateral estoppel, judicial estoppel, equitable estoppel, forfeiture and double jeopardy. The State has already acquired a judgment against CLC and the City is not an insurer of the landfill operator. To the extent the EPA is relying upon the June 22, 2011 amendment of Section 811.700 such amendment is not applicable to the City of Morris as there is nothing in the amendment to that regulation which indicates retroactive application. Furthermore, even if the amendment did apply to the City, which it does not, Section 811.700(c) explicitly provides that only one who conducts a waste disposal operation is liable for posting financial assurances. That section provides: "except as is provided in Subsection (f), the subpart does not apply to the State of Illinois, its agencies and institutions, or to any unit of local government; provided, however, that any other persons who conduct such a waste disposal operation on the site and is owned or operated by such governmental entity shall provide financial assurance for the closure and post-closure care of the site". Subsection (f) provides that on or after April 9, 1997, no person other than the State of Illinois, its agencies and institutions "shall conduct any disposal operation at an MSWLF unit that requires a permit under Section 21(d)". The Third District Appellate Court has already held that at no time did the City of Morris conduct a waste disposal operation. Therefore, regardless of whether the June 22 , 2011 amendment to Section 811.700(c) applies to the City, the City it is still not liable for the posting of any financial assurance as the Appellate Court has already ruled that the City did not and has not conducted a waste disposal operation. Finally, the State has been aware of the alleged violations for many years and thus the Violation Notice is untimely under 415 ILCS 5/31(a)(1) as well as the doctrines of waiver, laches and estoppel.

c. Attachments A & B

Both attachments (as well as the Violation Notice in general) fail to set forth a violation of the Illinois Environmental Act (the "Act") and/or regulations promulgated in connection therewith. Consequently, and in turn, the Violation Notice fails to set forth a valid claim under Section 31 of the Act.

II. ADDITIONAL RESPONSES TO ATTACHMENT A

Additional Response to Allegation #1:

The Violation Notice is based upon an IEPA file review from a June 16, 2010 inspection report, and the fact that Parcels A and B are developed and accepted waste. Pursuant to 5/31(a)(1) the Violation Notice is untimely because it was not issued with 180 days of the Agency becoming aware of the alleged violations. Further, the City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in the Violation Notice, because CLC was the operator of the landfill in June of 2010. Furthermore, the violation states that no person shall cause or allow the open dumping of any waste. However, there is no allegation that the City of Morris cause or allowed the open dumping of any waste. There is no data to substantiate the claim that the City of Morris accepted any waste without a necessary permit. The fact that Parcels A and B are developed does not make the City the owner or operator of the facility. There is no evidence or allegation that the City itself accepted any waste without a necessary permit.

The fact that Parcels A and B are developed and accepted waste does not establish a violation, the State has provided no evidence that the landfill did not have a valid permit when the waste was placed within Parcels A and B.

Additional Response to Allegation #2:

This alleged violation is based upon the June 16, 2010 inspection report and is thus untimely. The City of Morris has not conducted any waste-storage, waste-treatment, or waste-disposal operation without a permit granted by the IEPA or in violation of any conditions imposed by such a permit. The City had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #2 of the Violation Notice, because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. While it is alleged in the Violation Notice that the Facility does not have a valid permit in place for the Landfill, the City was and is not required to have a permit in place for the Landfill, as it is not the owner or operator of the facility and the City has not conducted any waste-storage, waste-treatment, or waste-disposal operations. The State's recourse is against Community Landfill Company. Even if the facility lacked a valid permit such does not create an obligation on the City to obtain a permit.

Additional Response to Allegation #3:

This alleged violation is based upon the June 16, 2010 inspection report and is thus untimely. The City of Morris has not conducted any waste-storage, waste-treatment, or waste-disposal operation without a permit granted by the IEPA or in violation of any conditions imposed by such a permit. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #3 of the Violation Notice, because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. While it is alleged in the Violation Notice that the Facility does not have a written closure plan or related supporting documents for the Landfill, the City of Morris was

not required to obtain such documents because the City did not and is not conducting any waste-storage, waste-treatment, or waste-disposal operation.

35 IL Admin. Section 811.110(d)(1) requires:

> The operator shall maintain a written plan describing all actions that the operator will undertake to close the unit or facility in a manner that fulfills the provisions of the Act, or this part and of other applicable parts of 35 Ill.Admin.Code Chapter 1. The written closure plan shall fulfill the minimum information requirements of 35 Ill.Admin.Code 812.114.

The City is not the operator of the facility, therefore, is not required to submit nor maintain a written closure plan and related supporting documents.

The facility has permitted written closure plans for both Parcels A and B, the closure plans were permitted under Permits Nos. 2000-155-LFM and 2000-156-LFM. The permitted closure plans do not vanish merely because the Agency denies a renewal request.

Additional Response to Allegation #4:

This alleged violation is based upon the June 16, 2010 inspection report and is thus untimely. The City of Morris has not conducted a sanitary landfill operation and as such, it has not conducted a sanitary landfill operation in a manner which results in failure to provide final cover within time limits established by Board regulations. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #4 of the Violation Notice, because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. While it is alleged in the Violation Notice that the there was a failure to provide final cover within time limits, the City was not responsible for providing that final cover; as it did not and is not conducting any waste-storage, waste-treatment, or waste-disposal operations.

Furthermore, a third-party expert investigated the cover conditions for both Parcels A and B at the landfill and determined that final cover has been installed on portions of both Parcels A and B.

Additional Response to Allegation #5:

This alleged violation is based upon the June 16, 2010 inspection report and is thus untimely. The City of Morris has not conducted any waste-storage, waste-treatment, or waste-disposal operation without a permit granted by the IEPA or in violation of any conditions imposed by such a permit. The City had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #5 of the Violation Notice, because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. While it is alleged in the Violation Notice that the Facility does not have a valid permit in place for the Landfill, the City was and is not required to have a permit in place for the Landfill, as it is not the owner or operator of the facility and the City has not conducted any

waste-storage, waste-treatment, or waste-disposal operations. The State's recourse is against Community Landfill Company. Even if the facility lacked a valid permit such does not create an obligation on the City to obtain a permit.

The fact that Parcels A and B are developed and accepted waste does not establish a violation, the State has provided no evidence that the landfill did not have a valid permit when the waste was placed within Parcels A and B.

Additional Response to Allegation #6:

This alleged violation is based upon the June 16, 2010 inspection report and is thus untimely. The City of Morris has not conducted a sanitary landfill operation in a manner which results in failure to submit reports required by permits or Board regulations. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #6 of the Violation Notice, because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. While it is alleged in the Violation Notice that the IEPA has not received the required reports, the City of Morris was not conducting a sanitary landfill operation and thus is not required to submit such reports.

Additional Response to Allegation #7:

This alleged violation is based upon the June 16, 2010 inspection report and is thus untimely. The City of Morris has not conducted a sanitary landfill operation and thus is not required to submit any closure cost estimate for the site nor is the City required to provide any performance bond or other security for the site. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #7 of the Violation Notice, because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. See also responses to Attachment B.

Additional Response to Allegation #8:

This alleged violation is based upon the June 16, 2010 inspection report and is thus untimely. The City of Morris has not caused or allowed the operation of a landfill without a person certified as competent under the Solid Waste Site Operator Certification Law. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #8 of the Violation Notice, because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. While it is alleged in the Violation Notice that the Landfill does not have a certified operator for the site, the City was not required to provide a certified operator as the City has not conducted a waste disposal operation nor accepted any waste, nor caused or allowed the operation of a landfill facility and thus 225 ILCS 230 is inapplicable to the City.

A certified operator is not required for a closed landfill unit. Under Allegation No. 12, the State alleges that the acceptance of the final volume of waste has occurred, therefore, the facility is not required to have a certified operator.

Additional Response to Allegation #9:

This alleged violation is based upon the June 16, 2010 inspection report and is thus untimely. The City of Morris is not operating the Landfill. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #9 of the Violation Notice, because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. While it is alleged in the Violation Notice that the Landfill does not have a Chief Operator for the site the City was not required to provide a Chief Operator; because the City did not operate the landfill, and therefore the requirements of 35 Ill. Adm. Code 745.181 are not applicable to the City. Furthermore, 35 Ill. Adm. Code 745 establishes procedures for prior conduct certification for personnel of waste disposal sites. Since the City of Morris has conducted no operations at a waste disposal site, this Part is inapplicable to the City of Morris.

A certified operator is not required for a closed landfill unit. Under Allegation No. 12, the State alleges that the acceptance of the final volume of waste has occurred; therefore the facility is not required to have a certified operator.

Additional Response to Allegation #10:

This alleged violation is based upon the June 16, 2010 inspection report and is thus untimely. The City of Morris is not operating a waste disposal site. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #10 of the Violation Notice, because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. While it is alleged in the Violation Notice that the Landfill does not have a certified chief operator or a chief operator with prior conduct certification, the City was not required to provide a chief operator. The City of Morris has not, and does not operate the landfill and therefore the requirements of 35 Ill. Adm. Code 745.181, are not applicable to the City. Furthermore, 35 Ill. Adm. Code 745 establishes procedures for prior conduct certification for personnel of waste disposal sites. Since the City of Morris has conducted no operations at a waste disposal site, this Part is inapplicable to the City of Morris.

A certified operator is not required for a closed landfill unit. Under Allegation No. 12, the State alleges that the acceptance of the final volume of waste has occurred; therefore the facility is not required to have a certified operator.

Additional Response to Allegation #11:

This alleged violation is based upon the June 16, 2010 inspection report and is thus untimely. The City of Morris is not operating the Landfill. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #11 of the Violation Notice, because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. While it is alleged in the Violation Notice that a written Closure Plan was not available at the time of the inspection, the City was not required to provide nor maintain this plan as the City has not conducted a sanitary

landfill operation. 35 Ill. Adm. Code 811.110(d)(1) specifically applies to the operator of a landfill, and since the City of Morris is not the operator, this Section is inapplicable to the City of Morris.

Additional Response to Allegation #12:

This alleged violation is based upon the June 16, 2010 inspection report and is thus untimely. The City of Morris is not operating the Landfill and was not operating the Landfill when the final volume of waste occurred. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #12 of the Violation Notice because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. While it is alleged in the Violation Notice that acceptance of the final volume of waste has occurred, and that closure activities were not initiated after receipt of the final volume of waste, the City of Morris was not required to initiate closure.

Further, a third party investigation revealed that final cover has been installed in both Parcels A and B.

Additional Response to Allegation #13:

This alleged violation is based upon the June 16, 2010 inspection report and is thus untimely. The City of Morris is not operating the Landfill and was not operating the Landfill when the final volume of waste occurred. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #13 of the Violation Notice because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. While it is alleged in the Violation Notice that the facility failed to complete closure activities within 180 days of beginning closure, the City was not required to initiate nor complete closure. Furthermore, since closure has not yet begun at the site, it is premature for the IEPA to assert that closure activities have not been completed within 180 days of beginning closure. Beginning closure is a pre-requisite to any assertion of a violation of this Section, and as closure has not yet begun, it is impossible for this Section to have been violated.

Additional Response to Allegation #14:

This alleged violation is based upon the June 16, 2010 inspection report and is thus untimely. The City of Morris is not operating the Landfill. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #14 of the Violation Notice because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. While it is alleged in the Violation Notice that the facility failed to record and retain in an operating record gas monitoring results and remediation plans, the City was not required to record and retain these documents. Furthermore, while it is alleged in the Violation Notice that the records were not available at the time of the inspection, Section 35 Ill. Adm. Code 811.112(c), does not require records to be retained at or near the facility where the inspection took place.

Additional Response to Allegation #15:

This alleged violation is based upon the June 16, 2010 inspection report and is thus untimely. The City of Morris is not operating the Landfill. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #15 of the Violation Notice because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. While it is alleged in the Violation Notice that the owner or operator of facility failed to record and retain in an operating record design documentation for placement of leachate or gas condensate, the City was not required to record and retain these documents. Furthermore, while it is alleged in the Violation Notice that the records were not available at the time of the inspection, 35 Ill. Adm. Code 811.112(d), does not require records to be retained at or near the facility where the inspection took place.

Additional Response to Allegation #16:

This alleged violation is based upon the June 16, 2010 inspection report and is thus untimely. The City of Morris is not operating the Landfill. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #16 of the Violation Notice because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. While it is alleged in the Violation Notice that the facility failed to record and retain in an operating record any demonstration, certification, monitoring results, testing, or analytical data relating to the groundwater monitoring program, the City was not required to record and retain these documents. Furthermore, while it is alleged in the Violation Notice that the records were not available at the time of the inspection, 35 Ill. Adm. Code 811.112(e) does not require records to be retained at or near the facility where the inspection took place.

Additional Response to Allegation #17:

This alleged violation is based upon the June 16, 2010 inspection report and is thus untimely. The City of Morris is not operating the Landfill. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #17 of the Violation Notice because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. While it is alleged in the Violation Notice that the facility failed to record and retain in an operating record any closure and post-closure care plans and any monitoring, testing, or analytical data, the City was not required to record and retain these documents. Furthermore, while it is alleged in the Violation Notice that the records were not available at the time of the inspection, 35 Ill. Adm. Code 811.112(f) does not require records to be retained at or near the facility where the inspection took place.

Additional Response to Allegation #18:

This alleged violation is based upon the June 16, 2010 inspection report and is thus untimely. The City is not operating the Landfill. The City had no operating obligations, and in fact, did not

have the authority to address the issues raised in Allegation #18 of the Violation Notice because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. While it is alleged in the Violation Notice that the facility failed to record and retain in an operating record any cost estimates and financial assurance documentation, the City was not required to record and retain these documents. Furthermore, while it is alleged in the Violation Notice that the records were not available at the time of the inspection, 35 Ill. Adm. Code 811.112(g) does not require records to be retained at or near the facility where the inspection took place.

Additional Response to Allegation #19:

This alleged violation is based upon the June 16, 2010 inspection report and is thus untimely. The City of Morris is not operating the Landfill. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #19 of the Violation Notice because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. While it is alleged in the Violation Notice that the facility failed to provide documentation at the time of the inspection that showed landfill gas monitoring frequency, the City was not required to record and retain these documents. Furthermore, while the Violation Notice indicates that the records were not available at the time of the inspection, 35 Ill. Adm. Code 811.310(c) does not have any requirements at all related to documentation, and 35 Ill. Adm. Code 811.112(c) does not require records to be retained at or near the facility where the inspection took place. Furthermore, Section 811.301 et. seq. applies only to landfills in which chemical and putrescible wastes are to be placed.

III. ADDITIONAL RESPONSES TO ATTACHMENT B

Additional Response to Allegation #1:

The City of Morris is not the operator of the Landfill. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #1 of the Violation Notice because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the Landfill. Furthermore, the Appellate Court of Illinois has already considered the issues included in 35 Ill. Adm. Code 810.103, and determined that the City of Morris is not the operator at the Landfill. Furthermore, the Agency has been aware of this alleged violation for many years and thus this allegation is untimely pursuant to 415 ILCS 5/31(a)(1).

Additional Response to Allegation #2:

The City of Morris is not conducting any waste-storage, waste-treatment, or waste-disposal operation at the Landfill. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #2 of the Violation Notice, because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the Landfill. Since CLC is the permit holder, CLC is the entity responsible for complying with the permit conditions for Parcel A and Parcel B associated with updating closure

and post-closure care cost and maintaining acceptable financial assurance equal to or greater than the amount of the approved cost estimate. See City of Morris v. Cmty. Landfill Co., 2011 IL App 3d. 090847. Furthermore, the Agency has been aware of this alleged violation for many years and thus this allegation is untimely pursuant to 415 ILCS 5/31(a)(1).

Additional Response to Allegation #3:

The City of Morris is not conducting any waste-storage, waste-treatment, or waste-disposal operation at the Landfill. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #3 of the Violation Notice because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. Since the CLC is the permit holder, CLC is the entity responsible for complying with the provisions of 35 Ill. Adm. Code Subtitle G, Part 811, Subpart G. Specifically, it was CLC, not the City of Morris, that was responsible for complying with Section 811.700(a), (c), and (f), requiring the provision of financial assurance. See City of Morris v. Cmty. Landfill Co., 2011 IL App 3d. 090847. Furthermore, the Agency has been aware of this alleged violation for many years and thus this allegation is untimely pursuant to 415 ILCS 5/31(a)(1).

Additional Response to Allegation #4:

The City of Morris is not conducting a sanitary landfill operation at the Landfill. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #4 of the Violation Notice because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. Since CLC is the permit holder, CLC is the entity responsible for providing an annual revision of the cost estimate and providing continuous financial assurance coverage. See City of Morris v. Cmty. Landfill Co., 2011 IL App 3d. 090847. Furthermore, the Agency has been aware of this alleged violation for many years and thus this allegation is untimely pursuant to 415 ILCS 5/31(a)(1).

Additional Response to Allegation #5:

The City of Morris is not conducting a sanitary landfill operation at the Landfill. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #5 of the Violation Notice because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. Since the CLC is the permit holder, CLC is the entity responsible for providing financial assurance that satisfies the requirements of the Environmental Protection Act. See City of Morris v. Cmty. Landfill Co., 2011 IL App 3d. 090847. Furthermore, the Agency has been aware of this alleged violation for many years and thus this allegation is untimely pursuant to 415 ILCS 5/31(a)(1).

Additional Response to Allegation #6:

The City of Morris is not conducting a sanitary landfill operation at the Landfill. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #6 of the Violation Notice because CLC held the permits for the Facility and

had all rights and responsibilities under those permits as the operator of the landfill. Since the CLC is the permit holder, CLC is the entity responsible for providing financial assurance by a bond guaranteeing payment, a bond guaranteeing performance, a letter of credit, insurance or self-insurance as required by 35 Ill. Adm. Code 811.706. See City of Morris v. Cmty. Landfill Co., 2011 IL App 3d. 090847. Furthermore, the Agency has been aware of this alleged violation for many years and thus this allegation is untimely pursuant to 415 ILCS 5/31(a)(1).

Additional Response to Allegation #7:

The City of Morris is not conducting any disposal operation at the Landfill, therefore 35 Ill. Adm. Code 811.700(f) is inapplicable to the City of Morris. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #7 of the Violation Notice because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. Since CLC is the permit holder, CLC is the entity responsible for providing financial assurance by a bond guaranteeing payment, a bond guaranteeing performance, a letter of credit, insurance or self-insurance as required by 35 Ill. Adm. Code 811.706. See City of Morris v. Cmty. Landfill Co., 2011 IL App 3d. 090847. Furthermore, the Agency has been aware of this alleged violation for many years and thus this allegation is untimely pursuant to 415 ILCS 5/31(a)(1).

Additional Response to Allegation #8:

The City of Morris is not conducting any disposal operation at the Landfill, therefore 35 Ill. Adm. Code 811.701 is inapplicable to the City of Morris. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #8 of the Violation Notice because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. Since the CLC is the permit holder, CLC is the entity responsible for complying with all financial assurance requirements. See City of Morris v. Cmty. Landfill Co., 2011 IL App 3d. 090847. The City of Morris never assumed any responsibilities of providing financial assurance from CLC. Rather, the City of Morris agreed to provide services for the treatment of leachate from the Landfill, it has continued to meet that obligation. Furthermore, the Agency has been aware of this alleged violation for many years and thus this allegation is untimely pursuant to 415 ILCS 5/31(a)(1).

Additional Response to Allegation #9:

The City of Morris is not conducting any disposal operation at the Landfill, therefore 35 Ill. Adm. Code 811.701 is inapplicable to the City of Morris. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #9 of the Violation Notice, because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. Since the CLC is the permit holder, CLC is the entity responsible for making adjustments to financial assurance for inflation. See City of Morris v. Cmty. Landfill Co., 2011 IL App. 3d 090847. Furthermore, the Agency has been aware of this alleged violation for many years and thus this allegation is untimely pursuant to 415 ILCS 5/31(a)(1).

Additional Response to Allegation #10:

The City of Morris is not conducting any disposal operation at the Landfill. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #10 of the Violation Notice because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. Since CLC is the permit holder, CLC is the entity responsible for annual revisions of the cost estimate. See City of Morris v. Cmty. Landfill Co., 2011 IL App.3d 090847. Furthermore, the Agency has been aware of this alleged violation for many years and thus this allegation is untimely pursuant to 415 ILCS 5/31(a)(1).

Additional Response to Allegation #11:

The City of Morris is not conducting any disposal operation at the Landfill. The City of Morris had no operating obligations, and in fact, did not have the authority to address the issues raised in Allegation #11 of the Violation Notice because CLC held the permits for the Facility and had all rights and responsibilities under those permits as the operator of the landfill. Since CLC is the permit holder, CLC is the entity responsible for maintaining continuous financial assurance until being released from the financial assurance requirements. See City of Morris v. Cmty. Landfill Co., 2011 IL App 3d 090847. Furthermore, the Agency has been aware of this alleged violation for many years and thus this allegation is untimely pursuant to 415 ILCS 5/31(a)(1).

IV. CONCLUSION

The City of Morris has provided herein rebuttal, explanation and justification for each of the alleged violations and accordingly said violations should be dismissed. Once again, pursuant to Section 31(a) the City of Morris requests a meeting to discuss the VN. Please contact the undersigned to schedule said meeting.

Sincerely,

HINSHAW & CULBERTSON LLP

Richard S. Porter
815-490-4920
rporter@hinshawlaw.com

RSP:dmh
Cc: Mark Retzlaff
Mr. Paul Purseglove
Mayor Kopczick
Scott Belt, Esq.

PROPOSED
COMPLIANCE COMMITMENT AGREEMENT

1. For the reasons stated in the February 10, 2014 and December 16, 2013 correspondence from the City to Brian White, the City of Morris is presently and has been, in compliance with all environmental statutes, regulations, and laws and commits to continue such compliance.

2. The City of Morris proposes that the State of Illinois acknowledge and agree that the City of Morris is not liable for any violations asserted in the December 16, 2013, Violation Notice M-2013-01016 including the alleged violations contained in Attachments A and B thereto.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217)782-2829
PAT QUINN, GOVERNOR LISA BONNETT, DIRECTOR

217/782-5544
217/782-9143 (TDD)

March 24, 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mayor Richard Kopczick
700 N. Division Street
Morris, Illinois 60450

Re: **Notice of Intent to Pursue Legal Action**
Violation Notice M-2013-01016
0630600001 – Grundy
Morris/Community Landfill
Compliance File

Dear Mayor Kopczick:

This Notice of Intent to Pursue Legal Action ("Notice") is provided pursuant to Section 31(b) of the Illinois Environmental Protection Act, 415 ILCS 5/31(b). The Illinois Environmental Protection Agency ("Illinois EPA") is providing you with this Notice because you failed to adequately respond to Violation Notice M-2013-01016, dated October 30, 2013, and issued by the Illinois EPA within the time frame required by Section 31 of the Act.

The Illinois EPA is providing this notice because it may pursue legal action for the violations of environmental statutes, regulations, or permits specified in Attachment A and Attachment B of the Violation Notice. This Notice of Intent to Pursue Legal Action provides the opportunity to schedule a meeting with representatives of the Illinois EPA to attempt to resolve the violations of the Act, regulations or permits specified in Attachment A and Attachment B. If a meeting is requested, it must be held within thirty (30) days of receipt of this Notice unless an extension of time is agreed to by the Illinois EPA.

If you wish to schedule a meeting with representatives of the Illinois EPA or if you have any questions, please contact me at 217/785-7114 within twenty (20) days of your receipt of this notice.

Sincerely,

James Kropid
Assistant Counsel

cc: Richard S. Porter, Esq.

EXHIBIT
tabbies
E

4302 N. Main St., Rockford, IL 61103 (815)987-7760
595 S. State, Elgin, IL 60123 (847)608-3131
2125 S. First St., Champaign, IL 61820 (217)278-5800
2009 Mall St., Collinsville, IL 62234 (618)346-5120
9511 Harrison St., Des Plaines, IL 60016 (847)294-4000
5407 N. University St., Arbor 113, Peoria, IL 61614 (309)693-5462
2309 W. Main St., Suite 116, Marion, IL 62959 (618)993-7200
100 W. Randolph, Suite 10-300, Chicago, IL 60601 (312)814-6026

LexisNexis

User Name: Richard Porter
Date and Time: Tuesday, August 11, 2020 1:36:00 PM CDT
Job Number: 123043583

Document (1)

1. *City of Morris v. Cmty. Landfill Co., 2011 IL App (3d) 090847*
   Client/Matter: 0982943
   Search Terms: 2011 Ill.App.3d 090847
   Search Type: Natural Language
   Narrowed by:

Content Type	Narrowed by
Cases	-None-

EXHIBIT F

City of Morris v. Cmty. Landfill Co.

Appellate Court of Illinois, Third District

August 5, 2011, Opinion Filed

Appeal No. 3-09-0847 (cons. with No. 3-09-0864)

Reporter
2011 IL App (3d) 090847 *; 957 N.E.2d 476 **; 2011 Ill. App. LEXIS 814 ***; 354 Ill. Dec. 160 ****

THE CITY OF MORRIS, an Illinois Municipal Corporation, Petitioner-Appellant, v. COMMUNITY LANDFILL COMPANY, an Illinois Corporation, THE PEOPLE ex. rel. LISA MADIGAN, Attorney General of the State of Illinois, the ILLINOIS POLLUTION CONTROL BOARD, and The STATE Of ILLINOIS, Respondents-Appellees.COMMUNITY LANDFILL COMPANY, an Illinois Corporation, Petitioner-Appellant, v. ILLINOIS POLLUTION CONTROL BOARD, THE PEOPLE ex rel. LISA MADIGAN, Attorney General of the State of Illinois, THE CITY OF MORRIS, an Illinois Municipal Corporation, and The STATE Of ILLINOIS, Respondents-Appellees.THE CITY OF MORRIS, an Illinois Municipal Corporation, Petitioner-Appellant, v. COMMUNITY LANDFILL COMPANY, an Illinois Corporation, THE PEOPLE ex. rel. LISA MADIGAN, Attorney General of the State of Illinois, the ILLINOIS POLLUTION CONTROL BOARD, and The STATE Of ILLINOIS, Respondents-Appellees.COMMUNITY LANDFILL COMPANY, an Illinois Corporation, Petitioner-Appellant, v. ILLINOIS POLLUTION CONTROL BOARD, THE PEOPLE ex rel. LISA MADIGAN, Attorney General of the State of Illinois, THE CITY OF MORRIS, an Illinois Municipal Corporation, and The STATE Of ILLINOIS, Respondents-Appellees.

Subsequent History: As Corrected September 26, 2011. Released for Publication October 5, 2011.

Prior History: **[***1]** Appeal from the Illinois Pollution Control Board. PCB No. 03-191.
Appeal from the Illinois Pollution Control Board. PCB No. 03-191.
Appeal from the Illinois Pollution Control Board. PCB No. 03-191.
Appeal from the Illinois Pollution Control Board. PCB No. 03-191.

Cmty. Landfill Co. v. Pollution Control Bd., 331 Ill. App. 3d 1056, 772 N.E.2d 231, 2002 Ill. App. LEXIS 386, 265 Ill. Dec. 193 (Ill. App. Ct. 3d Dist., 2002)

Disposition: Confirmed in part and set aside in part; cause remanded.

Core Terms

landfill, disposal, leachate, premiums, estimates, closure, postclosure, sureties, site, modification, revised, desist, cease, compliance, day-to-day, confirm, parcel

Case Summary

Procedural Posture
Appellants, city and landfill, challenged the order entered by the Illinois Pollution Control Board (the Board), in the proceeding with appellee State of Illinois, holding appellants jointly and severally liable for posting financial assurance of $17,427,366, prohibiting appellants from accepting additional waste at the landfill, and imposing penalties against appellants.

Overview

The State filed a complaint against appellants, alleging that they were conducting disposal operations without adequate financial assurance. The State filed a motion for summary judgment, which the Board granted. The Board then entered its order. The court ruled that the Board properly granted summary judgment against the landfill. The landfill never obtained any financial assurance in addition to or in lieu of the bonds, which were removed from the list of acceptable sureties, and stopped paying premiums on the bonds. Nevertheless, the landfill continued to conduct waste disposal operations. Also, the Board's penalty was not arbitrary, capricious or unreasonable. The landfill benefited financially by not paying premiums on bonds for many years. Furthermore, summary judgment in favor of the State and against the city was improper, because the Board erred in finding that the city was conducting a waste disposal operation and responsible for obtaining financial assurance. Since the city was not conducting disposal operations, it had no obligation to obtain financial assurance.

Outcome

Court confirmed landfill violated the Environmental Protection Act's financial assurance obligation, requirement that landfill obtain $17.4 million in financial assurance, penalty against landfill, and cease and desist order. The court set aside the rulings against city and found city did not violate the Act or regulations, was not responsible for obtaining financial assurance, and was not liable for any civil penalty. The case was remanded.

LexisNexis® Headnotes

Environmental Law > Solid Wastes > Municipal Landfills

HN1[] **Solid Wastes, Municipal Landfills**

Section 21 of the Environmental Protection Act provides that no person shall conduct any waste-storage, waste-treatment, or waste-disposal operation in violation of any regulations or standards adopted by the Illinois Pollution Control Board under the Act. *415 ILCS 5/21(d)(2)* (2008). *Section 811.700* of the Board's Financial Assurance Regulations states that no person shall conduct any disposal operations at an municipal solid waste landfill facility unit unless that person complies with the financial assurance requirements of this Part. *Ill. Admin. Code tit. 35, § 811.700(f)* (2011). Financial assurance may be provided by a bond guaranteeing payment or performance. Admin. Code tit. 35, *§ 811.700(b) (2011)*. The surety company issuing bonds must be approved by the U.S. Department of the Treasury as an acceptable surety. Admin. Code tit. 35, § 811.712(b) (2011). The Department of the Treasury lists acceptable sureties in its Circular 570. Admin. Code tit. 35, § 811.712(b) (2011).

Environmental Law > Solid Wastes > Municipal Landfills

HN2[] **Solid Wastes, Municipal Landfills**

An entity is responsible for obtaining financial assurance for a landfill if it conducts any disposal operation at an municipal solid waste landfill facility unit. Admin. Code tit. 35, *§ 811.700 (2011)*. The Environmental Protection Act defines "disposal" as the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well. *415 ILCS 5/3.185* (2008).

Environmental Law > Solid Wastes > Municipal Landfills

HN3[] **Solid Wastes, Municipal Landfills**

The Illinois Pollution Control Board's regulations define "operator" as a person is responsible for the operation and maintenance of a solid waste disposal facility. Admin. Code tit. 35, § 810.103 (2011). A court may look beyond permits to determine who is involved in the day-to-day operations of a landfill to determine who is an operator. An entity will be regarded as an operator if it is involved in the day-to-day operations of the site. An owner will be considered an operator when it pays for all site operations, directs and supervises the operator on an ongoing basis and limits the discretion of the

operator.

Environmental Law > Solid Wastes > Municipal Landfills

HN4 **Solid Wastes, Municipal Landfills**

Admin. Code tit. 35, § 811.309(e)(1)(c) (2011) provides that treatment works are considered part of a landfill only if more than 50% of the average daily influent flow is attributable to leachate from the landfill.

Environmental Law > Solid Wastes > General Overview

HN5 **Environmental Law, Solid Wastes**

Section 33 of the Environmental Protection Act provides that after due consideration of the written and oral statements, the testimony and arguments that shall be submitted at the hearing, the Illinois Pollution Control Board shall issue and enter such final order, or make such final determination, as it shall deem appropriate under the circumstances. 415 ILCS 5/33 (2008).

Environmental Law > Solid Wastes > Municipal Landfills

HN6 **Solid Wastes, Municipal Landfills**

An entity is responsible for obtaining financial assurance for a landfill if it conducts any disposal operation at an municipal solid waste landfill facility unit. Admin. Code tit. 35, *§ 811.700(f) (2011)*.

Environmental Law > Solid Wastes > General Overview

HN7 **Environmental Law, Solid Wastes**

Section 42 of the Environmental Protection Act authorizes the Illinois Pollution Control Board to impose a civil penalty of up to $10,000 per day against any person who violates a provision of the Act or regulation adopted by the Board. 415 ILCS 5/42(a) (2008).

Environmental Law > Solid Wastes > General Overview

HN8 **Environmental Law, Solid Wastes**

Section 42(h) of the Environmental Protection Act lists a number of factors that the Illinois Pollution Control Board is to consider when determining the appropriate penalty, including: (1) the duration and gravity of the violation; (2) the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of the Act and regulations thereunder; (3) any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefit shall be determined by the lowest cost alternative for achieving compliance; (4) the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with the Act by the respondent and other persons similarly subject to the Act; (5) the number, proximity in time, and gravity of previously adjudicated violations of the Act by the respondent. 415 ILCS 5/42(h) (2008).

Environmental Law > Solid Wastes > General Overview

HN9 **Environmental Law, Solid Wastes**

See 415 ILCS 5/42(h) (2008).

Administrative Law > Judicial Review > Standards of Review > Arbitrary & Capricious Standard of Review

Environmental Law > Solid Wastes > General Overview

HN10 **Standards of Review, Arbitrary & Capricious Standard of Review**

The Illinois Pollution Control Board is vested with broad discretionary powers in imposing penalties. A penalty will be set aside only if it is clearly arbitrary, capricious or unreasonable.

Environmental Law > Solid Wastes > General Overview

HN11[] **Environmental Law, Solid Wastes**

A penalty is authorized under the Environmental Protection Act against any person who violates a provision of the Act or a regulation adopted by the Illinois Pollution Control Board. 415 ILCS 5/42(a) (2008).

Environmental Law > Solid Wastes > General Overview

HN12[] **Environmental Law, Solid Wastes**

Section 33 of the Environmental Protection Act authorizes the Illinois Pollution Control Board to issue orders and provides that such orders may include a direction to cease and desist from violations of the Act or any rule or regulation adopted under the Act. 415 ILCS 5/33(b) (2008).

Environmental Law > Solid Wastes > Municipal Landfills

HN13[] **Solid Wastes, Municipal Landfills**

Section 21 of the Environmental Protection Act lists prohibited acts and states that no person shall conduct any waste disposal operation in violation of any regulations or standards adopted by the Illinois Pollution Control Board under the Act. 415 ILCS 5/21(d)(2) (2008). Admin. Code tit. 35, *§ 811.700* of the Board's regulations provides that no person shall conduct any disposal operation at an municipal solid waste landfill facility unit unless that person complies with the financial assurance requirements of this Part. Admin. Code tit. 35, *§ 811.700(f) (2011)*. The Act defines "disposal" as the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well. 415 ILCS 5/3.185 (2008).

Environmental Law > Solid Wastes > Municipal Landfills

HN14[] **Solid Wastes, Municipal Landfills**

A landfill conducts "disposal operations" by accepting waste at the landfill. 415 ILCS 5/3.185 (2008). Such disposal operations are authorized by the Environmental Protection Act and its regulations only if adequate financial assurance is in place. Admin. Code tit. 35, *§ 811.700(f) (2011)*. Accepting waste without proper financial assurance is prohibited by the Act and its regulations. 415 ILCS 5/21(d)(2) (2002); Admin. Code tit. 35, *§ 811.700(f) (2011)*.

Environmental Law > Solid Wastes > Municipal Landfills

HN15[] **Solid Wastes, Municipal Landfills**

A landfill violates the Environmental Protection Act and its regulations by accepting waste without proper financial assurance. 415 ILCS 5/21(d)(2) (2008); Admin. Code tit. 35, *§ 811.700(f) (2011)*. The Illinois Pollution Control Board has the power to direct a landfill to cease and desist from violating the Act and its regulations. 415 ILCS 5/33(b) (2008).

Syllabus

In an action alleging violations of the Environmental Protection Act and regulations adopted by the Pollution Control Board arising from a landfill company's operation of a waste disposal facility on land owned by a city, the appellate court confirmed the Board's findings that the landfill company violated the Act's financial assurance obligation, and its imposition of a penalty and issuance of a cease and desist order, but the appellate court set aside rulings against the city based on findings that the city did not violate the Act or its regulations, that it was not responsible for obtaining financial assurance for the landfill, and that it was not liable for any civil penalty.

Counsel: For City of Morris, Appellant: Ms. Nancy G. Lischer, Hinshaw & Culbertson, Chicago, IL; Mr. George F. Mahoney, III, Mr. R. Peter Grometer, Mr. Grant S. Wegner, Mahoney, Silverman & Cross, Ltd., Joliet, IL; Mr. Charles F. Helsten, Hinshaw & Culbertson, Rockford, IL; Mr. Scott M. Belt, Scott M. Belt & Associates, P.C., Morris, IL.

For Community Landfill Co., Appellant: Mr. Mark A. LaRose, LaRose & Bosco, Ltd., Chicago, IL; Mr. Michael T. Reagan, Law Offices of Michael T. Reagan,

Ottawa, IL; Ms. Clarissa Y. Cutler, Chicago, IL.

For Illinois Pollution Control Board, Appellee: Hon. Lisa Madigan, Attorney General, Chicago, IL; Ms. Laura M. Wunder, Assistant Attorney General, Chicago, IL; Mr. Michael A. Scodro, Solicitor General, Chicago, IL.

Judges: JUSTICE LYTTON delivered the judgment of the court, with opinion. Justices Schmidt and Wright concurred in the judgment and opinion.

Opinion by: LYTTON

Opinion

[*P1] **[****162]** **[**478]** The State filed a complaint with the Illinois Pollution Control Board (Board) against Community Landfill Co. (CLC) and the City of Morris, alleging that CLC and the City were conducting disposal operations in violation of the financial assurance requirements of the Environmental Protection Act (Act) (*415 ILCS 5/21* (West 2008)) and regulations promulgated thereunder by the Board. The State filed a motion for summary judgment, which the Board granted. The Board then entered an order (1) holding CLC and the City jointly and severally liable for posting financial assurance of $17,427,366, (2) prohibiting CLC and the City from accepting additional waste at the landfill, and (3) imposing penalties of $399,308.98 against the City and $1,059,534.70 against CLC. CLC and the City appeal the Board's rulings. We confirm in part and set aside in part.

[*P2] In the 1970s, the City of Morris operated the Morris Community Landfill. The landfill consists of two parcels, **[***2]** A and B. In 1982, the City transferred its interest in the landfill to CLC, but retained ownership of the land on which the landfill was situated. CLC began operating the landfill. CLC paid the City dumping-related royalties for its use of the landfill.

[*P3] In 1996, CLC secured financial assurance from bonds issued by Frontier Insurance for closure/postclosure care costs for the landfill. Prior to 1999, CLC carried $1.4 million in bonds from Frontier, the estimated closure costs at that time.

[*P4] In 1999, the City and CLC entered into an agreement that required CLC to give leachate from the landfill to the City, which the City then treated at its publicly owned treatment works at no cost to CLC. The leachate from the landfill made up less than 1% of what was treated at the City's publicly owned treatment works.

[*P5] In 1999, CLC submitted an application to the Illinois Environmental Protection Agency (IEPA) for a significant modification permit requesting the closure of parcel B and the continued operation of parcel A. The permit estimated that closure costs for CLC would be $7 million and the costs for the City would be $10 million for leachate treatment. CLC sought to post a $7 million bond, **[***3]** while the City would commit to leachate treatment costing $10 million. IEPA rejected CLC's application and required CLC to post a bond for the entire $17 million. CLC and the City appealed that decision to the Board and then to this court, both of which upheld the $17 million financial assurance amount. See *Community Landfill Co., Ill. Pollution Control Bd. Op. 01-48, 01-49 (cons.), 2001 Ill. ENV LEXIS 161 (April 5, 2001)*; *Community Landfill Co. v. Pollution Control Board, 334 Ill. App. 3d 1125 (2002)* (unpublished Order under *Supreme Court Rule 23*).

[*P6] In 2000, IEPA issued a modification permit supported by financial assurance of $17,427,366, which was guaranteed by three bonds issued by Frontier. One of the bonds, with a value of $10,081,630, listed the City as principal. The remaining bonds listed CLC as the principal. CLC was responsible for the premiums on all of the bonds.

[*P7] A few months later, IEPA notified CLC and the City that they were in violation of the Act because Frontier Insurance Company had been taken off the list of approved government sureties. Two weeks later, CLC filed its supplemental permit application for parcel A. IEPA denied the application because Board regulations required acceptable sureties **[***4]** to be **[****163]** **[**479]** listed in the United States Department of Treasury's Circular 570, and Frontier was stricken from the list. CLC and the City appealed IEPA's decision. The Board affirmed IEPA's denial of CLC's permit. *Community Landfill Co., Ill. Pollution Control Bd. Op. 01--170, at 22, 2001 Ill. ENV LEXIS 553 (Dec. 6, 2001)*. CLC and the City then appealed to this court. We confirmed, holding:

> "[T]he supplemental permit application in this case was appropriately denied because the company failed to satisfy *** requirements of the Act and Code when seeking the permit. Although the parties do not dispute that the bonds were valid and enforceable or that the Agency accepted the company's bonds for a different permit after Frontier was removed from the Circular 570 list, Frontier did not meet the statutory financial assurance requirements for the supplemental permit here as it was not on the list of approved sureties when this application was submitted and ruled on." *Community Landfill Co. v. Pollution Control Board, 331 Ill. App. 3d 1056, 1061, 772 N.E.2d 231, 265 Ill. Dec. 193 (2002)*.

[*P8] In 2003, the State filed a complaint against CLC and the City, alleging that they were conducting disposal operations at the Morris Community Landfill without adequate financial **[***5]** assurance. The State filed a motion for summary judgment against CLC and the City. CLC filed a response arguing that there was an issue of fact as to whether it had adequate financial assurance in place. The City filed a cross-motion for summary judgment, arguing that it had no responsibility to post financial assurance because it did not conduct or manage operations at the landfill. In 2006, the Board issued an opinion and order granting the State's motion for summary judgment and denying the City's motion for summary judgment.

[*P9] In September 2007, a penalty hearing was held. Evidence at the hearing established that CLC paid the City $399,208.98 in dumping royalties from 2001 to 2005. The evidence also showed that CLC's premium payment for the Frontier bonds was $217,842 in 2001, which amounted to $596.83 per day. CLC stopped making payments on the Frontier bonds in 2001. Neither CLC nor the City provided any financial assurance to IEPA for the landfill after 2001.

[*P10] Brian White, IEPA Bureau of Land Compliance unit manager, testified that IEPA has made a claim on the Frontier bonds obtained by the City and CLC in 2000. Frontier offered to pay IEPA $400,000 on those bonds. At the time **[***6]** of the hearing, Frontier had paid nothing.

[*P11] Christine Roque, IEPA Bureau of Land engineer, testified that financial assurance amounts may be reduced by seeking and obtaining a permit modification from IEPA. CLC and the City did not seek a permit modification for the Morris Community Landfill until July 2007. That permit modification was under review by IEPA at the time of the hearing.

[*P12] Devin Moose, a licensed professional engineer, was hired by the City in 2005 to evaluate the landfill. Moose prepared revised cost estimates for closure/post-closure care and found them to be $10 million. The revised figures were submitted to IEPA in July 2007, but IEPA had not yet responded to them.

[*P13] Edward Pruim, secretary/treasurer of CLC, testified that the cost of the Frontier bonds in 2000 was $200,000 in collateral and premium payments of slightly over $200,000 per year. CLC paid the premium on the Frontier bonds for two years. CLC then began looking for another bonding company and found that it did not have enough money to purchase other bonds.

[*P14] **[****164]** **[**480]** Following the hearing, each party filed posthearing briefs. In its brief, the State argued that the Board should impose a penalty against CLC in the amount **[***7]** of $1,059,534.70, reflecting the amount it saved on bond premiums by not paying for any bonds after 2001. The State argued that the penalty against the City should be $399,308.98, the amount of dumping royalties it received from CLC from 2001 to 2005, when no financial assurance was in place for the landfill.

[*P15] In 2009, the Board issued an order in which it found CLC and the City jointly and severally obligated to post financial assurance in the amount of $17,427,366, to be reduced by any amount IEPA has or will receive from Frontier. *Community Landfill Co., Ill. Pollution Control Bd. Op. 03-191, at 3, 35, 2009 Ill. ENV LEXIS 228 (June 18, 2009)*. The Board also ordered both CLC and the City to (1) submit revised cost estimates and update financial assurance in accordance with the revised estimates, and (2) cease and desist from accepting any additional waste at the landfill. *Id. at 3, 2009 Ill. ENV LEXIS 228*. The Board imposed penalties of $399,308.98 against the City and $1,059,534.70 against CLC. *Id.*

[*P16] I. VIOLATION OF ACT AND REGULATIONS

[*P17] A. CLC's Liability

[*P18] CLC argues that the Board erred in finding that it violated the Act and its regulations by not obtaining adequate financial assurance because the Frontier

bonds were valid and enforceable, **[***8]** as evidenced by IEPA's attempt to collect on them.

[*P19] *HN1*[↑] *Section 21 of the Act* provides that "[n]o person shall *** [c]onduct any waste-storage, waste-treatment, or waste-disposal operation *** in violation of any regulations or standards adopted by the Board under this Act." *415 ILCS 5/21(d)(2)* (West 2008). Section 811.700 of the Board's Financial Assurance Regulations states that "no person *** shall conduct any disposal operations at an MSWLF [municipal solid waste landfill facility] unit *** unless that person complies with the financial assurance requirements of this Part." *35 Ill. Adm. Code 811.700(f)* (2011). Financial assurance may be provided by a bond guaranteeing payment or performance. *35 Ill. Adm. Code 811.700(b)* (2011). The surety company issuing bonds must be "approved by the U.S. Department of the Treasury as an acceptable surety." *35 Ill. Adm. Code. 811.712(b)* (2011). The Department of the Treasury lists acceptable sureties in its Circular 570. *35 Ill. Adm. Code 811.712(b)* (2011).

[*P20] In 1999, IEPA determined that CLC was required to post over $17 million in financial assurance for the Morris Community Landfill. In May 2000, CLC and the City purchased $17.1 million in bonds from **[***9]** Frontier. On June 1, 2000, Frontier was removed from the Circular 570 list. See *Community Landfill Co. v. Pollution Control Board, 331 Ill. App. 3d at 1059*. CLC never obtained any financial assurance in addition to or in lieu of the Frontier bonds and stopped paying premiums on the Frontier bonds in 2001. Nevertheless, CLC continued to conduct waste disposal operations at the landfill.

[*P21] As we explained in *Community Landfill Co.*, the Frontier bonds were valid and enforceable. *Community Landfill Co., 331 Ill. App. 3d at 1061*. Nevertheless, they did not satisfy the requirements of the Act or the Code because Frontier was removed from the list of approved sureties. *Id.* Moreover, CLC stopped paying premiums on the Frontier bonds in 2001. In 2003, when the State filed its complaint, CLC **[****165]** **[**481]** was already in substantial violation of the Board's financial assurance regulations and *section 21 of the Act*. Thus, the Board properly granted summary judgment against CLC.

[*P22] B. The City's Liability

[*P23] The City argues that the Board should not have found it liable for providing financial assurance for the landfill because the City did not "conduct disposal operations."

[*P24] *HN2*[↑] An entity is responsible for obtaining financial **[***10]** assurance for a landfill if it "conduct[s] any disposal operation at an MSWLF unit." *35 Ill. Adm. Code 811.700* (2011). The Act defines "disposal" as "the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well." *415 ILCS 5/3.185* (West 2008). The parties do not dispute that parcels A and B of Morris Community Landfill qualify as MSWLF units.

[*P25] Here, the Board found that while the City did not "conduct the day-to-day operations at the landfill," the City was an operator of the landfill and, thus, responsible for financial assurance:

> "While Morris may not actively conduct the day-to-day operations at the landfill, Morris also does not 'passively own land upon which waste disposal operations are (or have been) conducted.' [Citation.] Morris financed the operation, litigated in conjunction with CLC, as well as profited from and treated the leachate from the Morris Community Landfill. While these activities alone may not constitute "operating" a waste disposal site, Morris also had discretion regarding the decisions at the site and took responsibility for some of the ancillary site operations such as **[***11]** the treatment of leachate from the landfill. The Board finds that the grand sum of Morris' conduct rises to the level of 'operation ***'". (Internal quotation marks omitted.) *Community Landfill Co., Inc., Ill. Pollution Control Bd. Op. 03-191, 2006 Ill. ENV LEXIS 89, *31 (Feb. 16, 2006)*.

[*P26] *HN3*[↑] The PCB's regulations define "operator" as "a person who is responsible for the operation and maintenance of a solid waste disposal facility." 35 Ill. Adm. Code 810.103 (2011). A court may look beyond permits to determine who is involved in the day-to-day operations of a landfill to determine who is an operator. *People ex rel. Ryan v. Bishop, 315 Ill. App. 3d 976, 979-80, 735 N.E.2d 754, 249 Ill. Dec. 150 (2000)*. An entity will be regarded as an operator if it is involved in the day-to-day operations of the site. *Poland, Ill. Pollution Control Bd. 98--148, at 8-9, 2001 Ill. ENV LEXIS 407 (Sept. 6, 2001)*. An owner will be considered an operator when it pays for all site operations, directs and supervises the "operator" on an ongoing basis and

limits the discretion of the "operator." See *Termaat, Ill. Pollution Control Bd. 85--129, 1986 Ill. ENV LEXIS 444, *8 (Oct. 23, 1986)*.

[*P27] Here, there was no evidence that the City oversaw, directed or supervised CLC in its waste disposal operations. While the City helped CLC obtain financial assurance, litigated **[***12]** alongside CLC on various issues and treated leachate from the landfill, those activities were separate and distinct from CLC's "waste disposal operation" at the landfill. Moreover, the leachate the City received from CLC amounted to a very small percentage of the total leachate the City treated at its publicly owned treatment works. Thus, the City's treatment of the leachate did not amount to an ancillary site operation of the landfill. See HN4[↑] *35 Ill. Adm. Code 811.309(e)(1)(c)* (2011) (treatment works considered part of a landfill only if more than 50% of the average daily influent flow is attributable to leachate from the landfill).

[*P28] **[****166]** **[**482]** The Board specifically found that the City was not involved in day-to-day operations of the landfill. *Community Landfill Co., Ill. Pollution Control Bd. Op. 03--191, at 13, 2006 Ill. ENV LEXIS 89 (Feb. 16, 2006)*; *Community Landfill Co., Ill. Pollution Control Bd. Op. 03--191 at 3, 4, 28, 2009 Ill. ENV LEXIS 228 (June 18, 2009)*. That finding is the test for determining if an entity is "conducting waste operations," not litigation activities, financial support or minor amounts of leachate treatment. The Board erred in finding that the City was conducting a waste disposal operation and responsible for obtaining **[***13]** financial assurance. The Board's order granting summary judgment in favor of the State and against the City was improper.

[*P29] II. FINANCIAL ASSURANCE

[*P30] A. CLC's Liability

[*P31] CLC argues that the Board's order requiring it to obtain $17.4 million in financial assurance was improper because (1) it already had financial assurance in place by way of the Frontier bonds, and (2) the appropriate amount of financial assurance necessary for closure/postclosure costs was still in dispute.

[*P32] HN5[↑] Section 33 of the Act provides: "After due consideration of the written and oral statements, the testimony and arguments that shall be submitted at the hearing, *** the Board shall issue and enter such final order, or make such final determination, as it shall deem appropriate under the circumstances." *415 ILCS 5/33* (West 2008).

[*P33] CLC's first argument that it had adequate financial assurance in place through the Frontier bonds is not supported by the evidence. The evidence at the hearing established that the Frontier bonds purchased in 2000 did not comply with the Act or regulations and that CLC stopped paying premiums on those bonds in 2001. Thus, from 2000 to the time of the hearing, CLC did not have proper financial **[***14]** assurance in place. The Board's order requiring CLC to obtain compliant financial assurance was proper.[1]

[*P34] Moreover, the amount of financial assurance ordered by the Board was supported by the evidence. In 2000, CLC estimated that closure/postclosure care of the landfill would cost $17.4 million, and IEPA issued a modification permit to CLC based on that cost estimate. At the hearing in September 2007, CLC presented testimony that only $10 million was necessary to cover closure/postclosure costs at the landfill. While CLC could have provided IEPA with revised estimates of closure/postclosure costs at any time, CLC did not present its revised cost estimates to IEPA until July 2007. At the time of the hearing, IEPA had not yet determined if CLC's modified cost estimates were proper and could be accepted. Because the only amount of closure/postclosure costs approved by IEPA at the time of the hearing was $17.4 million, the Board did not err in requiring CLC to obtain financial assurance in that amount, less **[***15]** any amount tendered by Frontier to IEPA.

[*P35] B. The City's Liability

[*P36] The City argues that the Board should not have found it jointly and severally liable for obtaining $17.4 million in financial assurance for the Morris Community Landfill since it is not "conducting waste disposal operations." We agree.

[*P37] HN6[↑] An entity is responsible for obtaining financial assurance for a landfill if it "conduct[s] any

[1] While IEPA has attempted to collect from Frontier on the noncompliant bonds, the $400,000 offered by Frontier was far less than $17.4 million. Frontier has yet to pay IEPA any amount.

disposal operation at an **[****167]** **[**483]** MSWLF unit." *35 Ill. Adm. Code 811.700(f)* (2011). Since we have found that the City is not conducting disposal operations, it had no obligation to obtain financial assurance. The Board's order finding the City jointly and severally liable for obtaining financial assurance for the landfill was improper.

[*P38] III. PENALTIES

[*P39] A. CLC

[*P40] CLC argues that the Board abused its discretion in imposing a penalty of $1,059,534.70 against it because it acted reasonably in purchasing the Frontier bonds and did not benefit from noncompliance.

[*P41] *HN7*[↑] *Section 42 of the Act* authorizes the Board to impose a civil penalty of up to $10,000 per day against any person who violates a provision of the Act or regulation adopted by the Board. *415 ILCS 5/42(a)* (West 2008). *HN8*[↑] *Section 42(h)* lists a number of factors **[***16]** that the Board is to consider when determining the appropriate penalty, including:

> "(1) the duration and gravity of the violation;
> (2) the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder ***;
> (3) any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefit shall be determined by the lowest cost alternative for achieving compliance;
> (4) the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
>
> (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent[.]" *415 ILCS 5/42(h)* (West 2008).

Section 42(h) also states:

> *HN9*[↑] "In determining the appropriate civil penalty to be imposed ***, the Board shall ensure, in all cases that the penalty is at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result **[***17]** in an arbitrary or unreasonable financial hardship." *415 ILCS 5/42(h)* (West 2008).

[*P42] *HN10*[↑] The Board is vested with broad discretionary powers in imposing penalties. *ESG Watts, Inc. v. Pollution Control Board, 282 Ill. App. 3d 43, 50-51, 668 N.E.2d 1015, 218 Ill. Dec. 183 (1996)*. A penalty will be set aside only if it is clearly arbitrary, capricious or unreasonable. *Id. at 51*.

[*P43] Here, the Board considered the section 42(h) factors and found only one mitigating factor in CLC's favor -- no prior adjudicated administrative citation violations. *Community Landfill Co., Ill. Pollution Control Bd. 03-191, at 39, 2009 Ill. ENV LEXIS 228 (June 18, 2009)*. On the other hand, the Board found the aggravating factors to be "many and severe." *Id.* The Board explained that "the on-going, grave financial assurance violations in this case [that] have persisted since 2000, leaving unresolved problems at the Landfill," required that it impose a significant penalty against CLC. *2009 Ill. ENV LEXIS 228, [slip op.] at 40*. The Board found that the appropriate measure of the civil penalty against CLC was the amount of money CLC saved by not paying premiums for the noncompliant Frontier bonds from 2001 to 2007. *Id.* Thus, the Board assessed a penalty against CLC for that amount: $1,059,534.70. *Id.*

[*P44] **[****168]** **[**484]** We find that **[***18]** the Board's penalty was not arbitrary, capricious or unreasonable. The penalty was supported by *section 42(h)*, including the mandate that penalties be at least as great as the economic benefits accrued by the respondent as a result of the violation. Here, CLC benefited financially by not paying premiums on bonds for many years. Thus, the penalty imposed by the Board, which was equal to the premiums CLC should have paid for those bonds, was appropriate.

[*P45] B. The City

[*P46] *HN11*[↑] A penalty is authorized under the Act against any person who violates a provision of the Act or a regulation adopted by the Board. *415 ILCS 5/42(a)* (West 2008). Because the City did not violate the Act or regulations, the Board erred in imposing a penalty against the City.

[*P47] IV. CEASE AND DESIST ORDER

[*P48] CLC argues that the Board had no authority to order it to cease and desist from accepting any additional waste at the site because the only issue before the Board was CLC's compliance with statutory and regulatory financial assurance requirements.

[*P49] HN12[↑] Section 33 of the Act authorizes the Board to issue orders and provides that "[s]uch order[s] may include a direction to cease and desist from violations of this Act [or] any rule or **[***19]** regulation adopted under this Act." 415 ILCS 5/33(b) (West 2008).

[*P50] HN13[↑] Section 21 of the Act lists "[p]rohibited acts" and states that "[n]o person shall *** [c]onduct any *** waste disposal operation *** in violation of any regulations or standards adopted by the Board under this Act." 415 ILCS 5/21(d)(2) (West 2008). Section 811.700 of the Board's regulations provides that "no person *** shall conduct any disposal operation at an MSWLF unit *** unless that person complies with the financial assurance requirements of this Part." *35 Ill. Adm. Code 811.700(f)* (2011). The Act defines "disposal" as "the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well." 415 ILCS 5/3.185 (West 2008).

[*P51] HN14[↑] CLC conducts "disposal operations" by accepting waste at the Morris Community Landfill. See 415 ILCS 5/3.185 (West 2008). Such disposal operations are authorized by the Act and its regulations only if adequate financial assurance is in place. See *35 Ill. Adm. Code 811.700(f)* (2011). Accepting waste without proper financial assurance is prohibited by the Act and its regulations. See 415 ILCS 5/21(d)(2) (West 2002); *35 Ill. Adm. Code 811.700(f)* **[***20]** (2011).

[*P52] Here, HN15[↑] CLC violated the Act and its regulations by accepting waste without proper financial assurance. See 415 ILCS 5/21(d)(2) (West 2008); *35 Ill. Adm. Code 811.700(f)* (2011). The Board had the power to direct CLC to cease and desist from violating the Act and its regulations. See 415 ILCS 5/33(b) (West 2008). Thus, the Board acted properly when it prohibited CLC from accepting waste.

[*P53] CONCLUSION

[*P54] We confirm the Board's (1) finding that CLC violated the Act's financial assurance obligation, (2) requirement that CLC obtain $17.4 million in financial assurance, (3) penalty of $1,059,534.70 against CLC, and (4) cease and desist order. However, we set aside the Board's rulings against the City and find that the City (1) did not violate the Act or its regulations, (2) is not responsible for obtaining financial assurance for the landfill, and (3) is not liable for any civil penalty.

[*P55] **[****169]** **[**485]** The order of the Illinois Pollution Control Board is confirmed in part and set aside in part.

[*P56] Confirmed in part and set aside in part; cause remanded.

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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GRUNDY

CITY OF MORRIS, an Illinois Municipal Corporation, Cross-Claimant/Third Party Plaintiff, v. ROBERT PRUIM, ED PRUIM and COMMUNITY LANDFILL CO., Third Party Defendants.	)	No. 06-CH-184A

AGREED ORDER

THIS CAUSE coming on to be heard upon the Third Party Plaintiff's Motion for Preliminary Injunction against Third Party Defendants, and the Court being fully advised in the premises, and upon agreement of the Third Party Plaintiff and Third Party Defendants, IT IS HEREBY ORDERED:

1. Third Party Defendants shall not accept or deposit any waste, product, soil, or other material in any form, at the Morris Community Landfill until further order of Court;

2. Third Party Defendants shall not sell, transfer, or otherwise dispose of any of assets of CLC, including, but not limited to trucks, equipment and computer systems until further order of Court, except for the following equipment which shall be sold solely for the purpose of paying Mr. James Pelnarsh wages:

- 1987 Caterpillar 235B Escavator with 2 buckets and a crusher, Serial #7WC00749
- 1989 Caterpillar 963 Crawler Loader, Serial #21Z02570
- 1969 Caterpillar D8H, Serial #46A21827

3. Neither Robert Pruim, Edward Pruim, any CLC employee, nor any other individual on their behalf, shall have access to the Morris Community Landfill landfill (Site

number 0630600001, permit number 2000-155-LFM (Parcel A) and permit number 2000-156-LFM (Parcel B)), without prior written authorization from the Court.

4. The Third Party Defendant CLC acknowledges that it has not, and financially cannot, pay for or effectuate the closure and post-closure care of the Morris Community Landfill landfill (Site number 0630600001, permit number 2000-155-LFM (Parcel A) and permit number 2000-156-LFM (Parcel B)), and does not intend to do so, and accordingly is in breach of its lease contract with the City of Morris, under which contract such obligation rests solely upon CLC.

5. The City of Morris has and will continue to receive and treat all leachate from the Morris Community Landfill and will implement such additional ongoing measures as are necessary to ensure proper and efficient treatment of the same.

6. The City of Morris shall have access to the landfill site to undertake and perform any maintenance or activity deemed by the City to be necessary to ensure the continued and ongoing protection of the public and the environment.

7. Nothing herein is intended to, nor shall it be construed as, a waiver of any defense, claim or cross-claim of the City of Morris, Community Landfill Company, Robert Pruim, or Edward Pruim and nothing herein shifts any responsibility of Community Landfill Company under the Lease entered into on July 1, 1982 as amended thereafter to the City of Morris.

DATE: 9-21-10

S/ RCH

JUDGE

READ AND APPROVED:

Richard S. Porter
Hinshaw & Culbertson LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
Phone: (815) 490-4900

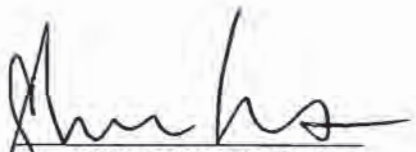
Mark A. LaRose
LaRose & Bosco, Ltd.
200 N. LaSalle Street, Suite 2810
Chicago, IL 60601
Phone: (312) 642-4414

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
GRUNDY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois,	)	
Plaintiff,	)	
-vs-	)	No. 06 CH 184
COMMUNITY LANDFILL CO., an Illinois corporation, and the CITY OF MORRIS, an Illinois municipal corporation,	)	
Defendants.	)	

NOTICE OF MOTION

PLEASE TAKE NOTICE that on July 8, 2013, at 10:00 a.m. or whenever counsel may be heard, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, will appear before the honorable Robert Marsaglia in the Grundy County Courthouse, 111 E. Washington Street, Morris, Illinois, and there and then present its Motion to Voluntarily Dismiss without Prejudice, a copy of which is attached.

By: 

CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
69 W. Washington, #1800
Chicago, Illinois 60601
(312) 814-5388

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
GRUNDY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois,	)	
Plaintiff,	)	
v.	)	No. 06 CH 184
COMMUNITY LANDFILL CO., an Illinois corporation, and the CITY OF MORRIS, an Illinois municipal corporation,	)	
Defendants.	)	

MOTION TO VOLUNTARILY DISMISS WITHOUT PREJUDICE

NOW COMES Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to 735 ILCS 5/2-1009 and 735 ILCS 5/5-117, moves this Court to dismiss this action without prejudice and without costs. In support thereof, Plaintiff states as follows:

1. This Complaint in this matter was filed on December 8, 2006, and alleged violations of the Illinois Environmental Protection Act ("Act") related to the Defendants' failure to collect and control landfill gas at the Morris Community Landfill ("Landfill"). On December 15, 2006, the Court granted Plaintiff's request for preliminary injunctive relief, and the Defendants subsequently installed and began operating a landfill gas control flare at the Landfill. On June 9, 2008, the State filed its Amended Complaint, which again related solely to alleged landfill gas-related violations.

2. After the case was filed, Morris began submitting landfill gas reports to Plaintiff. Recent reports indicate that landfill gas generation within the Landfill is ongoing, and that some

collection wells are nonfunctional. While Plaintiff is not aware of a serious ongoing odor nuisance, the current gas collection and control system will need to be expanded and updated.

3. Plaintiff contends that a new system can only be effective if installed as part of a complete landfill closure. Landfill "closure" encompasses a wide range of engineering tasks that are intended to prevent waste and waste constituents from escaping into groundwater, or otherwise affecting the environment. Closure tasks include, for example, installation of systems to collect and treat polluted water and landfill gas, re-contouring of the landfill surface to minimize erosion, and installation of a compacted soil cover over the waste disposal area.[1] The new landfill gas collection system should be installed within the final cover to be effective in preventing an odor nuisance from the closed Landfill.

4. The Landfill has not undergone closure as required under the Act. Therefore, the Landfill has not yet been engineered to its final counters, and the installation of final cover has not begun.

5. Plaintiff has learned that the Illinois Environmental Protection Agency ("Illinois EPA") has recently inspected the Landfill, and that Illinois EPA observed potential violations related to the failure to close the Landfill. Based on the Illinois EPA inspection report, one or both of the Defendants in this case may be issued violation notices related to these potential closure violations in the near future.

6. Pursuant to Section 31 of the Act, 415 ILCS 5/31 (2012) ("Section 31"), a person issued a violation notice has the opportunity to meet with Illinois EPA without the participation of the Illinois Attorney General's Office. During this period, a prospective defendant and Illinois

[1] In addition to landfill 'closure', periodic maintenance is required for between 30 and 100 years after closure is performed; this is referred to as "post-closure care".

EPA may, *inter alia*, discuss a possible technical remedy to the violations prior to the matter being referred to the Attorney General's Office for enforcement.

7. Plaintiff believes that a complete resolution of the violations alleged in this case will require full closure of the Landfill. However, the provisions of Section 31 will inevitably delay a complete resolution of the alleged closure-related violations.[2] Because this case is now 6 ½ years old, Plaintiff will not ask that the Court stay this matter to allow for the Section 31 process to run its statutory course. Instead, Plaintiff requests that the Court dismiss this case, without prejudice to the remaining violations in the Amended Complaint, and without costs. These violations, and any additional violations observed by Illinois EPA may be the subject of a future enforcement proceeding.

[2] Section 31 requires Illinois EPA to give notices of violations, allow time for meetings related to possible resolution and also provide notifications of intent to pursue legal action prior to referral.

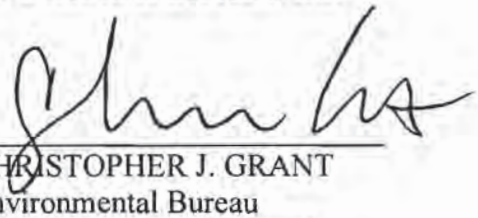
WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court dismiss this case, without prejudice and without costs.

RESPECTFULLY SUBMITTED

PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN,
Attorney General of the State of Illinois

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

ELIZABETH WALLACE, Chief
Environmental Bureau North

BY: 

CHRISTOPHER J. GRANT
Environmental Bureau
Assistant Attorney General
69 W. Washington Street, #1800
Chicago, IL 60602
(312) 814-5388

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused the foregoing Motion to Voluntarily Dismiss without Prejudice, and Notice of Motion to be served on those listed below by email on July 3, 2013.

CHRISTOPHER GRANT

Service List:

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

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

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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 · (217) 782-3397
JB PRITZKER, GOVERNOR JOHN J. KIM, DIRECTOR

(847) 294-4000
Fax: 847/ 294-4018

July 18, 2019

City of Morris
Attn: Mayor Richard Kopczick
700 N. Division
Morris, Illinois 60450

Re: 0630600001 - Grundy County
Community Landfill
Compliance File

Dear Mayor Kopczick:

On July 5, 2019, an inspection of your facility was conducted by Donna Shehane representing the Illinois Environmental Protection Agency. This inspection was conducted in accordance with Sections 4(c) and 4(d) of the Illinois Environmental Protection Act (Act) 415 ILCS 5/4(c) and (d) (1992). The purpose of this inspection was to determine compliance with the [Illinois] Environmental Protection Act and 35 Ill. Adm. Code, Subtitle G.

A copy of the inspection report is enclosed. Please note that this matter is currently under review by the Agency's Division of Legal Counsel. Please contact Mark Gurnik at 217/782-5544 if you have any questions regarding this inspection.

Sincerely,

Donna J. Czech

Donna J. Czech, Environmental Protection Specialist IV
Field Operations Section
Bureau of Land

Enclosure

cc: Bureau of Land File

EXHIBIT
I

4302 N. Main St., Rockford, IL 61103 (815)987-7760
595 S. State, Elgin, IL 60123 (847)608-3131
2125 S. First St., Champaign, IL 61820 (217)278-5800
2009 Mall St., Collinsville, IL 62234 (618)346-5120

9511 Harrison St., Des Plaines, IL 60016 (847)294-4000
412 SW Washington St., Suite D, Peoria, IL 61602 (309)671-3022
2309 W. Main St., Suite 116, Marion, IL 62959 (618)993-7200
100 W. Randolph, Suite 4-500, Chicago, IL 60601

overflow at times. Vegetation is heavy, and the landfill is not mowed. Drainage ditches are not maintained, and certain areas lack vegetation. There is no documentation of site grading or application of final cover, and steep areas evidence erosion. The gas flare is not operational and access roads are lacking maintenance. Large trees have established themselves on both parcels. There is no documentation of groundwater monitoring in Agency files for many years. Required documents were not available for inspection.

Summary of Apparent Violation(s)			
Status	Date Cited	Violation	Narrative
Continuing	10/10/2013	21(d)(1)	Conduct a waste storage, treatment, or disposal operation without a permit
Continuing	10/10/2013	21(d)(2)	Conduct a waste storage, treatment, or disposal operation in violation of any regulations or standards adopted by the Pollution Control Board
Continuing	10/10/2013	21(o)(13)	Conduct a sanitary landfill operation which results in the failure to submit any cost estimate, performance bond or other security for the site
Continuing	10/10/2013	21.1(a.5)	Not posting a performance bond or other security for the purpose of insuring closure of the landfill and post-closure care
Continuing	10/10/2013	811.700(a)	Failure to provide financial assurance that satisfies the requirements of the Environmental Protection Act.
Continuing	10/10/2013	811.700(b)	Failure to provide financial assurance as specified in 35 IAC 811.706
Continuing	10/10/2013	811.700(f)	Failure to provide financial assurance that satisfies the requirements of 35 IAC Part 811.
Continuing	10/10/2013	811.701(a)	Failure to maintain continuous financial assurance.
Continuing	10/10/2013	811.701(c)	Failure to make adjustments to financial assurance for inflation as required.
Continuing	10/10/2013	811.705(d)	Failure to provide an annual revision of the cost estimate.
Continuing	10/10/2013	811.706(d)	Failure to maintain continuous financial assurance until the owner or operator is released from the financial assurance requirements.
Continuing	5/23/2013	21(a)	Cause or allow open dumping
Continuing	5/23/2013	21(d)(1)	Conduct a waste storage, treatment, or disposal operation without a permit
Continuing	5/23/2013	21(d)(2)	Conduct a waste storage, treatment, or disposal operation in violation of any regulations or standards adopted by the Pollution Control Board
Continuing	5/23/2013	21(o)(11)	Conduct a sanitary landfill operation which results in the failure to submit reports required by permits or Pollution Control Board regulations
Continuing	5/23/2013	21(o)(13)	Conduct a sanitary landfill operation which results in the failure to submit any cost estimate, performance bond or other security for the site
Continuing	5/23/2013	21(o)(6)	Conduct a sanitary landfill operation which results in the failure to provide final cover within time limits
Continuing	5/23/2013	21(o)(7)	Conduct a sanitary landfill operation which results in acceptance of wastes without necessary permits

Continuing	5/23/2013	225 ILCS 230/1004	Cause or allowing operation of a landfill without proper competency certificate
Continuing	5/23/2013	811.110(d)	Written closure plan maintained, fulfilling §812.114 requirements and including estimate of largest area ever requiring final cover at any time during active life; and estimate of maximum inventory of wastes ever on-site during active life
Continuing	5/23/2013	811.110(e)	MSWLF unit closure initiated by 30 days after final receipt of waste, or no later than one year after most recent receipt of waste if capacity remains, unless extended by Agency
Continuing	5/23/2013	811.110(f)	MSWLF unit closure completed by 180 days of beginning closure, unless extended by Agency
Continuing	5/23/2013	811.112(c)	Gas monitoring results and any remediation plans
Continuing	5/23/2013	811.112(d)	Design documentation for leachate or gas condensate placement in a MSWLF unit
Continuing	5/23/2013	811.112(e)	Any demonstration, certification, monitoring results, testing, or analytical data relating to the groundwater monitoring program
Continuing	5/23/2013	811.112(f)	Closure & post-closure care plans and any monitoring, testing, or analytical data
Continuing	5/23/2013	811.112(g)	Cost estimates and financial assurance documentation
Continuing	5/23/2013	811.310(c)	All gas monitoring devices including ambient air monitors operated/sampled monthly for entire operating period and for at least 5 years after closure; after at least 5 years after closure, monitoring frequency may be reduced to quarterly; frequency may be reduced to yearly upon installation/operation of gas collection system with device to withdraw gas; monitoring continued for at least 30 years after closure at MSWLF units, at least 5 years after closure at on-site non-MSWLF landfills, or at least 15years after closure at all other 811 landfills; monitoring beyond the minimum period may be discontinued if following conditions have been met for at least 1 year: methane concentration <5 percent of LEL for 4 consecutive quarters at all monitoring points outside unit and monitoring points within unit indicate methane is no longer being produced in quantities that would migrate and exceed subsection (a)(1) standards
Continuing	5/23/2013	745.181	Chief Operator not certified and/or no Chief Operator has been designated
Continuing	5/23/2013	745.201	Chief Operator has not been certified

Attachment Listing

ID	Type	Description
No Attachments		

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
GRUNDY COUNTY, ILLINOIS

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

Plaintiff,

-vs-

COMMUNITY LANDFILL CO., an Illinois corporation, and the CITY OF MORRIS, an Illinois municipal corporation,

Defendants.

No. 06-CH-184

VERIFIED COMPLAINT FOR INJUNCTION AND OTHER RELIEF

Plaintiff, People of the State of Illinois, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), complains of Defendants, COMMUNITY LANDFILL CO., and the CITY OF MORRIS, as follows:

COUNT I
AIR POLLUTION

1. This Verified Complaint is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois EPA, pursuant to Section 42 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42 (2004).

2. The Illinois EPA is an administrative agency

established in the executive branch of State government by Section 4 of the Act, 415 ILCS 5/4 (2004), and charged, *inter alia*, with the duty of enforcing the Act.

3. Defendant CITY OF MORRIS ("Morris"), is an Illinois municipal corporation, organized and operating according to the laws of the State of Illinois, and located in Grundy County, Illinois. Defendant Morris is the owner of the Morris Community Landfill ("Landfill"), a special waste and municipal solid waste landfill located at 1501 Ashley Road, Morris, Grundy County, Illinois. Ashley Road is a public highway running between Highway 126 in the City of Yorkville, Illinois, and Gun Club Road in the City of Morris.

4. Defendant COMMUNITY LANDFILL CO. ("CLC") is an Illinois corporation, duly authorized to transact business in the State of Illinois. CLC operates the Landfill pursuant to a lease agreement with Defendant Morris.

5. The Landfill is approximately 119 acres in area, and is divided into two parcels, designated Parcel "A", consisting of approximately 55 acres, and Parcel "B", consisting of approximately 64 acres. As reported by the Defendants, Parcel B has a disposal capacity in excess of 2.5 million megagrams (Mg) of mass, and in excess of 2.5 million cubic meters in volume.

6. The Landfill commenced operations in 1974, and continued to accept municipal solid waste ("MSW") in Parcel B until

approximately 2000. On information and belief, deposit of waste in Parcel A continues to the date of filing this Verified Complaint.

7. As owners and operators of a municipal solid waste landfill, the Defendants are required to obtain Illinois EPA solid waste permits. The most recently issued permits for the Landfill are 2000-155-LFM (Modification No. 5) for Parcel A, and 2000-156-LFM (Modification No. 4) for Parcel B. The two permits list Defendant Morris as permitted owner, and Defendant CLC as permitted operator.

8. Municipal solid waste degrades over time to form constituent waste products. Included in these waste degradation products are mixtures of volatile compounds, including sulfur compounds, methane, and carbon dioxide (collectively "landfill gas"). Landfill gas may also contain hydrogen sulfide, vinyl chloride, benzene, toluene, and other potentially dangerous chemicals.

9. Unless properly controlled, landfill gas can be emitted into the environment and potentially cause harm to the public health, safety, and welfare of persons in the surrounding area. According to the United States Department of Health & Human Services, exposure to landfill gas may result in nausea, headaches, and an increase in asthmatic reactions. Odors from landfill gas may interfere with the enjoyment of life and

property, and may harm local businesses.

10. According the United States Environmental Protection Agency ("USEPA"), landfill gas can also collect and auto-ignite within landfills, threatening the structural integrity of both operating and closed landfills, and threatening the release of pollutants to the atmosphere. When extraction well temperatures exceed 131 degrees F., there is an increased risk of spontaneously-generated subsurface landfill fires.

11. According to USEPA, landfill gas can contain substantial amounts of methane, a combustible and explosive gas. Methane gas can migrate through fissures, cracks, sewer lines, electrical conduits, and other underground pathways into off-site buildings. At levels approaching 5% in air (methane's "lower explosive limit", or "LEL"), methane gas creates an explosion hazard. Pursuant to 40 CFR 258.23(a)(2), the concentration of methane gas may not exceed the methane LEL at a landfill's property boundary.

12. When landfill gas collection systems are nonfunctional, or installed or operated improperly, methane gas migrates up through soil and clay cover materials, and increased methane levels can be detected at the surface of a landfill.

13. Pursuant to Illinois regulations codified at 35 Ill. Adm. Code, Part 220, Subpart B, and Federal regulations codified at 40 CFR 60.33c, the Defendants are required to collect and

control landfill gas generated within Parcel B of the Landfill. Collection of landfill gas is commonly accomplished using extraction wells installed in the deposited waste, extraction of landfill gas from the wells under negative pressure, and the routing of collected landfill gas to a control system, consisting of a landfill gas destruction device. Landfill gas destruction devices may consist, *inter alia*, of open or enclosed flares, biofilters, or electrical generating/gas destruction turbines.

14. On May 20, 1996, the Defendants arranged for KMS Morris Power, Inc., and its related business entities, to install a landfill gas management system consisting of landfill gas extraction wells and a gas collection system, consisting of collection pipes and headers as a 'collection system', and two electrical generating/gas destruction turbines as a 'control system'. Illinois EPA records indicate that the electrical generating/gas destruction turbines began operation at the Landfill on or about March 1, 1999.

15. On or about July 1, 2004, on a date better known to the Defendants, electrical generating/gas destruction turbines were removed from the landfill by a receiver for creditors of KMS Morris Power, Inc. A landfill gas destruction flare was brought to the Site to serve as a replacement control system by the receiver. However, the flare was not connected to the landfill gas collection system, and remained nonfunctional through at

least May 8, 2006.

16. On July 27, 2005, an Illinois EPA inspection of the Landfill revealed that, although landfill gas was being generated and released to the atmosphere from ongoing degradation of waste, the landfill gas collection wells and gas collection pipes were non-functioning and in disrepair. A strong odor of landfill gas was present at the Landfill. Also, on July 27, 2005 there was no operational flare or other landfill gas destruction or control device connected to the collection system.

17. As of July 27, 2005 the Defendants had not made or kept records of the generation, collection, or destruction of landfill gas, or any records regarding operation of the landfill gas collection and control systems.

18. On January 5, 2006, the City of Morris advised Illinois EPA that methane gas concentrations at the perimeter of the Landfill exceeded 100% of the methane LEL.

19. On May 8, 2006, an Illinois EPA inspector again visited the Landfill. A strong odor of landfill gas was present near the entrance, within 50 yards of Ashley Road. No flare or other landfill gas destruction or control device was operating. Many landfill gas extraction wells were non-functioning and in disrepair. Collection pipes and routers were not properly connected. A 13-inch diameter main header pipe was open, and discharging landfill gas, with an extremely unpleasant odor,

directly to the atmosphere.

20. On October 18, 2006, an Illinois EPA inspector again visited the Landfill. A strong, offensive odor of landfill gas was present at the Landfill, within fifty (50) yards of Ashley Road. Landfill gas was being discharged directly to the atmosphere from the 13-inch main header pipe. More than 50% of the gas extraction wells at the Landfill were nonfunctional and in disrepair, and landfill gas transmission pipes were disconnected. Since the previous inspection, the Defendants had connected a gas destruction flare to collection pipes, but were not operating the flare at the time of inspection. A representative of the Defendants advised the inspector that Defendants had begun operating the flare, but for only 2-3 hours per day.

21. As of October 18, 2006 the Defendants had not made or kept records of the generation, collection, or destruction of landfill gas, or any records regarding operation of the landfill gas collection and control systems.

22. Section 9(a) of the Act, 415 ILCS 5/9(a) (2004), provides, as follows:

No person shall:

a. Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

23. Section 201.141 of the Illinois Pollution Control Board ("Board") Air Pollution regulations, 35 Ill. Adm. Code 201.141, provides, as follows:

> **Prohibition of Air Pollution**
>
> No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

24. Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), provides, as follows:

> "Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

25. The Defendants are "persons" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2004).

26. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), provides, as follows:

> "Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

27. Landfill gas is a "contaminant" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2004).

28. Section 3.115 of the Act, 415 ILCS 5/3.115 (2004), provides, as follows:

> "Air pollution" is the presence in the atmosphere of

> one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

29. From at least July 27, 2005 until the date of filing this Verified Complaint, the Defendants have caused and allowed landfill gas to be discharged directly to the atmosphere at the Landfill, creating a threat to human health, and interfering with the enjoyment of life and property in the vicinity of the Landfill. On information and belief, the uncontrolled discharge began on or around July 1, 2004, when the electrical generating/gas destruction turbines were removed from the Landfill. The uncontrolled discharge of landfill gas constitutes "air pollution" as that term is defined in Section 3.115 of the Act, 415 ILCS 5/3.115 (2004).

30. By failing to properly install, maintain, repair, and operate an effective landfill gas collection and control system at the Landfill, and by allowing the direct discharge of landfill gas to the atmosphere, the Defendants have caused and allowed air pollution. The Defendants have thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2004), and 35 Ill. Adm. Code 201.141.

31. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue until and unless this Court grants equitable relief in the form

of a temporary restraining order, preliminary injunction and, after trial, permanent injunction.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this court enter a temporary restraining order, preliminary injunction, and, after trial, permanent injunction, and an order in favor of Plaintiff and against the Defendants, COMMUNITY LANDFILL CO. and the CITY OF MORRIS, on Count I:

1. Finding that the Defendants have violated Section 9(a) of the Act, and 35 Ill. Adm. Code 201.141;

2. Enjoining the Defendants from further violations of Section 9(a) of the Act, and 35 Ill. Adm. Code 201.141;

3. Ordering the Defendants to take immediate action to prevent the emission of landfill gas, including acquiring, installing, and operating compliant collection and control equipment;

4. Assessing against the Defendants, pursuant to Section 42(a) of the Act, a civil penalty of Fifty Thousand Dollars ($50,000.00) for each and every violation of the Act and pertinent regulations, with an additional penalty of Ten Thousand Dollars ($10,000.00) for each day of violation;

5. Ordering the Defendants to pay all costs, including Illinois EPA response and oversight costs, attorney, expert witness and consultant fees, expended by the State in its pursuit of the action; and

6. Granting such other relief as this Court deems appropriate and just.

COUNT II
VIOLATION OF CONTROL SYSTEM REQUIREMENTS

1-24. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 22, and paragraphs 24 through 25, of Count I as paragraphs 1 through 24 of this Count II.

25. Pursuant to authority granted under the Act, the Board has promulgated regulations related to the control of landfill gas emissions at municipal solid waste ("MSW") landfills, codified at 35 Ill. Adm. Code, Part 220, Subpart B ("Board Air Pollution regulations).

26. Section 220.200 of the Board Air Pollution regulations, 35 Ill. Adm. Code 220.200, provides, in pertinent part, as follows:

> a) Except as provided in subsection (b) of this Section, an owner or operator of an MSW landfill for which construction or modification commenced before May 30, 1991, is subject to the requirements of this Subpart if the landfill has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition.
>
> * * *

27. Section 220.260 of the Board Air Pollution regulations, 35 Ill. Adm. Code 220.260, provides, in pertinent part, as follows:

> a) The landfill owner or operator shall calculate the NMOC emission rate using the equation provided in either subsection (a)(1)(A) or subsection (a)(1)(B) of this

> Section and make a determination that the emission rate is less than 50 Mg/yr, pursuant to subsection (a)(2), (a)(3), (a)(4), or (e), or install a gas collection and control system pursuant to Sections 220.220 and 220.230 of this Subpart.
>
> * * *

28. On June 11, 1999, the Defendants advised Illinois EPA that the non-methane organic compound ("NMOC") emission rate at the Landfill was 494 Mg/year. The Defendants were therefore required to design, construct, and install a landfill gas collection and control system in conformance with the requirements of 35 Ill. Adm. Code 220.220 and 220.230.

29. Section 220.230 of the Board Air Pollution regulations, 35 Ill. Adm. Code 220.230, provides, in pertinent part, as follows:

> Each owner and operator of an MSW landfill subject to the control requirements of this Subpart must install and operate a gas collection system that routes all the collected gas to a gas control system that complies with the requirements in subsection (f) and either install a gas control system, as described in either subsection (a), (b), or (c) of this Section, or obtain approval of and install an alternate gas control system pursuant to subsection (d) or (e) of this Section.
>
> a) An open flare designed and operated in accordance with 40 CFR 60.18, incorporated by reference in Section 220.130 of this Part.
>
> b) A control system designed and operated to reduce NMOC by 98 weight-percent, or, when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight-percent or reduce the outlet NMOC concentration to less than 20 ppmv, dry basis as hexane at 3 percent oxygen....
>
> * * *

30. 40 CFR 60.18, incorporated by reference in 35 Ill. Adm. Code 220.230 provides, in pertinent part:

* * *

> (e) Flares used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

* * *

31. From at least July 27, 2005 until a date better known to Defendants, but after May 8, 2006, the Defendants failed to operate a landfill gas control device of any kind, and therefore also failed to reduce NMOC emissions by 98%. Between May 8, 2006, and October 18, 2006, the Defendants failed to operate the gas control flare at the Landfill at all times when landfill gas emissions were vented to the flare.

32. By failing to operate a gas collection and control system meeting the requirements of the Board Air Pollution regulations from approximately July 1, 2004 until the date of filing this Verified Complaint, the Defendants violated Section 220.230 of the Board Air Pollution regulations, 35 Ill. Adm. Code 220.230, and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2004).

33. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue until and unless this Court grants equitable relief in the form

of a temporary restraining order, preliminary injunction, and, after trial, permanent injunction.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this court enter a preliminary injunction, and, after trial, permanent injunction and an order in favor of Plaintiff and against the Defendants, COMMUNITY LANDFILL CO. and the CITY OF MORRIS on Count II:

1. Finding that the Defendants have violated Section 9(a) of the Act, and 35 Ill. Adm. Code 220.230;

2. Enjoining the Defendants from further violations of Section 9(a) of the Act, and 35 Ill. Adm. Code 220.230;

3. Ordering the Defendants to take immediate action to prevent the emission of landfill gas at the Site, including acquiring, installing, and operating compliant collection and control equipment;

4. Assessing against the Defendants, pursuant to Section 42(a) of the Act, a civil penalty of Fifty Thousand Dollars ($50,000.00) for each and every violation of the Act and pertinent regulations, with an additional penalty of Ten Thousand Dollars ($10,000.00) for each day of violation;

5. Ordering the Defendants to pay all costs, including Illinois EPA response and oversight costs, attorney, expert witness and consultant fees, expended by the State in its pursuit of the action; and

6. Granting such other relief as this Court deems appropriate and just.

COUNT III
VIOLATION OF COLLECTION AND CONTROL OPERATIONAL STANDARDS

1-28. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 28 of Count II, as Paragraphs 1 through 28 of this Count III.

29. On October 18, 2006, more than 50% of gas extraction wells installed at the Landfill were not functioning, and landfill gas was not being extracted from all waste disposal cells.

30. On information and belief, from at least July 1, 2004, until the date of filing this Verified Complaint, the Defendants have operated the gas collection system at the Landfill with gas extraction wells at positive pressure. The Defendants have failed to repair or expand the collection system to correct this condition.

31. On information and belief, from at least July 1, 2004, until the date of filing this Verified Complaint, the Defendants have operated gas extraction wells at the Site with a landfill gas temperature in excess of 55 degrees Centigrade (131 degrees F.), and with nitrogen level in excess of 20% and/or oxygen levels in excess of 5%. The Defendants have failed to eliminate air infiltration, or to take other corrective action to reduce extraction well temperature, and to reduce nitrogen and/or oxygen

levels.

32. On information and belief, from at least July 1, 2004 until the date of filing this Verified Complaint, surface methane concentrations at the Landfill have exceeded 500 parts per millions ("ppm") above background methane levels. The Defendants have failed to perform monthly testing, failed to install new wells or collection devices, and failed to take any other corrective action to reduce surface methane levels.

33. On at least July 27, 2006, May 8, 2006, and October 18, 2006, the Defendants allowed landfill gas to vent directly to the atmosphere, failed to route landfill gas collected from the Landfill to an adequate control device, and failed to operate a flare, gas treatment system, boiler, or any other approved landfill gas control system at all times.

34. Section 220.250 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 220.250, provides, in pertinent part, as follows:

OPERATIONAL STANDARDS FOR COLLECTION AND CONTROL SYSTEMS

Each owner or operator of an MSW landfill with a gas collection and control system shall:

a) Operate the collection system such that gas is collected from each are, cell, or group of cells in the MSW landfill in which the initial solid waste has been in place for:

1) 5 years or more if active; or
2) 2 years or more if closed or at final grade.

b) Operate the collection system with negative pressure at

each wellhead....

c) Operate each interior wellhead in the collection system with a landfill gas temperature less than 55°C (131°F) and with either a nitrogen level less than 20 percent or an oxygen level less than 5 percent.

d) Operate the collection system so that the methane concentration is less than 500 ppm above background at the surface of the landfill....

e) Operate the gas collection and control system such that all collected gases are vented to a control system designed and operated in compliance with Sections 220.230, 220.250, and 220.270 of this Subpart. In the event the collection or control system is inoperable, the gas mover system shall be shut down and all valves in the collection and control system contributing to the venting of the gas to the atmosphere shall be closed within 1 hour.

f) Operate the gas collection and control or treatment system at all times, except during shutdown or malfunction, provided that the duration of start-up, shutdown, or malfunction must not exceed 5 days for collection systems and must not exceed 1 hour for treatment or control devices.

g) If monitoring demonstrates that the operational requirements in subsection (b), (c), or (d) of this Section are not met, take corrective action as specified in Section 220.240(a)(3), (a)(5), or (c)(4) of this Subpart....

35. By failing to collect landfill gas from each waste disposal cell at the Landfill, the Defendants violated Section 220.250(a) of the Board Air Pollution regulations, and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2004).

36. By operating the gas collection system at the Landfill with gas extraction wells at positive pressure, the Defendants violated Section 220.250(b) of the Board Air Pollution

regulations, 35 Ill. Adm. Code 220.250(b), and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2004).

37. By operating gas extraction wells at the Site with a landfill gas temperature in excess of 55 degrees Centigrade (131 degrees F.), the Defendants violated Section 220.250(c) of the Board Air Pollution regulations, 35 Ill. Adm. Code 220.250(c), and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2004).

38. By causing and allowing surface methane concentrations at the Landfill to exceed 500 ppm above background methane levels, and by failing to operate the collection system so that methane concentrations were below 500 ppm above background levels, the Defendants violated Section 220.250(d) of the Board Air Pollution regulations, 35 Ill. Adm. Code 220.250(d), and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2004).

39. By allowing landfill gas to vent to the atmosphere, by failing to route landfill gas collected from the landfill to a control device, and by failing to operate a flare, gas treatment system, boiler, or any other approved control system, the Defendants violated Sections 220.250(e) and (f) of the Board Air Pollution regulations, 35 Ill. Adm. Code 220.250(e) and (f), and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2004).

40. By failing to take action to correct the operation standard deviations as alleged herein, the Defendants violated Section 220.250(g) of the that Board Air Pollution regulations, 35 Ill. Adm. Code 220.250(g), and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9 (2004).

41. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue until and unless this Court grants equitable relief in the form of a preliminary injunction and, after trial, permanent injunction.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this court enter a preliminary injunction, and, after trial, permanent injunction, and an order in favor of Plaintiff and against the Defendants, COMMUNITY LANDFILL CO. and the CITY OF MORRIS on Count III:

1. Finding that the Defendants have violated Section 9(a) of the Act, and 35 Ill. Adm. Code Sections 220.250 (a), (b), (c), (d), (e), (f), and (g);

2. Enjoining the Defendants from further violations of Section 9(a) of the Act, and 35 Ill. Adm. Code Sections 220.250 (a), (b), (c), (d), (e), (f), and (g);

3. Ordering the Defendants to take immediate action to prevent the emission of landfill gas at the Site, including

acquiring, installing, and operating compliant collection and control equipment;

4. Assessing against the Defendants, pursuant to Section 42(a) of the Act, a civil penalty of Fifty Thousand Dollars ($50,000.00) for each and every violation of the Act and pertinent regulations, with an additional penalty of Ten Thousand Dollars ($10,000.00) for each day of violation;

5. Ordering the Defendants to pay all costs, including Illinois EPA response and oversight costs, attorney, expert witness and consultant fees, expended by the State in its pursuit of the action; and

6. Granting such other relief as this court deems appropriate and just.

COUNT IV
FAILURE TO SUBMIT REQUIRED REPORTS

1-28. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 28 of Count II as paragraphs 1 through 28 of this Count IV.

29. From at least June 1, 2000 to the date of filing this Verified Complaint, the Defendants have failed to provide Illinois EPA with reports regarding Non-Methane Organic Chemical ("NMOC") emissions at the Landfill.

30. From at least September 27, 1999 to the date of filing this Verified Complaint, the Defendants have failed to provide Illinois EPA with annual reports regarding exceedences of surface

methane limits, well operating parameters, control system bypasses, operational interruptions, and the original and/or modified location of gas extraction wells.

31. On July 31, 1998, the Board Air Pollution regulations pertaining to landfill gas collection and control became applicable to the Morris Community Landfill. Section 220.280 of the Board Air Pollution regulations provides, in pertinent part, as follows:

Reporting Requirements

* * *

b) Each owner and operator with a total design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3 shall submit an NMOC emission rate report to the Agency initially and by June 1 annually thereafter, except as provided for in subsections (b)(1) and (b)(4) of this Section. The Agency may request such additional information as may be necessary to verify the reported NMOC emission rate. The NMOC emission rate report shall contain an annual or 5-year estimate of the NMOC emission rate calculated using the formula and procedures in Section 220.260(a) of this Subpart, as applicable. The annual NMOC emission rate report required by this subsection must be submitted with the annual emissions report required pursuant to 35 Ill. Adm. Code 201.302(a).

1) The initial NMOC emission rate report may be combined with the initial design capacity report required in subsection (a) of this Section. The first NMOC emission report shall be filed with the Agency by October 29, 1998. Subsequent NMOC emission reports shall be filed with the Agency by June 1 of the subsequent year, except as provided for in subsection (b)(2) of this Section.

* * *

(e) Each owner or operator of a landfill shall submit to the Agency annual reports of the recorded information in subsections (e)(1) through (e)(6) of this Section. The initial annual report shall be submitted within 180 days after installation and start-up of the collection and control system, and may be included with the report of the initial performance test required pursuant to Section 220.210(d)(2) of this Subpart. For enclosed combustion devices and flares, reportable exceedences are defined under Section 220.290(c) of this Subpart.

1) Value and length of time for exceedence of applicable parameters monitored under Section 220.270(a), (b), (c), and (d) of this Subpart.

2) Description and duration of all periods when the gas stream is diverted from the control device through a bypass line or the indication of bypass flow as specified under Section 220.270 of this Subpart.

3) Description and duration of all periods when the control device was not operating for a period exceeding 1 hour and length of time the control device was not operating.

4) All periods when the collection system was not operating in excess of 5 days.

5) The location of each exceedence of the 500 ppm methane concentration, as provided in Section 220.250(d) of this Subpart, and the concentration recorded at each location for which an exceedence was recorded in the previous month.

6) The date of installation and the location of each well or collection system expansion added pursuant to subsections (a)(3), (b), and (c)(4) of Section 220.240 of this Subpart.

* * *

32. As owners and operators of the Landfill, the Defendants were required by 35 Ill. Adm. Code 220.280(b) to submit annual NMOC emission reports by June 1 of each calender year. By failing to submit NMOC emission reports at any time from June 1, 2000 to the date of filing this Verified Complaint, the Defendants violated Section 220.280(b) of the Board Air Pollution regulations, 35 Ill. Adm. Code 220.280(b), and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2004).

33. Illinois EPA Bureau of Air records indicate that the Defendants began operation of their landfill gas collection and control system on or about March 1, 1999. The Defendants were therefore required by 35 Ill. Adm. Code 220.280(e) to begin submitting annual reports of operations, as described therein, within 180 days, or by September 27, 1999.

34. By failing to submit annual reports meeting the requirements of 35 Ill. Adm. Code 220.280(e), the Defendants violated Section 220.280(e) of the Board Air Pollution regulations, and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2004).

35. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue until and unless this Court grants equitable relief in the form of a preliminary injunction, and, after trial, permanent

injunction.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this Court enter a preliminary injunction and, after trial, permanent injunction and an order in favor of Plaintiff and against the Defendants, COMMUNITY LANDFILL CO. and the CITY OF MORRIS, on Count IV:

1. Finding that the Defendants have violated Section 9(a) of the Act, and 35 Ill. Adm. Code Sections 220.280(b) and (e);

2. Enjoining the Defendants from further violations of Section 9(a) of the Act, and 35 Ill. Adm. Code Sections 220.280(b) and (e);

3. Ordering the Defendants to immediately provide Illinois EPA with all past due reports related to the Landfill gas collection and control system, and to submit all future reports in accordance with schedules contained in the Board regulations;

4. Assessing against the Defendants, pursuant to Section 42(a) of the Act, a civil penalty of Fifty Thousand Dollars ($50,000.00) for each and every violation of the Act and pertinent regulations, with an additional penalty of Ten Thousand Dollars ($10,000.00) for each day of violation;

5. Ordering the Defendants to pay all costs, including Illinois EPA response and oversight costs, attorney, expert witness and consultant fees, expended by the State in its pursuit of the action; and

6. Granting such other relief as this Court deems appropriate and just.

COUNT V
FAILURE TO MAINTAIN REQUIRED RECORDS

1-28. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 28 of Count II, as paragraphs 1 through 28 of this Count V.

29. On July 27, 2005, May 8, 2006, and October 18, 2006, Illinois EPA inspectors visited the Landfill and requested records of the landfill gas collection system, control system, electrical generating/gas destruction turbines, flare, gas extraction well system, operational problems and exceedences, NMOC records, and any other records related to landfill gas collection and control. No records were present at the Landfill on these dates, and the Landfill Site Manager was unaware of any such records being made. On information and belief, neither CLC nor the City of Morris has made or kept any of the above-specified records from June 1, 2000 to the date of filing this Verified Complaint.

30. Although Illinois EPA requested on July 27, 2005 and May 8, 2005 that the above-described records be submitted, neither Defendant has provided the information to Illinois EPA to the date of filing this Verified Complaint.

31. Section 220.290 of the Board Air Pollution regulations, 35 Ill. Adm. Code 220.290, provides, in pertinent part, as

follows:

Record Keeping Requirements

Each owner or operator of an MSW landfill shall keep for at least 5 years, unless another time period is specified in this Section, up-to-date, readily accessible, on-site records of the following:

* * *

b) For the life of the control equipment, the data listed in subsections (b)(1) through (b)(4) of this Section as measured during the initial performance test or compliance determination. Records of the control device vendor specifications shall be maintained until removal.

1) Active collection systems:

A) The maximum expected gas generation flow rate as calculated in Section 220.240(a) of this Subpart....

B) The density of wells, horizontal collectors, surface collectors, or other gas extraction devices determined using the procedures specified in Section 220.220(b)(1)(A) of this Subpart.

2) Enclosed combustion device other than a boiler or process heater with a design heat input capacity greater [than] 44 MW:

A) The combustion temperature measured at least every 15 minutes and averaged over the same time period as the performance test.

B) The percent reduction of NMOC determined as specified in Section 220.230(b)of this Subpart achieved by the control device.

* * *

4) Open flare: the flare type (i.e., steam-assisted, air-assisted, or nonassisted), all visible emission readings, heat content determination, flow rate or bypass flow rate measurements, and exit velocity determinations....

c) Continuous records of the equipment operating parameters specified to be monitored in Section 220.270 of this Subpart as well as up-to-date, readily accessible records for periods of operation during which the parameter boundaries established during the most recent performance test are exceeded.

* * *

32. The Defendants were required to make and keep extensive operating records, as described in 35 Ill. Adm. Code 220.290, at the Landfill. By failing to make and keep the above-described records, the Defendants violated Section 220.290 of the Board Air Pollution regulations, 35 Ill. Adm. Code 220.290, and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2004).

33. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue until and unless this Court grants equitable relief in the form of a preliminary injunction, and, after trial, permanent injunction.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this Court enter a preliminary injunction and, after trial, permanent injunction, and an order in favor of Plaintiff and against the Defendants, COMMUNITY LANDFILL CO. and the CITY OF MORRIS on Count V:

1. ' Finding that the Defendants have violated Section 9(a) of the Act, and 35 Ill. Adm. Code Section 220.290;

2. Enjoining the Defendants from further violations of Section 9(a) of the Act, and 35 Ill. Adm. Code Section 220.290;

3. Ordering the Defendants to immediately assemble and provide to Illinois EPA all records of past operation of the landfill gas collection and collection and control system, and to make and keep all future operational records in accordance with the Board Air Pollution regulations;

4. Assessing against the Defendants, pursuant to Section 42(a) of the Act, a civil penalty of Fifty Thousand Dollars ($50,000.00) for each and every violation of the Act and pertinent regulations, with an additional penalty of Ten Thousand Dollars ($10,000.00) for each day of violation;

5. Ordering the Defendants to pay all costs, including Illinois EPA response and oversight costs, attorney, expert witness and consultant fees, expended by the State in its pursuit of the action; and

6. Granting such other relief as this Court deems appropriate and just.

COUNT VI
FAILURE TO MONITOR CONTROL SYSTEM

1-28. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 28 of Count II, as paragraphs 1 through 28 of this Count VI.

29. From approximately March 1, 1999 until approximately July 1, 2004, the Defendants operated two electrical generating/

gas destruction turbines as control devices at the Landfill. On information and belief, the Defendants failed to monitor temperature, gas flow, or gas bypass of the operating turbines, and failed to install a continuous temperature, gas flow, or gas bypass recording device.

30. Section 220.270 of the Board Air Pollution regulations, 35 Ill. Adm. Code 220.270, provides, in pertinent part, as follows:

Monitoring of Operations

* * *

b) Enclosed combustors. Each owner or operator of an enclosed combustor shall calibrate, maintain, and operate according to the manufacturer's specifications, the following equipment:

1) A temperature monitoring device equipped with a continuous recorder and having a minimum accuracy of plus or minus 1 percent of the temperature being measured, expressed in degrees Celsius, or plus or minus 0.5 degrees C, whichever is greater....

2) A device that records flow to or bypass of the control device. The owner or operator shall either:

A) Install, calibrate, and maintain a gas flow rate measuring device that shall record the flow to the control device every 15 minutes; or

B) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not

diverted through the bypass line.

* * *

31. Section 220.100 of the Board Air Pollution regulations, 35 Ill. Adm. Code 220.100, provides, in pertinent part, as follows:

> "Enclosed combustor" means an enclosed firebox. Examples include, but are not limited to, an enclosed flare, a boiler, and an internal combustion engine.

32. The electrical generating/gas destruction turbines which the Defendants operated at the Landfill from 1999 until 2004, are "enclosed combustors" as that term is defined in the Board Air Pollution regulations.

33. By failing to install and maintain monitoring devices for temperature, gas flow, and gas bypass on the turbines operated at the Landfill, the Defendants violated Section 220.270(b) of the Board Air Pollution regulations, 35 Ill. Adm. Code 220.270(b), and thereby also violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2004).

34. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue until and unless this Court grants equitable relief in the form of a preliminary injunction, and, after trial, permanent injunction.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays

that this Court enter an immediate and, after trial, permanent injunction and an order in favor of Plaintiff and against the Defendants, COMMUNITY LANDFILL CO. and the CITY OF MORRIS, on Count VI:

1. Finding that the Defendants have violated Section 9(a) of the Act, and 35 Ill. Adm. Code 220.270(b);

2. Enjoining the Defendants from further violations of Section 9(a) of the Act, and 35 Ill. Adm. Code 220.270(b);

3. Ordering the Defendants to immediately assemble and provide to Illinois EPA all records of past operation of the landfill gas collection and collection and control system, and to make and keep all future operational records in accordance with the Board regulations;

4. Assessing against the Defendants, pursuant to Section 42(a) of the Act, a civil penalty of Fifty Thousand Dollars ($50,000.00) for each and every violation of the Act and pertinent regulations, with an additional penalty of Ten Thousand Dollars ($10,000.00) for each day of violation;

5. Ordering the Defendants to pay all costs, including Illinois EPA response and oversight costs, attorney, expert witness and consultant fees, expended by the State in its pursuit of the action; and

6. Granting such other relief as this Court deems appropriate and just.

COUNT VII

VIOLATION OF CAAPP PERMIT CONDITIONS: GAS CONTROL SYSTEM

1-24. Plaintiff realleges and incorporates by reference herein, paragraphs 1 through 21, and paragraphs 24 through 25, of Count I, and paragraph 31 of Count II, as paragraphs 1 through 24 of this Count VII.

25. In addition to solid waste permits, both CLC and Morris are required under Federal and State law to obtain a Clean Air Act Permit Program Permit ("CAAPP Permit") for the Landfill.

26. On November 19, 2002, Illinois EPA issued CAAPP Permit No. 00040069 to the Defendants, with an expiration date of November 19, 2007. The Defendants' CAAPP Permit requires installation of a landfill gas collection and control system, and permits operation of the collection and control system of landfill gas from the Landfill, subject to enumerated conditions. A copy of the Defendants CAAPP Permit is attached hereto as Exhibit 'A'.

27. Section 39.5(6) of the Act, 415 ILCS 5/39.5(6) (2004), provides, in pertinent part, as follows:

> 6. Prohibition
>
> a. It shall be unlawful for any person to violate any terms or conditions of a permit issued under this Section, to operate any CAAPP source except in compliance with a permit issued by the Agency under this Section or to violate any other applicable requirements.

28. Condition 7.1.3 of the Defendants' CAAPP Permit

provides, in pertinent part, as follows:

7.1.3 Applicability Provisions and Applicable Regulation

* * *

c. The affected landfill is subject to 35 IAC Part 220, Non-methane Organic Compounds, because construction or modification of the affected landfill commenced before May 30, 1991 and has accepted waste since November 8, 1987, pursuant to 35 IAC 220.200(a).

* * *

d. Gas Collection System Requirements-35 IAC 220.220 Each owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 Million Mg and 2.5 million cubic meters, and a calculated NMOC emission rate equal to or greater than 50 Mg/yr, must install and operate a gas collection system that meets the requirements of either Condition 7.1.3...

* * *

i. Gas Control System Requirements [35 IAC 220.230] Each owner and operator of an MSW landfill subject to the control requirements of Condition 7.1.3(c) and (d) must install and operate a gas collection system that routes all the collected gas to a gas control system that complies with the requirements of 35 IAC 220.230(f) and either install a gas control system as described in 7.1.3(i)(i), (ii), or (iii) (35 IAC 220.230(a)(b), or (c)) or (iii)...or obtain approval of and install an alternate gas control system....

(i) An open flare...
(ii) A control system designed and operated to reduce NMOC by 98 weight percent....
(iii) A treatment system that processes the collected gas for subsequent sale or use.

* * *

29. The Defendants accepted waste at Parcel B of the

Landfill, which has a design capacity greater than 2.5 Million Mg and 2.5 million cubic meters, and NMOC emission rate greater than 50 Mg/yr, after 1987. The Defendants were thereby bound by Condition 7.1.3 of CAAPP Permit No. 00040069.

30. From at least July 27, 2005 to at least October 18, 2006, the Defendants failed to install and operate a landfill gas collection system that routes all collected gas to a compliant control device. The Defendants thereby violated Condition 7.1.3 (i) of their CAAPP Permit, and thereby also violated Section 39.5 (6) of the Act, 415 ILCS 5/39.6 (2004).

31. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue until and unless this Court grants equitable relief in the form of a preliminary injunction, and, after trial, permanent injunction.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this court enter a temporary restraining order, preliminary injunction, and after trial, permanent injunction and an order in favor of Plaintiff and against the Defendants, COMMUNITY LANDFILL CO. and the CITY OF MORRIS, on Count VII:

1. Finding that the Defendants have violated Section 39.5(6) of the Act, and Condition 7.1.3(i) of CAAPP Permit No. 00040069;

2. Enjoining the Defendants from any further violations of Section 39.5(6) of the Act, and Condition 7.1.3(i) of CAAPP Permit No. 00040069;

3. Assessing against the Defendants, pursuant to Section 42 of the Act, a civil penalty of Ten Thousand Dollars ($10,000.00) for each day of violation of Section 39.5(6) of the Act, and Condition 7.1.3(i) of CAAPP Permit No. 00040069;

4. Ordering the Defendants to pay all costs, including Illinois EPA response and oversight costs, attorney, expert witness and consultant fees expended by the State in its pursuit of the action; and

5. Granting such other relief as this court deems appropriate and just.

COUNT VIII

VIOLATION OF CAAPP PERMIT CONDITIONS: OPERATIONAL VIOLATIONS

1-34. Plaintiff realleges and incorporates by reference herein, paragraphs 1 through 29 of Count VII, and paragraphs 29 through 33 of Count III, as paragraphs 1 through 34 of this Count VIII.

35. Condition 7.1.5 of the Defendants' CAAPP Permit provides, in pertinent part, as follows:

> **Operational and Production Limits and Work Practices**
>
> Upon becoming subject to the landfill gas collection and control requirements in Condition 7.1.3 [35 IAC 220.250 and 220.230], the Permittee shall become subject to the

requirements of 7.1.5(a) through (h): [35 IAC 220.250, Operational Standards for Collection and Control Systems]

a. operate the collection system such that gas is collected from each area, cell, or group of cells in the MSW landfill in which the initial solid waste has been in place for:
[35 Ill. Adm. Code 220.250(a)]

i. 5 years or more if active; or
ii. 2 years or mor if closed or at final grade.

* * *

b. Operate the collection system with negative pressure at each wellhead....[35 IAC 220.250(b)].

* * *

c. Operate each interior wellhead in the collection system with a landfill gas temperature less than 55°C (131°F) and with either a nitrogen level less than 20 percent or an oxygen level less than 5 percent...[35 IAC 220.250(c)].

* * *

d. Operate the collection system so that the methane concentration is less than 500 ppm above background at the surface of the landfill...[35 IAC 220.250(d)].

* * *

e. Operate the gas collection and control system such that all collected gases are vented to a control system....

* * *

f. Operate the gas collection and control or treatment system at all times, except during shutdown or malfunction...[35 IAC 220.250(f)].

* * *

g. If monitoring demonstrates that the operational requirements in Condition 7.1.5(b), (c), or (d) are not met, take correction action as specified in Condition 7.1.12(a)(iii), (a)(v), or (c)(iv)....

* * *

36. By failing to collect landfill gas from every area and cell at the Landfill, the Defendants violated Condition 7.1.5 (a) of CAAPP Permit No. 00040069, and thereby also violated Section 39.5(6) of the Act, 415 ILCS 5/39.5(6) (2004).

37. By failing to operate the collection system at the Landfill so that each well operated at negative pressure, the Defendants violated Condition 7.1.5 (b) of CAAPP Permit No. 00040069, and thereby also violated Section 39.5(6) of the Act, 415 ILCS 5/39.5(6) (2004).

38. By failing to operate each gas extraction well at a temperature below 131 degrees F., and with nitrogen levels below 20% and oxygen levels below 5%, the Defendants violated Condition 7.1.5.(c) of CAAPP Permit No. 00040069, and thereby also violated Section 39.5(6) of the Act.

39. By failing to operate the gas collection system so that surface methane concentrations remained below 500 ppm above background, the Defendants violated Condition 7.1.5(d) of CAAPP Permit No. 00040069, and thereby also violated Section 39.5(6) of the Act.

40. By allowing landfill gas to escape from wells to the atmosphere, the Defendants failed to operate the collection and control systems such that collected gases were directed to a compliant control system. The Defendants thereby violated

Condition 7.1.5(e) of CAAPP Permit No. 00040069, and thereby also violated Section 39.5(6) of the Act.

41. By failing to operate a compliant control system from at least July 1, 2004 until the date of filing this Verified Complaint, the Defendants violated Condition 7.1.5(f) of CAAPP Permit No. 00040069, and thereby also violated Section 39.5(6) of the Act.

42. By failing to take corrective action to remedy the operational violations as described herein, the Defendants violated Condition 7.1.5 (g) of CAAPP Permit No. 00040069, and thereby also violated Section 39.5(6) of the Act.

43. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue until and unless this Court grants equitable relief in the form of a preliminary injunction, and, after trial, permanent injunction.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this court enter a preliminary injunction, and after trial, permanent injunction and an order in favor of Plaintiff and against the Defendants, COMMUNITY LANDFILL CO. and the CITY OF MORRIS on Count VIII:

1. Finding that the Defendants have violated Section 39.5(6)(a) of the Act, and Conditions 7.1.5 (a), (b),(c), (d),

(e), (f), and (g) of CAAPP Permit No. 00040069;

2. Enjoining the Defendants from any further violations of 39.5(6)(a) of the Act, and Conditions 7.1.5 (a), (b),(c), (d), (e), (f), and (g) of CAAPP Permit No. 00040069;

3. Assessing against the Defendants, pursuant to Section 42 of the Act, a civil penalty of Ten Thousand Dollars ($10,000.00) for each day of each violation of the Act, and Conditions 7.1.5 (a), (b),(c), (d), (e), (f), and (g) of CAAPP Permit No. 00040069 ;

4. Ordering the Defendants to pay all costs, including Illinois EPA response and oversight costs, attorney, expert witness and consultant fees expended by the State in its pursuit of the action; and

5. Granting such other relief as this court deems appropriate and just.

COUNT IX
VIOLATION OF CAAPP PERMIT CONDITIONS: FAILURE TO MONITOR CONTROL SYSTEM

1-29. Plaintiff realleges and incorporates by reference herein, paragraphs 1 through 27 of Count VII, and paragraphs 29 and 32 of Count VI, as paragraphs 1 through 29 of this Count IX.

30. Condition 7.1.8 of the Defendants' CAAPP Permit provides, in pertinent part, as follows:

* * *

b) Enclosed combustors. Each owner or operator of an enclosed combustor shall calibrate, maintain, and

operate according to the manufacturer's specifications, the following equipment: [35 IAC 220.270(b)]

i. A temperature monitoring device equipped with a continuous recorder...[35 IAC 220.270(b)(1)].

ii. A device that records flow to or bypass of the control device...[35 IAC 220/270(b)(2)].

* * *

f) Notwithstanding the exclusion from the monitoring requirements under 35 IAC 220 (Conditions 7.1.8(a) through (e)), the Permittee is required to perform the following:

i. The Permittee shall calibrate, maintain, and operate according to the manufacturer's specifications, the following equipment [35 IAC 201.281]

A. A gas flow rate measuring devices(s) that shall record the flow to the control system(s)...at least every 15 minutes;

B. A gas flow rate measuring devices(s) that provides a measurement of gas flow to or bypass of the control system(s)....

31. Condition 7.2.8 of the Defendants CAAPP Permit provides, in pertinent part, as follows:

* * *

b) The Permittee shall calibrate, maintain, and operate according to the manufacturer's specification, equipment that will enable the continuous monitoring of each affected emission s unit's hours of operations.

* * *

32. By failing to monitor temperature, gas flow, gas bypass, operational interruptions, and by failing to install temperature measuring devices on the electrical generating/gas

destruction control system, the Defendants violated Condition 7.1.8 of CAAPP Permit No. 00040069, and thereby also violated Section 39.5(6) of the Act.

33. By failing to maintain and operate continuous operation monitoring equipment on the electrical generating/gas destruction control system, the Defendants violated Condition 7.2.8(b) of CAAPP Permit No. 00040069, and thereby also violated Section 39.5(6) of the Act.

34. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue until and unless this Court grants equitable relief in the form of a preliminary injunction, and, after trial, permanent injunction.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this Court enter a preliminary injunction, and after trial, permanent injunction, and an order in favor of Plaintiff and against the Defendants, COMMUNITY LANDFILL CO. and the CITY OF MORRIS, on Count IX:

1. Finding that the Defendants have violated Section 39.5(6) of the Act, and Conditions 7.1.8 and 7.2.8 of CAAPP Permit No. 00040069;

2. Enjoining the Defendants from any further violations of 39.5(6) of the Act, and Conditions 7.1.8 and 7.2.8 of CAAPP

Permit No. 00040069;

3. Assessing against the Defendants, pursuant to Section 42 of the Act, a civil penalty of Ten Thousand Dollars ($10,000.00) for each day of each violation of the Act, and Conditions 7.1.8 and 7.2.8 of CAAPP Permit No. 00040069;

4. Ordering the Defendants to pay all costs, including Illinois EPA response and oversight costs, attorney, expert witness and consultant fees expended by the State in its pursuit of the action; and

5. Granting such other relief as this Court deems appropriate and just.

COUNT X

VIOLATION OF CAAPP PERMIT CONDITIONS: REPORTING VIOLATIONS

1-33. Plaintiff realleges and incorporates by reference herein, paragraphs 1 through 27 of Count VII, paragraphs 29 through 30 of Count IV, and paragraphs 29 through 32 of Count III, as paragraphs 1 through 33 of this Count X.

34. Condition 7.1.10 of the Defendants' CAAPP Permit provides, in pertinent part, as follows:

Reporting Requirements

* * *

b) Each owner or operator of an MSW landfill with a total design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3, shall submit an NMOC emission rate report to the Illinois EPA initially and by June 1 annually thereafter...[35 IAC 220.280(b)].

* * *

e) Each owner or operator of a landfill shall submit to the Illinois EPA annual reports of the recorded information in Condition 7.1.10(e)(i) through (vi) (Below)....

i. Value and length of time for exceedance of the applicable parameters monitored under Condition 7.1.8(a) through (d). [35 IAC 220.280(e)(1)].

ii. Description and duration of all periods when the gas stream is diverted from the control device...[35IAC 220.280(e)(2)].

iii. Description and duration of all periods when the control device was not operating for a period exceeding 1 hour and length of time the control device was not operating...[35 IAC 220.280(e)(3)].

* * *

g) The Permittee shall notify the Illinois EPA within 30 days of an exceedance of the limits in Conditions 7.1.3, 7.1.5, or 7.1.6.

* * *

35. Condition 5.7.1 of the Defendants' CAAPP Permit provides, as follows:

General Source-Wide Reporting Requirements

The Permittee shall promptly notify the Illinois EPA, Compliance Section of deviations of the source with the permit requirements as follows, pursuant to Section 39.5(7)(f)(ii) of the Act. Reports shall describe the probable cause of such deviations, and any corrective actions or preventive measures taken.

36. Section 8.6.1 of the Defendants' CAAPP Permit provides, as follows:

Monitoring Reports

If monitoring is required by any applicable requirements or conditions of this permit, a report summarizing the required monitoring results, as specified in the conditions of this permit, shall be submitted to the Air Compliance Section of the Illinois EPA every six months as follows:

Monitoring Period	Report Due Date
January-June	September 1
July-December	March 1

All instances of deviations from permit requirements must be clearly identified in such reports. All such reports shall be certified in accordance with Condition 9.9.

37. Condition 9.8 of the Defendants' CAAPP Permit provides, in pertinent part, as follows:

Requirement for Compliance Certification

Pursuant to Section 39.5(7)(p)(v) of the Act, the Permittee shall submit annual compliance certifications. The Compliance certifications shall be submitted no later than May 1 or more frequently as specified in the applicable requirements or by permit condition....

38. By failing to submit annual NMOC emission rate reports to Illinois EPA from June 1, 2000 to the present, the Defendants violated Condition 7.1.10(b) of CAAPP Permit No. 00040069, and thereby also violated Section 39.5(6) of the Act, 415 ILCS 5/39.5(6) (2004).

39. By failing to provide Illinois EPA with annual reports of exceedances of operating parameters, permit limitations, and non-operation of the control system, the Defendants violated Conditions 7.1.10 (e) and (g) of CAAPP Permit No. 00040069, and thereby also violated Section 39.5(6) of the Act, 415 ILCS 5/39.5(6) (2004);

40. By failing to promptly notify Illinois EPA of the numerous deviations from permitted and regulatory operating parameters, including positive pressure, exceedance of surface methane levels, and excessive well temperature, the Defendants violated Condition 5.7.1 of CAAPP Permit No. 00040069, and thereby also violated Section 39.5(6) of the Act, 415 ILCS 5/39.5(6) (2004).

41. By failing to provide semi-annual monitoring reports to Illinois EPA, the Defendants violated Condition 8.6.1 of CAAPP Permit No. 00040069, and thereby also violated Section 39.5(6) of the Act, 415 ILCS 5/39.5(6) (2004).

42. By failing to submit annual compliance certifications to Illinois EPA at any time, the Defendants violated Condition 9.8 CAAPP Permit No. 00040069, and thereby also violated Section 39.5(6) of the Act, 415 ILCS 5/39.5(6) (2004).

43. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue until and unless this Court grants equitable relief in the form of a preliminary injunction, and, after trial, permanent injunction.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this court enter a preliminary injunction, and after a trial, permanent injunction and an Order in favor of Plaintiff

and against the Defendants, COMMUNITY LANDFILL CO. and the CITY OF MORRIS, on Count X:

1. Finding that the Defendants violated Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6) (2004), and Conditions 7.1.10(b),(e),and (g), Condition 5.7.1, Condition 8.6.1, and Condition 9.8 of CAAPP Permit No. 00040069 ;

2. Enjoining the Defendants from any further violations of Section 39.5(6) of the Act, and Conditions 7.1.10(b),(e),and (g), Condition 5.7.1, Condition 8.6.1, and Condition 9.8 of CAAPP Permit No. 00040069;

3. Assessing against the Defendants, pursuant to Section 42 of the Act, a civil penalty of Ten Thousand Dollars ($10,000.00) for each day of each violation of the Act, and Conditions 7.1.10(b),(e),and (g), Condition 5.7.1, Condition 8.6.1, and Condition 9.8 of CAAPP Permit No. 00040069;

4. Ordering the Defendants to pay all costs, including Illinois EPA response and oversight costs, attorney, expert witness and consultant fees expended by the State in its pursuit of the action; and

5. Granting such other relief as this court deems appropriate and just.

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

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

BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

of Counsel:
CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, IL 60601
(312) 814-5388

VERIFICATION

I, MATTHEW COOKINGHAM, being duly sworn on oath state:

1. I have been employed by the Illinois Environmental Protection Agency ("Illinois EPA") since May, 1994.

2. My title is Environmental Protection Engineer for the Illinois EPA Bureau of Air. As part of my responsibilities, I inspect municipal solid waste landfills, including the Morris Community Landfill, for compliance with Illinois regulations governing the collection and control of landfill gas.

3. I have read the attached Verified Complaint for Injunction and Other Relief, and, except for matters stated on information and belief, I have personal and direct knowledge of the facts set forth within Count I: paragraph numbers 5-6, 8-9, 10-13, 15-21, and 29; Count II: paragraph numbers 28 and 31; Count III: paragraph numbers 29 and 33, Count V: paragraph numbers 29-30;

4. Aside from allegations stated on information and belief, the factual matters set therein are true and correct in substance and fact, to the best of my knowledge and true belief.

MATTHEW COOKINGHAM

SUBSCRIBED AND SWORN TO BEFORE
me this 16th day of November, 2006

NOTARY PUBLIC

"OFFICIAL SEAL"
DARLENE F. ARMSTRONG
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 11/17/2006

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
GRUNDY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois,	)	
Plaintiff,	)	
-vs-	)	No. 06 CH 184
COMMUNITY LANDFILL CO., an Illinois corporation, and the CITY OF MORRIS, an Illinois municipal corporation,	)	
Defendants.	)	

NOTICE OF MOTION

PLEASE TAKE NOTICE that on July 8, 2013, at 10:00 a.m. or whenever counsel may be heard, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, will appear before the honorable Robert Marsaglia in the Grundy County Courthouse, 111 E. Washington Street, Morris, Illinois, and there and then present its Motion to Voluntarily Dismiss without Prejudice, a copy of which is attached.

By: _____

CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
69 W. Washington, #1800
Chicago, Illinois 60601
(312) 814-5388

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
GRUNDY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois,	)	
Plaintiff,	)	
v.	)	No. 06 CH 184
COMMUNITY LANDFILL CO., an Illinois corporation, and the CITY OF MORRIS, an Illinois municipal corporation,	)	
Defendants.	)	

MOTION TO VOLUNTARILY DISMISS WITHOUT PREJUDICE

NOW COMES Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to 735 ILCS 5/2-1009 and 735 ILCS 5/5-117, moves this Court to dismiss this action without prejudice and without costs. In support thereof, Plaintiff states as follows:

1. This Complaint in this matter was filed on December 8, 2006, and alleged violations of the Illinois Environmental Protection Act ("Act") related to the Defendants' failure to collect and control landfill gas at the Morris Community Landfill ("Landfill"). On December 15, 2006, the Court granted Plaintiff's request for preliminary injunctive relief, and the Defendants subsequently installed and began operating a landfill gas control flare at the Landfill. On June 9, 2008, the State filed its Amended Complaint, which again related solely to alleged landfill gas-related violations.

2. After the case was filed, Morris began submitting landfill gas reports to Plaintiff. Recent reports indicate that landfill gas generation within the Landfill is ongoing, and that some

collection wells are nonfunctional. While Plaintiff is not aware of a serious ongoing odor nuisance, the current gas collection and control system will need to be expanded and updated.

3. Plaintiff contends that a new system can only be effective if installed as part of a complete landfill closure. Landfill "closure" encompasses a wide range of engineering tasks that are intended to prevent waste and waste constituents from escaping into groundwater, or otherwise affecting the environment. Closure tasks include, for example, installation of systems to collect and treat polluted water and landfill gas, re-contouring of the landfill surface to minimize erosion, and installation of a compacted soil cover over the waste disposal area.[1] The new landfill gas collection system should be installed within the final cover to be effective in preventing an odor nuisance from the closed Landfill.

4. The Landfill has not undergone closure as required under the Act. Therefore, the Landfill has not yet been engineered to its final counters, and the installation of final cover has not begun.

5. Plaintiff has learned that the Illinois Environmental Protection Agency ("Illinois EPA") has recently inspected the Landfill, and that Illinois EPA observed potential violations related to the failure to close the Landfill. Based on the Illinois EPA inspection report, one or both of the Defendants in this case may be issued violation notices related to these potential closure violations in the near future.

6. Pursuant to Section 31 of the Act, 415 ILCS 5/31 (2012) ("Section 31"), a person issued a violation notice has the opportunity to meet with Illinois EPA without the participation of the Illinois Attorney General's Office. During this period, a prospective defendant and Illinois

[1] In addition to landfill 'closure', periodic maintenance is required for between 30 and 100 years after closure is performed; this is referred to as "post-closure care".

EPA may, *inter alia*, discuss a possible technical remedy to the violations prior to the matter being referred to the Attorney General's Office for enforcement.

7. Plaintiff believes that a complete resolution of the violations alleged in this case will require full closure of the Landfill. However, the provisions of Section 31 will inevitably delay a complete resolution of the alleged closure-related violations.[2] Because this case is now 6 ½ years old, Plaintiff will not ask that the Court stay this matter to allow for the Section 31 process to run its statutory course. Instead, Plaintiff requests that the Court dismiss this case, without prejudice to the remaining violations in the Amended Complaint, and without costs. These violations, and any additional violations observed by Illinois EPA may be the subject of a future enforcement proceeding.

[2] Section 31 requires Illinois EPA to give notices of violations, allow time for meetings related to possible resolution and also provide notifications of intent to pursue legal action prior to referral.

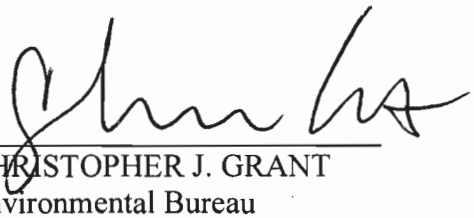
WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court dismiss this case, without prejudice and without costs.

RESPECTFULLY SUBMITTED

PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN,
Attorney General of the State of Illinois

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

ELIZABETH WALLACE, Chief
Environmental Bureau North

BY: 

CHRISTOPHER J. GRANT
Environmental Bureau
Assistant Attorney General
69 W. Washington Street, #1800
Chicago, IL 60602
(312) 814-5388

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused the foregoing Motion to Voluntarily Dismiss without Prejudice, and Notice of Motion to be served on those listed below by email on July 3, 2013.

CHRISTOPHER GRANT

Service List:

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

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

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