

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VILLAGE OF GLENVIEW, an Illinois)
municipal corporation;)
and)
SOLID WASTE AGENCY OF NORTHERN)
COOK COUNTY,)
an Illinois statutory solid waste agency;)

Complainants,

v.)

CATHOLIC BISHOP OF CHICAGO,)
A corporation sole;)
and)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
an agency of the State of Illinois;)

Respondents.

PCB CASE NO. 2023-049
Hearing Officer Bradley Halloran

ANSWER TO COMPLAINT

The Catholic Bishop of Chicago ("Respondent"), by and through its attorneys in this regard, Baker & McKenzie LLP, states as follows for its Answer to Complaint.

The Parties and the Pollution Control Facility at Issue

1. Respondent is the owner and operator of the Des Plaines (Sexton) Landfill pursuant to Permit Nos. 1974-24-DE and 1974-24-OP and Supplemental Permit No. 2019-356-SP (the Des Plaines (Sexton) Landfill is hereafter referred to as the "Landfill"). The Landfill is located in unincorporated Cook County, generally north of Central Road and east of the Des Plaines River, and is adjacent and contiguous to the Village of Glenview.

ANSWER: Admitted.

2. The Village of Glenview is a community of more than 47,000 people. The corporate limits of the Village are immediately adjacent and contiguous to the Landfill.

ANSWER: Respondent admits that the Village is adjacent to and generally contiguous to the Landfill. Respondent denies having knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this Paragraph.

3. The Solid Waste Agency of Northern Cook County was formed through the intergovernmental agreement of its 23 municipal members. Glenview is one of those 23 members. SWANCC provides waste disposal and recycling services for its members primarily through the operation of SWANCC's solid waste transfer station. SWANCC's transfer station is located within the Village near the Landfill. SWANCC's mission is the safe and cost-effective disposal and recycling of municipal solid waste and landscape waste for its members and their residents.

ANSWER: Respondent denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph.

4. The Landfill has had deleterious effects on Glenview and the surrounding areas for decades and, as Respondent and IEPA are both aware, has been polluting and is continuing to pollute the groundwater. Although often promised by the Respondent, the empirical data inexorably demonstrates that the Respondent has failed to make any actual substantial corrective progress on remediation of the on-going pollution. As detailed below, the Landfill remains in violation of the Act and in violation of the Respondent's Permits, and IEPA has simply failed to fulfill its regulatory mission to hold the Respondent accountable.

ANSWER: This Paragraph sets forth legal conclusions or arguments to which no response is required. To the extent that a response is required, Respondent denies the allegations. Respondent further objects that pursuant to the Board's May 2, 2024 Order, claims of permit violations have been stricken from the Complaint.

5. The Respondent and IEPA have, inexplicably, now continued this malfeasance by approving a permit application authorizing construction and operation of a compost facility *on top of the already leaking Landfill* ("Compost Facility"). The Compost Facility currently under construction is certain to exacerbate the underlying causes of the existing violations and thereby cause even greater pollution. Once again, IEPA has failed to fulfill its regulatory mission.

ANSWER: This Paragraph sets forth legal conclusions or arguments to which no response is required. To the extent that a response is required, Respondent denies the allegations. Respondent further objects that pursuant to the Board's May 2, 2024 Order, claims of permit violations have been stricken from the Complaint.

6. The Complainants bring this enforcement action to compel the Respondent to undertake the important steps necessary to actually remediate its polluting Landfill and, until that is accomplished, to prevent the Respondent from constructing and operating the Compost Facility. Only at such time as Respondent has remediated the causes of the on-going pollution problem can there be any confidence that the Compost Facility will not cause more pollution.

ANSWER: This Paragraph sets forth legal conclusions or arguments to which no response is required. To the extent that a response is required, Respondent denies the allegations. Respondent further objects that pursuant to the Board's May 2, 2024 Order, Count II of the Complaint which relates to operation of the Compost Facility have been stricken from the Complaint.

COUNT I

**RESPONDENT'S FAILURE TO REMEDIATE THE ONGOING POLLUTION
OF GROUND AND SURFACE WATERS
IS A VIOLATION OF THE ACT AND THE RESPONDENT'S PERMITS**

7. Starting in 1974, the Landfill received approval of a 65,000,000 gallon injection well field and accepted significant quantities of liquid waste for disposal. The Landfill accepted at least 3.46-million gallons of liquid waste. Liquid waste disposal in a landfill system results in the generation of large quantities of leachate (which, as the Board knows, is any liquid that has touched waste). Leachate has the potential to cause surface water and groundwater contamination and therefore must be removed from the Landfill. When the leachate head is allowed to build-up within a landfill, the pressure will cause the leachate to migrate outward through permeable soil zones around the landfill and contaminate the groundwater system.

ANSWER: Respondent admits that it received permits in 1974 to develop and operate a landfill, and that a 65,000,000 gallon injection well field was approved in March 1979. Respondent denies having knowledge or information sufficient to form a belief as to the truth of the allegation that the Landfill accepted 3.46 million gallons of liquid waste, and demands strict proof thereof. Respondent denies the remaining allegations contained in this Paragraph.

8. Leachate head buildup is caused when a landfill accepts liquid waste, when a landfill has an insufficient final cover (soil cap) system that allows precipitation to infiltrate into the waste (at rates greater than it can be removed), by ineffective leachate removal systems (meaning low removal rates), or by some combination of the above.

ANSWER: Respondent denies the allegations of this Paragraph. Respondent objects that these allegations are highly technical in nature, and dependent on multiple variables, and therefore are denied as framed. Respondent further objects that these allegations are more properly the subject of expert testimony, and reserves the right to respond through appropriate expert disclosures.

9. Upon closure of the Landfill, groundwater monitoring indicated that there were three (3) groundwater contamination plumes on the north, east, and west borders of the Landfill. Thus, high leachate levels within the Landfill did in fact result in outward movement of both leachate and landfill gas, thereby polluting the groundwater.

ANSWER: Respondent admits that ultimately, three plumes were identified which led to the development of a Groundwater Management Zone, but denies the allegations of this Paragraph to the extent that it is vague on timing. Respondent also objects that these allegations are highly technical in nature, and dependent on multiple variables, and therefore are denied as framed. Respondent further objects that these allegations are more properly the subject of expert testimony, and reserves the right to respond through appropriate expert disclosures.

10. In June of 1990, after the Landfill closed, the IEPA requested that the Respondent submit a Comprehensive Leachate Management Plan ("Plan"). The Plan was required to demonstrate proper management of leachate at the Landfill in order to reduce leachate levels and prevent a build-up of leachate head. Respondent did not, however, submit a Plan until 9 years later.

ANSWER: Respondent admits that IEPA requested that Respondent submit a Comprehensive Leachate Management Plan in June 1990. The IEPA's request was pursuant to a written document which speaks for itself and is the best evidence of its contents; therefore, Respondent denies the allegations in this Paragraph to the extent that they mischaracterize, misconstrue, or place out of context the actual wording of the document. Answering further, Respondent denies that it did not submit a Plan until 9 years later – Respondent originally submitted a plan in September 1990 in connection with a supplemental permit application.

11. The Plan identified 5 leachate seep locations where leachate elevations exceed the ground surface elevations. The Plan also identified a significant build-up of leachate within the Landfill with a peak elevation at 688.67 ft. MSL as of May 1998. That peak elevation is approximately 48.67 ft. higher than the ground surface elevation at the approximate waste boundary (640.00 ft. MSL). The build-up of leachate and presence of leachate seeps indicates that leachate was escaping the Landfill at the time of the Plan.

ANSWER: Respondent admits that a document dated February 23, 1998, attached to the APTIM Report as Attachment 4, indicates that there were five "historic seep locations." Respondent denies the remaining allegations in this Paragraph. Further answering, Respondent expressly denies that there is any evidence supporting the allegation that "leachate was escaping the Landfill at the time of the Plan." Respondent also denies that data from 1998 is relevant to current site conditions.

12. Leachate elevations within the Landfill were measured again in September 2017. The peak leachate elevation was measured to be 676.00 ft. MSL, indicating that the high levels of leachate are still present. A comparison of the 1998 leachate elevations to the 2017 leachate elevations show an increase along the west and north portions of the Landfill. Based on this comparison, leachate was continuing to escape the Landfill and pollute the surroundings along the west and north portions of the Landfill.

ANSWER: Respondent denies that that data indicate that leachate was escaping the Landfill. In 2021, Respondent engaged Geosyntec Consultants, Inc. ("Geosyntec") to study the Landfill. Geosyntec concluded, in relevant part, that there has been a net decrease in leachate between April 1998 and November 2022, and that there is no evidence indicating that leachate is migrating offsite. Respondent also denies that data from 1998 and 2017 is relevant to current site conditions.

13. Supplemental permit applications submitted to the IEPA by the Respondent confirmed that a release of leachate from the Landfill was occurring along the west and north portions of the property polluting surrounding groundwater and surface water.

ANSWER: Respondent objects to the vague nature of the allegations in this Paragraph, and notes that it submits supplemental permit applications on an annual basis. Without waiving this objection, Respondent denies the allegations of this Paragraph and demands strict proof thereof.

14. More specifically, groundwater contamination was initially identified during the second quarter of 1998 in a monitoring well located in the north west corner of the Landfill property (Well G120). Groundwater contamination was further investigated along the entire western border of the Landfill and reported to the IEPA in May 2001. Elevated levels of chloride and several other parameters were identified in multiple locations along the western border of the Landfill property and determined to be caused by the release of leachate into the shallow groundwater zone.

ANSWER: Respondent admits that an Assessment Monitoring Report and Feasibility Study (May 2001) references a second quarter 1998 groundwater monitoring event that identified exceedances at well G120. Respondent further admits that an Assessment Monitoring Report West Side Soil Borings and Piezometers (January 2001) appears to identify exceedances of chloride and other parameters along western border in 2001. Further answering, Respondent states that these allegations are from written documents which speak for themselves and are the best evidence of their contents; therefore, Respondent denies the allegations in this Paragraph to the extent that they mischaracterize, misconstrue, or place out of context the actual wording of the documents. Respondent denies the remaining allegations in this Paragraph. Respondent also denies that data from 1998 and 2001 is relevant to current site conditions.

15. The shallow groundwater zone is separated into two (2) different depositional units, the alluvial granular unit and the glacial granular unit. The alluvial granular unit is located at an elevation above the Des Plaines River and will receive water from or discharge water to the river depending on seasonal fluctuations in the height of the river. According to the Respondent's permit file, the alluvial granular unit is hydraulically connected to both the Des Plaines River and the Landfill.

ANSWER: Respondent admits that the shallow groundwater zone at the Landfill is separated into two different depositional units, the alluvial granular unit and the glacial granular unit. Respondent further objects that these allegations are more properly the subject of expert testimony, and reserves the right to respond through appropriate expert disclosures.

16. The glacial granular unit is located beneath the alluvial granular unit. According to the May 2001 report, the glacial granular unit likely extends laterally under and beyond the Des Plaines River to the west. The glacial granular unit is hydraulically connected to the alluvial granular unit and intermittently connected to the Des Plaines River (depending on surface water elevations in the river and depending upon the location of the glacial granular unit along the western boundary of the Landfill). According to the May 2001 report, leachate from the Landfill impacted the shallow water bearing zone (alluvial granular unit and glacial granular unit) and likely released into the Des Plaines River through the alluvial granular unit, and also laterally under and beyond the Des Plaines River to the west through the glacial granular unit.

ANSWER: Respondent admits that the Assessment Monitoring Report and Feasibility Study (May 2001) states on p. 29-30:

The glacial granular unit likely extends laterally under and beyond the river to the west.

The alluvial and glacial granular zones act as one hydrostratigraphic unit, known as the shallow water-bearing zone. Most of the alluvial granular unit is located vertically above the Des Plaines River, which is its local discharge zone. The alluvial granular units receive recharge very quickly from precipitation events or, for some of the lenses, what appears to be, based on the analytical data, a direct connection to the landfill. The glacial granular unit is well to poorly connected to the Des Plaines River and varies between being a discharge or recharge zone depending on time and location. As indicated by the vertically downward gradient within the shallow water-bearing unit, the glacial granular unit receives recharge predominantly from the overlying alluvial granular unit.

VOCs and inorganic compounds exceeding ILGWQS Class II standards have been detected in the shallow water bearing zone. Most VOC and inorganic compound detections correlate with elevated chloride concentrations suggesting that impacts to the shallow water bearing zone are attributable to landfill leachate.

Respondent objects that the May 2001 report is a written document which speaks for itself and is the best evidence of its contents; therefore, Respondent denies the allegations in this Paragraph to the extent that they mischaracterize, misconstrue, or place out of context the actual wording of the document. Respondent further objects that these allegations are more properly the subject of expert testimony, and reserves the right to respond through appropriate expert disclosures. Respondent also denies that data from 2001 is relevant to current site conditions.

THE IDENTIFIED POLLUTION LEADS TO GROUNDWATER CONTAMINATION ZONES

17. As a result of the May 2001 report, the Respondent and IEPA delineated a “zone” of known groundwater contamination in the form of a Groundwater Management Zone (“GMZ”) on the west Landfill boundary, and likewise delineated another GMZ on the north Landfill boundary. By establishing these GMZs, the IEPA and the Respondent agreed that Respondent would implement remedial actions to stop the pollution. Accordingly, IEPA established new groundwater monitoring thresholds against which to evaluate the effectiveness of the Respondent’s remedial actions.

ANSWER: Respondent admits that it created GMZs at the Landfill. Respondent denies the remaining allegations of this Paragraph.

THE RESPONDENT’S OWN REPORTS FOR EACH GMZ DEMONSTRATE THAT THE RESPONDENT IS MAKING NO PROGRESS AND THAT THE LANDFILL CONTINUES TO POLLUTE THE SURROUNDING GROUNDWATER AND SURFACE WATER

West Groundwater Management Zone.

18. The boundaries of the GMZ along the Landfill's western border ("West GMZ") are as follows: the Landfill drainage ditch to the north, a groundwater extraction trench to the east, a location between two monitoring wells to the south, and the center of the Des Plaines River to the west. The vertical boundaries of the West GMZ are from the groundwater surface down to an elevation of 600 ft. MSL.

ANSWER: Respondent admits that pursuant to Supplemental Permit No. 2018-090-SP the west GMZ is defined by G131 to the north, leachate extraction trench to the east, center of the Des Plaines River to the west, and G122 to the south. The bottom boundary is approximately 600 feet MSL. Respondent objects that the Supplemental Permit is a written document which speaks for itself and is the best evidence of its contents; therefore, Respondent denies the allegations in this Paragraph to the extent that they mischaracterize, misconstrue, or place out of context the actual wording of the document.

19. The Respondent's proposed remedial action to mitigate groundwater contamination was a groundwater extraction trench along the western border of the property. The Respondent intended that the groundwater extraction trench would contain the leachate within the legally defined limits of the Landfill and prevent leachate contaminated groundwater migration. The groundwater extraction trench design and construction methodology were provided to the IEPA in a report submitted in October 2001. The October 2001 report states that the design "fully intersects the alluvial granular units described in the Application as contaminated."

ANSWER: Respondent admits that it constructed a leachate extraction trench along the western border of the property to contain leachate within the limits of the Landfill. Respondent admits that it submitted a leachate extraction trench design and construction methodology to IEPA in October 2001 in a First Addendum to Supplemental Permit Application, Log No. 2001-15. Respondent further admits that the October 2001 submittal to IEPA states that "the trench, as designed, fully intersects the alluvial granular units described in the Application as contaminated." Further answering, Respondent states that these allegations are from written documents which speak for themselves and are the best evidence of their contents; therefore, Respondent denies the allegations in this Paragraph to the extent that they mischaracterize, misconstrue, or place out of context the actual wording of the documents. Respondent denies the remaining allegations in this Paragraph. Respondent also denies that data from 2001 is relevant to current site conditions.

20. Unfortunately, according to the groundwater extraction trench design drawings, boring logs, and as-built report, the groundwater extraction trench does not intercept the lower glacial granular unit, which was known to be contaminated due to a release of leachate. As constructed, the trench was never going to work.

ANSWER: Respondent denies the allegations in this Paragraph. Answering further, Respondent states that Geosyntec concluded in May 2021 that the trench functions as designed, and stated: "The leachate extraction trench does remove leachate, if present, from the lower glacial granular unit (i.e., liquids can move between the lower glacial granular unit to the leachate extraction trench.

Liquid (i.e., groundwater or leachate) moves from areas of high hydraulic pressure . . . to areas of low hydraulic pressure. The leachate extraction trench invert in the vicinity of R121 (screened in the glacial granular unit) is at an approximate elevation of 615.00 ft MSL as compared to the measured R121 groundwater elevations which varied between 626.08 to 628.00 ft MSL during 2Q 2019 through 2Q 2020 groundwater sampling events. Therefore, liquid travels from high hydraulic head/elevations (i.e., R121 to lower hydraulic head/elevations (leachate extraction trench) and the leachate extraction trench extracts liquids from the lower glacial granular unit." Respondent further objects that these allegations are more properly the subject of expert testimony, and reserves the right to respond through appropriate expert disclosures.

21. The conclusion that the trench does not perform as intended is supported by the most recent Evaluation of Remedial Measures Report submitted in August 2021. According to that report, dissolved chloride concentrations in the well monitoring the glacial granular unit (R121 formerly G121) exceeded the IEPA-approved GMZ threshold beginning in 2005. Dissolved chloride concentrations have exceeded the GMZ threshold from 2005 through 2021. As of 2021, the dissolved chloride concentration was reported at 1,920,000 pg/L which is more than two times the GMZ threshold concentration (929,307 pg/L). These elevated levels of dissolved chloride indicate that leachate is still being released from the Landfill into the groundwater and that the Respondent has wholly failed to remediate the pollution from its Landfill.

ANSWER: Respondent denies that data from R121, an interior well, indicates that the trench does not perform as intended or that there has been any release of leachate offsite. Respondent denies that R121 has exceeded the GMZ threshold for dissolved chloride from 2005 through 2021. Respondent admits that the dissolved chloride concentration at R121 was reported at 1,920,000 pg/L in the Evaluation of Remedial Measures Report (August 2021) and that the GMZ standard is 929,307 pg/L. Further, Geosyntec concluded, in relevant part:

...there is no evidence to indicate that leachate is being discharged to the Des Plaines River. Groundwater concentrations in the west-side GMZ boundary wells are well below applicable GMZ standards. The use of interior GMZ wells to assess the effectiveness of corrective actions is inappropriate because the interior GMZ wells do not accurately reflect groundwater quality at the Facility's property boundary nor the impact of the existing leachate extraction trench... (Ex. __, p. 1-2)

Reliance on chloride concentrations to question the effectiveness of remedial corrective actions is inappropriate. While chloride is a leachate "indicator" parameter, a recent Illinois State Water Survey has concluded that chloride concentrations in shallow groundwater aquifers have increased significantly over the past 20 years due to urbanization in the Chicagoland area; therefore, there are other potential sources of chloride besides the Facility. Organic parameters such as benzene, chlorobenzene, trichloroethylene, and vinyl chloride are better leachate "fingerprint" parameters, since these parameters are present in leachate but are not common in the environment. Groundwater sampling results at the Des Plaines Landfill reveal that the concentrations of these organic parameters have decreased over time and, in fact, are no longer detected in the facility groundwater monitoring

program. Per IEPA approval, these organic parameters have been removed from the GMZ sampling lists due to the 'non-detects.'

22. Moreover, Respondent's IEPA Operating Permit requires the operator to submit an evaluation of the effectiveness of the groundwater extraction trench based on groundwater monitoring results over time. Ignoring the actual data, the Respondent has claimed every year since 2005 (without any supporting basis in fact) that the concentrations measured through groundwater monitoring have peaked and that the concentrations will eventually diminish with the continued operation of the trench. But the data reported demonstrates that the trench has been ineffective in preventing leachate contaminated groundwater migration and containing leachate to the legally defined site limits. Furthermore, the leachate head has increased near Well R121 from 1998 to at least 2017, indicating that leachate migration in this area will continue to be an issue based on current operations.

ANSWER: Respondent states that these allegations are from written documents which speak for themselves and are the best evidence of their contents; therefore, Respondent denies the allegations in this Paragraph to the extent that they mischaracterize, misconstrue, or place out of context the actual wording of the documents. Further answering, Respondent states that Geosyntec concluded in May 2021 that "there is no evidence to indicate that leachate is being discharged to the Des Plaines River. Groundwater concentrations in the west-side GMZ boundary wells are well below applicable GMZ standards. The use of interior GMZ wells to assess the effectiveness of corrective actions is inappropriate because the interior GMZ wells do not accurately reflect groundwater quality at the Facility's property boundary nor the impact of the existing leachate extraction trench." Respondent denies the remaining allegations in this Paragraph. Respondent also denies that data from 1998 and 2017 is relevant to current site conditions.

23. The groundwater contamination through the glacial granular zone (and the Respondent's failure to prevent that contamination) is a violation of the following regulations:

- 415 Illinois Compiled Statutes ("ILCS") 5/12 (a);
- 415 ILCS 5/21 (d)(1);
- 415 ILCS 5/21 (d)(2);
- 415 ILCS 5/21 (o)(2);
- 415 ILCS 5/21 (o)(3);
- Title 35 IAC Section 807.313; and
- Title 35 IAC Section 807.315.

ANSWER: This Paragraph sets forth legal conclusions or arguments to which no response is required. To the extent that a response is required, Respondent denies the allegations.

North Groundwater Management Zone

24. Groundwater contamination was also identified during the second quarter of 2001 in a monitoring well located in the northern portion of the Landfill property (Well G127). Leachate seeps and landfill gas have been occasionally encountered during detection monitoring activities at Well G127.

ANSWER: Respondent states that these allegations are from written documents which speak for themselves and are the best evidence of their contents; therefore, Respondent denies the allegations in this Paragraph to the extent that they mischaracterize, misconstrue, or place out of context the actual wording of the documents. Respondent denies that data from 2001 is relevant to current site conditions, and objects to the vague nature of the allegations with respect to alleged timing, specifically with respect to "occasionally encountered."

25. Groundwater contamination was further investigated along the Landfill's northern border and reported to the IEPA in April 2002. The presence of volatile organic compounds and high dissolved chloride concentrations were determined to be caused by Landfill gas impacts and leachate impacts. Upon further analysis of groundwater contamination in this area, it was concluded that impacts due to leachate are limited to Well G127 due to infiltration of surface seeps. In response, the Respondent and IEPA delineated a GMZ along the northern portion of the landfill. As with the GMZ on the western border, this GMZ for the northern border required the Respondent to implement remedial actions and the IEPA established new groundwater monitoring thresholds against which to evaluate the effectiveness of the Respondent's remedial actions.

ANSWER: Respondent states that these allegations are from written documents which speak for themselves and are the best evidence of their contents; therefore, Respondent denies the allegations in this Paragraph to the extent that they mischaracterize, misconstrue, or place out of context the actual wording of the documents. Respondent denies that data from 2002 is relevant to current site conditions. Respondent admits that a G127 Assessment Monitoring Report dated April 30, 2002, states at p. 16 that "Based on the field observations of landfill gas and the presence of volatile organic compounds (VOCs) in groundwater samples collected in the vicinity of well G127, it appears that groundwater in this area has been impacted by landfill gas. Because of the recent increase in chloride concentrations at well G127, the possibility does exist that these groundwater impacts may have a leachate component" and that a First Addendum to Supplemental Permit Application Log No. 2002-122 (October 2002) states at p. 6 that "We believe the apparent leachate component to the impacts at G127 may be due to the infiltration of surface seeps."

26. The boundaries of the GMZ along the Landfill's northern border ("North GMZ") are set by four (4) monitoring wells that are used to measure the extent of groundwater contamination. The vertical boundaries of the North GMZ are from the groundwater surface down to the extents of a "weathered till" zone defined by a series of boring logs.

ANSWER: Respondent states that these allegations are from written documents which speak for themselves and are the best evidence of their contents; therefore, Respondent denies the allegations in this Paragraph to the extent that they mischaracterize, misconstrue, or place out of context the actual wording of the documents. Respondent admits that pursuant to SPA No. 2018-090-SP (Oct

2019), the North GMZ is defined by G134 to the north, G132 to the west, and G133 to the east; the southern boundary of the GMZ is the landfill. The top elevation of the GMZ ranges from 638 to 640 MSL. The bottom elevation of the GMZ ranges from 614 to 627 feet MSL.

27. Groundwater has been documented to flow from south to north in this area, therefore, Well G127 is the upgradient well and Well G134 is the downgradient well. There is a drainage ditch located on the Landfill between Well G127 and Well G134. The drainage ditch accepts stormwater from Beck Lake (north of the Landfill property) and stormwater run-off from the Landfill and conveys it to the Des Plaines River.

ANSWER: Respondent states that these allegations are from written documents which speak for themselves and are the best evidence of their contents; therefore, Respondent denies the allegations in this Paragraph to the extent that they mischaracterize, misconstrue, or place out of context the actual wording of the documents. Respondent further objects that these allegations are more properly the subject of expert testimony, and reserves the right to respond through appropriate expert disclosures.

28. The Respondent proposed a remedial action described as the "continued operation of the landfill gas collection system and further optimization of the gas extraction efficiency of the well field." The IEPA later requested that a leachate management system be added as another remedial action. More specifically, IEPA determined that a perimeter leachate management system consisting of leachate extraction wells and a force-main system located in the vicinity of Well G127 would help prevent leachate seeps.

ANSWER: Respondent admits that the First Addendum to Supplemental Permit Application Log No. 2002-122 (Oct 2002)) at p. 6 states that "we propose continued operation of the landfill gas collection system and further optimization of the gas extraction efficiency of the well field as the remedial measure to address landfill gas migration," and that this document also states: "We are also proposing the currently-approved leachate management system as an additional remedial measure. The intent of this system is to prevent leachate seeps. The system, consisting of a perimeter well and header array, has been constructed at the site but has not yet been put into operation because the leachate disposal line was not permitted [by MWRD] until recently. The construction of the leachate disposal line has now begun."

29. But once again the Respondent's remedial actions have proven ineffective. Based on the most recent Evaluation of Remedial Measures Report submitted in August 2021, dissolved chloride concentrations in Well G127 have exceeded the GMZ threshold. The elevated concentrations of dissolved chloride observed in Well G127 indicates the presence of leachate in the groundwater sample. The downgradient groundwater monitoring well, Well G134, has also exceeded the background standard for dissolved chloride from 2005 through at least the most recent report in 2021.

ANSWER: Respondent states that these allegations are from written documents which speak for themselves and are the best evidence of their contents; therefore, Respondent denies the allegations in this Paragraph to the extent that they mischaracterize, misconstrue, or place out of context the actual wording of the documents. Respondent further objects that these allegations are more

properly the subject of expert testimony, and reserves the right to respond through appropriate expert disclosures. Respondent admits that the dissolved chloride concentrations in Well G127 exceeded the GMZ standard, as reported in the August 2021 Evaluation of Remedial Measures Report. Respondent denies that the elevated concentrations of dissolved chloride observed in Well G127 indicates the presence of leachate in the groundwater sample, and states that there could be other sources of dissolved chloride. Respondent admits that Well G134 exceeded the intrawell background standard for dissolved chloride as reported in the August 2021 Evaluation of Remedial Measures Report. Respondent denies that Well G134 has exceeded that background standard consistently since 2005. Answering further, Respondent denies that its remedial actions have proven ineffective.

30. Well G127 and Well G134 have exceeded the standard for dissolved chloride since the establishment of the GMZ in 2004—and this despite the Respondent’s implementation of its so-called “remedial actions.” There simply are no constructed remedial measures preventing the migration of leachate between Well G127 and Well G134. However, the Landfill drainage ditch located between these two wells indicates that the surface water elevation in the drainage ditch is at a similar elevation to the groundwater measured on either side, which indicates that the shallow groundwater monitored in Well G127 and Well G134 may be hydraulically connected to the Landfill drainage ditch and consequently the Des Plaines River.

ANSWER: Respondents deny that their remedial actions have proven ineffective, and denies the allegations of this Paragraph. Respondent further objects that these allegations are more properly the subject of expert testimony, and reserves the right to respond through appropriate expert disclosures.

31. The continuing exceedance and increasing trend in dissolved chloride concentrations in both Well G127 and Well G134 are empirical proof that the Respondent’s remedial actions are not effectively preventing a release of leachate through groundwater in this area. The release of leachate has potential to discharge into the Landfill drainage ditch and consequently the Des Plaines River. Furthermore, the leachate head has increased in the northern portion of the Landfill from 1998 to at least 2017, indicating that leachate migration in this area will continue to be an issue based on current operations.

ANSWER: Respondents deny that their remedial actions have proven ineffective, and denies the allegations of this Paragraph. Respondent further objects that these allegations are more properly the subject of expert testimony, and reserves the right to respond through appropriate expert disclosures.

32. The ongoing release of leachate into surface waters is a violation of the following regulations:

- 415 ILCS 5/12 (a);
- 415 ILCS 5/21 (d)(1);
- 415 ILCS 5/21 (d)(2);

- 415 ILCS 5/21 (o)(2);
- 415 ILCS 5/21 (o)(3);
- Title 35 IAC Section 807.313; and
- Title 35 IAC Section 807.315.

ANSWER: This Paragraph sets forth legal conclusions or arguments to which no response is required. To the extent that a response is required, Respondent denies the allegations.

THE RESPONDENT'S PERSISTENT FAILURE TO CONTROL THE LEACHATE AND GAS HAS MORE RECENTLY CAUSED SLOPE FAILURES AND NEW SEEPS IN FURTHER VIOLATION OF THE ACT AND ITS PERMITS

33. A visual inspection of the Landfill from surrounding properties completed in March of 2021 discovered multiple circular slope failures and noticeable soil sloughing. Three (3) notable slope failures were located directly south of Wells G127 and G134. The slope failures had noticeable sloughing 2-foot down-slope and ranged in length from 50 to 200-feet. A fourth slope failure was located approximately 600-feet to the west of Wells G127 and G134. This slope failure had noticeable sloughing 1-foot down-slope and was approximately 200-feet in length. At the location of the fourth slope failure, there existed a circular area approximately 10-feet in diameter that, unlike its surroundings, had no snow. This area was located on the inside toe of the perimeter access road. This area, absent of snow, likely indicates a leachate seep or landfill gas release point, which is consistent with the data proving that the leachate head has increased in the northern portion of the Landfill from 1998 to at least 2017.

ANSWER: Respondent denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph and therefore denies same, and demands strict proof thereof. Respondent states that on information and belief, the "visual inspection of the Landfill" alleged in this Paragraph relates to observations purportedly made by Complainants, and Respondents have no personal knowledge thereof. Answering further, Respondent states that the Geosyntec Report dated May 2021 states: "There is no evidence . . . of recent (i.e., last five years) leachate seeps or landfill gas emissions. The lack of snow in a depressional area provides no evidence of a leachate seep or landfill gas emission. Moreover, no evidence of leachate seeps or landfill gas emissions was observed during Geosyntec's site visit." (p.1-2, 1-3) and that "Observed slope stability issues are localized shallow circular/veneer failures, which can occur on landfill final cover slopes. These are not rotational or translational failures through the waste mass that would be defined as catastrophic failures. Corrective actions to address these localized stability issues are routine repairs performed under typical landfill post-closure care activities, such as: erosion repair, mowing, inspections and cover grading, which the Facility completes in accordance with applicable regulations and permit terms." (p. 1-3). Respondent also denies that data from 1998 and 2017 is relevant to current site conditions.

34. The effects of the leachate head build-up within the Landfill are displaying visible signs including the noticeable slope failures. The sustained presence of the leachate head buildup indicates that the waste is saturated, which has been demonstrated to increase the risk of slope failures in landfills. Indeed, the trigger mechanism for a majority of significant slope failures in solid waste landfills has been linked to liquid, either by building up within the waste mass or through saturation in the foundation soils. The current condition of the Landfill poses a significant safety issue that has the potential to endanger public health, welfare, and the adjacent Cook County Forest Preserve property.

ANSWER: Respondent denies the allegations in this Paragraph. Respondent further objects that these allegations are more properly the subject of expert testimony, and reserves the right to respond through appropriate expert disclosures.

35. In July of 2021 the Respondent and the IEPA, acting through Cook County Department of Environment and Sustainability, identified and confirmed a slope failure caused by leachate buildup during an inspection of the Landfill. Inexplicably and despite clear evidence to the contrary, the IEPA nevertheless concluded that the demonstrated leachate buildup and subsequent slope failure did not compromise the Landfill's integrity.

ANSWER: Respondent denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph and therefore denies same, and demands strict proof thereof.

36. Based upon all of the foregoing, Respondent has, is now, and continues to violate the following laws and regulations:

- 415 ILCS 5/12 (a) - No person shall: (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.
- 415 ILCS 5/12 (d) - No person shall: (d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.
- 415 ILCS 5/21 (d)(1) and (2) - No person shall: (d) Conduct any waste-storage, waste treatment, or waste-disposal operation: (1) without a permit granted by the Agency or in violation of any conditions imposed by such permit..., (2) in violation of any regulations or standards adopted by the Board under this Act; or...
- 415 ILCS 5/21 (o)(2) and (3) - No person shall: (o) Conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section, in a manner which results in any of the following conditions:... (2) leachate flows entering waters of the State; (3) leachate flows exiting the landfill confines (as determined by the boundaries established for the landfill by a permit issued by the Agency);

- Title 35 Illinois Administrative Code Section 807.313 - No person shall cause or allow operation of a sanitary landfill so as to cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under the Act. (see 415 ILCS 5/12 (a))
- Title 35 Illinois Administrative Code Section 807.315 - No person shall cause or allow the development or operation of a sanitary landfill unless the applicant proves to the satisfaction of the Agency that no damage or hazard will result to waters of the State because of the development and operation of the sanitary landfill.

ANSWER: This Paragraph sets forth legal conclusions or arguments to which no response is required. To the extent that a response is required, Respondent denies the allegations.

37. The violation of the pertinent environmental statutes will continue unless and until this Board acts to hold the Respondent accountable for its persistent failures.

ANSWER: This Paragraph sets forth legal conclusions or arguments to which no response is required. To the extent that a response is required, Respondent denies the allegations.

WHEREFORE, Respondent denies any and all liability for purported violations of the Act, and prays that Complainants be awarded none of the relief sought in the Complaint.

COUNT II

THE COMPOST FACILITY WILL CAUSE EVEN GREATER POLLUTION AND WAS APPROVED IN VIOLATION OF THE ACT

1-38. Complainants incorporate and re-allege as part of this Count II paragraphs 1-37 set forth above as if fully set forth herein.

[Paragraphs 39-48 Omitted]

ANSWER: Pursuant to the Board's Order dated May 2, 2024, and by agreement of the parties, Count II has been stricken in its entirety and no response is required to these allegations.

AFFIRMATIVE DEFENSES

Respondent hereby asserts the following affirmative defenses, without assuming the burden of proof on such defenses as would otherwise rest with Complainants. Respondent further

states that these affirmative defenses are based upon information presently available and in order to avoid waiver. Respondent reserves the right to withdraw any of these affirmative defenses, or to assert additional affirmative defenses as further information becomes available.

1. Complainants' claim is barred in whole or in part by laches, given their long proximity to and awareness of the purported issues which they raise in their Complaint, going back over 20 years.

2. Complainants' claim is barred in whole or in part by the doctrine of unclean hands, to the extent that the leachate of which they complain is going into the Des Plaines River may be migrating from their property instead of Respondent's property.

3. Complainants' claim may be barred or reduced to the extent that the alleged contamination complained of is due to the acts of their parties and/or of the Complainants themselves.

4. Complainants' claim may be barred to the extent the allegations of violations include acts and/or omissions authorized by the IEPA pursuant to the terms of permits issued to Respondent.

RESERVATION OF RIGHTS

Respondent reserves the right to assert additional Affirmative Defenses or plead claims as may be warranted following the completion of discovery in this matter.

WHEREFORE, Respondent denies any and all liability for purported violations of the Act as alleged; prays that Complainants be awarded none of the relief sought in the Complaint; and for such additional and further relief as may be appropriate.

WHEREFORE, Respondent requests that the Board undertake the following actions:

1. Deny all relief sought by Complainants;

2. Enter judgment in favor of Respondent on all causes of action in the Complaint; and
3. Grant Respondent any such other and further relief as the Board deems just and proper.

Date: July 1, 2024

Respectfully submitted,

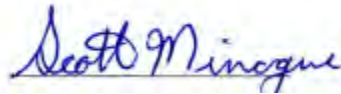
By: /s/ Jonathan H. Ebner

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CHICAGO

VERIFICATION BY CERTIFICATION

The Undersigned, being first duly sworn, on oath deposes and says that it is the authorized representative for the Catholic Bishop of Chicago; that as such, the Undersigned has read the foregoing matters in the Answer to Complaint by it subscribed; and has knowledge of the factual responses contained therein, and that under penalty of perjury pursuant to 735 ILCS 5/1 -109, the Undersigned hereby certifies that the contents of the said Answer to Complaint are truth, both in substance and in fact, except that as to facts, if any, alleged on information and belief, which the Undersigned verily believes to be true.



By: Scott Minogue
Catholic Bishop of Chicago
Director of Technical Services