

JUN 19 2003

65299-POH

STATE OF ILLINOIS  
Pollution Control Board  
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

UNITED DISPOSAL OF BRADLEY, INC.,  
and MUNICIPAL TRUST & SAVINGS BANK,  
as Trustee Under Trust 0799

Petitioners,

vs.

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY,

Respondent.

No. PCB 03-235

(Permit Appeal - Land)

NOTICE OF FILING

TO: Rene Cipriano, Director  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62701

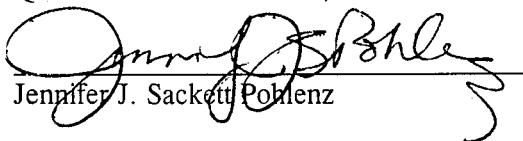
PLEASE TAKE NOTICE that on June 19, 2003, we filed with the Illinois Pollution Control Board, the following:

1. Petition for Review of Decision Concerning Denial of a Permit to Modify the Operating Permit for a Pollution Control Facility, Pursuant to Sections 39.2 and 40;
2. Appearance of Jennifer J. Sackett Pohlenz on behalf of Petitioners, United Disposal of Bradley, Inc. and Municipal Trust & Savings Bank, Trustee Under Trust 0799; and
3. Appearance of David E. Neumeister on behalf of Petitioners, United Disposal of Bradley, Inc. and Municipal Trust & Savings Bank, Trustee Under Trust 0799.

copies of which are attached hereto and served upon you.

Jennifer J. Sackett Pohlenz  
David E. Neumeister  
**QUERREY & HARROW, LTD.**  
175 West Jackson Boulevard, Ste. 1600  
Chicago, Illinois 60604  
(312) 540-7000  
Attorney Registration No. 6225990  
Attorneys for Petitioners

QUERREY & HARROW, LTD.

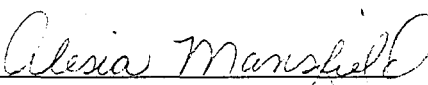
  
Jennifer J. Sackett Pohlenz

**PROOF OF SERVICE**

Alesia Mansfield, a non-attorney, under penalties of perjury states that she served the foregoing Notice of Filing, along with copies of document(s) set forth in this Notice, on:

Rene Cipriano, Director  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62701

this 19<sup>th</sup> day of June, 2003, by or before the hour of 5:00 p.m. via certified mail, return receipt requested.

  
Alesia Mansfield

JUN 19 2003

65299-POH

STATE OF ILLINOIS  
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD *Pollution Control Board*

**UNITED DISPOSAL OF BRADLEY, INC.,  
and MUNICIPAL TRUST & SAVINGS BANK,  
as Trustee Under Trust 0799**

Petitioners,

vs.

**ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY,**

Respondent.

No. PcB 03-235

(Permit Appeal - Land)

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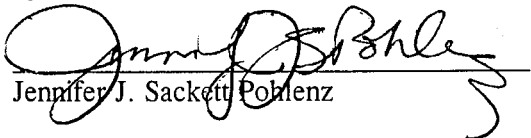
PLEASE TAKE NOTICE that on June 19, 2003, we filed with the Illinois Pollution Control Board, the following:

1. Petition for Review of Decision Concerning Denial of a Permit to Modify the Operating Permit for a Pollution Control Facility, Pursuant to Sections 39.2 and 40;
2. Appearance of Jennifer J. Sackett Pohlenz on behalf of Petitioners, United Disposal of Bradley, Inc. and Municipal Trust & Savings Bank, Trustee Under Trust 0799; and
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copies of which are attached hereto and served upon you.

Jennifer J. Sackett Pohlenz  
David E. Neumeister  
**QUERREY & HARROW, LTD.**  
175 West Jackson Boulevard, Ste. 1600  
Chicago, Illinois 60604  
(312) 540-7000  
Attorney Registration No. 6225990  
Attorneys for Petitioners

QUERREY & HARROW, LTD.


  
Jennifer J. Sackett Pohlenz

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Rene Cipriano, Director  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62701

this 19<sup>th</sup> day of June, 2003, by or before the hour of 5:00 p.m. via certified mail, return receipt requested.

  
Alesia Mansfield

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JUN 19 2003

UNITED DISPOSAL OF BRADLEY, INC.,  
and MUNICIPAL TRUST & SAVINGS BANK,  
as Trustee Under Trust 0799

Petitioners,

v.

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY,

Respondent.

STATE OF ILLINOIS  
Pollution Control Board

No. PCB 03-235

(Permit Appeal - Land)

**PETITION FOR REVIEW OF DECISION CONCERNING DENIAL OF A PERMIT TO  
MODIFY THE OPERATING PERMIT FOR A POLLUTION CONTROL FACILITY,  
PURSUANT TO SECTIONS 39.2 AND 40  
OF THE ILLINOIS ENVIRONMENTAL PROTECTION ACT**

Petitioner UNITED DISPOSAL OF BRADLEY, INC. ("United Disposal") and MUNICIPAL TRUST & SAVINGS BANK, as Trustee Under Trust 0799, by and through their attorneys, Jennifer J. Sackett Pohlenz and David E. Neumeister of QUERREY & HARROW, Ltd., files this Petition for a review of the decision of the Illinois Environmental Protection Agency ("IEPA") denying the application for a permit to modify Operating Permit, No. 1994-30-OP, by striking the permit language (specifically one sentence contained in Special Condition No. 9) prohibiting acceptance of waste from outside the Village of Bradley, Kankakee County, Illinois. In further support of this Petition, Petitioners state as follows:

1. This Petition is filed pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (Act) and Sections 105.200 and 807.205 of the Illinois Pollution Control Board Regulations. (415 ILCS 5/40 (2003) and 35 IAC 807.205 (2003)).

2. Pursuant to Section 105.210(a), a copy of the IEPA's May 15, 2003 written decision is attached to this Petition as **Exhibit A**.

3. The subject of the application for a permit to modify an operating permit ("the application") is the United Disposal of Bradley, Inc. Transfer Station located in the Village of Bradley, Kankakee County, Illinois. The application sought to strike language from Special Condition No. 9, contained in the existing operating permit that purports to prohibit the Transfer Station from accepting waste from outside the Village of Bradley. The application was denied by the IEPA.

4. United Disposal and Municipal Trust & Savings Bank as Trustee Under Trust 0799, are proper Petitioners pursuant to Section 40 of the Act, and Sections 105.200 and 807.205 of the Pollution Control Board Regulations because they filed an application for the modification of its existing operational permit on April 28, 2003, pursuant to Section 807.205(a), and the IEPA denied that permit on May 15, 2003. A copy of the permit application is attached as **Exhibit B**. As such, Petitioners may petition for a hearing and review of the IEPA decision before the Pollution Control Board pursuant to Section 40(a)(1).

5. Pursuant to Section 105.210(c), the following Paragraphs 6-21, set forth the grounds for this appeal. The IEPA's application of certain law to the United Disposal's application for a permit modification, and other points of law raised by the IEPA's actions, require reversal of the IEPA's May 31, 2003 decision.

6. The IEPA's response to Petitioners' application stated that the application was deemed not to have been filed because it allegedly failed to set forth information, documents or authorizations as required by Section 807.205, and further stated that the IEPA's action may be considered a denial for purposes of review pursuant to Section 40.

7. The IEPA ruled that the application was deemed “not filed” because the IEPA purportedly had not received all information, documents and authorizations in the form and content required by Section 807. The IEPA noted the following alleged deficiencies:

1. “You failed to provide proof of local siting approval as required by Section 39(c) of the Act (415 ILCS 5/39(c)). Section 807.207(a) provides in part that the Illinois EPA shall not grant any permit unless the applicant submits adequate proof that the solid waste management site will be developed, modified or operated so as not to cause a violation of the Act or Part 807 rules. Your application only addresses the revision of the operating permit. An application for supplemental permit to revise the operating permit is not the appropriate method to remove the condition in question (*i.e.*, Condition #9 of the operating permit), since there must also be a corresponding change to the to the development (DE) permit. The nature of the request made in the permit application requires that the applicant provide proof of local siting approval as described in Section 39.2 of the Act (425 ILCS 5/39.2). The resolution from the Village of Bradley included in your application does not conform to the procedures in Section 39.2 of the Act and therefore is not sufficient proof of siting approval as required by Section 39 (c) of the Act.”

8. Essentially, the IEPA’s effective denial of the application is based on two points: (1) the allegation that Petitioners did not submit adequate proof of Section 39.2 local siting approval; and (2), the allegation that Petitioners sought no corresponding change to their Development Permit as required to revise an operating permit.

9. The IEPA’s decision was in error based on certain points of law for the following reasons:

- a. IEPA incorrectly denied the permit application, because: (1) the application sought only to strike invalid and unconstitutional language from Special Condition No. 9; (2) Section 39.2 siting approval is not necessary for the

modification of an operating permit; and, strictly in the alternative (3), no permit for the modification of the operating permit was necessary, because that portion of Special Condition No. 9 for which modification was sought is unconstitutional, and therefore, invalid, null and void;

- b. No development permit was necessary; and
- c. IEPA made an incompleteness determination on the application, pursuant to 35 IAC 807.205, on the forty-fifth, rather than the thirtieth day after its receipt of the application.

**A. IEPA incorrectly denied the permit application because: (a) the application sought only to strike invalid and unconstitutional language from Special Condition No. 9; (b) Section 39.2 siting approval is not necessary for the modification of an operating permit; and, strictly in the alternative (c), no permit for the modification of the operating permit was necessary, because that portion of Special Condition No. 9 for which modification was sought is unconstitutional, and therefore, invalid, null and void**

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10. The language sought to be stricken from Special Condition No. 9 prohibited the United Disposal facility from accepting waste from beyond the Village of Bradley's municipal boundaries, thereby effectively implementing the deleted statutory distinction between a "non-regional" and a "regional" facility. The IEPA's decision was, therefore, incorrect on several grounds, because the distinction between a "non-regional" and "regional" facility is no longer valid. As a matter of law, the facility may accept waste from beyond the Village of Bradley's municipal boundaries because the distinction between "regional" and "non-regional" facilities that previously prohibited "non-regional" facilities from accepting waste beyond certain geographic limits no longer exists. Therefore, initially, the IEPA incorrectly denied the permit application because the application sought only to strike that invalid and unconstitutional language from Special Condition No. 9.



11. Second, proof of Section 39.2 siting approval was not necessary for the modification of the operating permit, it is only required, in this instance, for the initial development of the facility. Since this Transfer Station was already constructed and developed, modifying its operating permit to delete language imposed under an unconstitutional statutory structure or repealed provision of a statute does not require site location approval. Similarly, this is so because, as a matter of law, the facility may accept waste from beyond the Village of Bradley's municipal boundaries because the distinction between "regional" and "non-regional" facilities that previously prohibited "non-regional" facilities from accepting waste beyond certain geographic limits no longer exists.

12. Finally, and alternatively, no permit for modification of the facility's operating permit was necessary because, as previously stated, that portion of Special Condition No. 9 sought to be modified is unconstitutional, and therefore null and void.

13. That portion of Section 39.2 that prohibited certain facilities from accepting waste from beyond certain geographic limits is unconstitutional. *See, e.g., Tennsv, Inc. v. Gade*. 1993 U.S. Lexis 10403, 24 E.L.R. 20019 (S.D. Ill. 1993). Section 39.2 violates the Commerce Clause of the United States Constitution as applied to the United Disposal facility because that Section curtails the movement of articles in commerce through subdivisions of the State of Illinois. *Id.* That Section is unconstitutional as to the subject permit application and denial because it prohibits the facility from handling waste (undisputedly an article that moves in commerce) from outside the boundaries of the Village of Bradley.

14. For those reasons, the IEPA's denial of the requested permit, effectively ruling that the United Disposal Bradley facility could only continue to accept waste from within the Village

of Bradley's municipal boundaries, was incorrect. The ruling was an unconstitutional application of Section 39.2 in that it curtailed the movement of articles in commerce.

**B. No Development Permit was necessary**

15. In its denial of the permit application, the IEPA apparently takes the position that no operating permit can be modified unless a Development Permit is also obtained. This position and the associated ruling does not account for the fact that Section 39.2 is unconstitutional as applied to the any permit requirement that restricts the movement of waste in commerce between states or the subdivisions of states. *Tennsv v. Gade, supra*.

16. Because Section 39.2 is unconstitutional in that regard, United Disposal was not required to modify its operating permit. Thus, any requirement that United Disposal also had to obtain a Development Permit to effect that modification is moot, since no modification of the permit pursuant to Section 39.2 was necessary.

17. Additionally, since the geographic restriction sought by United Disposal to be removed from or found invalid in the operating permit, had no bearing on the physical construction of the facility, to which no change is sought, no change is or should be required.

18. Finally, and in the alternative, even if, technically, a change to or invalidation of the subject condition in the development permit is necessary, United Disposal can file an application for such modification, without prejudice to it or to this proceeding, and prays that, should this be the determination of the Illinois Pollution Control Board, that this matter is remanded to the IEPA to review with such a development permit application.

**C. IEPA did not rule on United Disposal's application until 45 days, rather than 30 days after the application was submitted**

19. Pursuant to 35 IAC 807.205, the IEPA is under certain time constraints in ruling on an operating permit application, or in this instance an application to modify an existing operating permit. If the IEPA denies an application for an operating permit or modification of an operating permit on the grounds that the application is incomplete, then such a denial must be communicated within thirty (30) days of receipt of the application. If the IEPA does not notify an applicant that an application is incomplete within that 30 days, then the application is deemed to be complete as a matter of law. 35 IAC 807.205(f).

20. If the IEPA denies a permit on grounds other than incompleteness, then the denial must be communicated to the applicant within 45 days of the receipt of the application. *Id.*

21. According to the IEPA's notification of its ruling on Petitioners' application, the IEPA received the application on March 31, 2003.

22. The IEPA's notification letter states the grounds for its ruling as follows:

"The subject application for permit is deemed not to have been filed because it fails to set forth information, documents or authorizations as required pursuant to Title 35, Illinois Administrative Code (hereinafter 35 Ill. Adm. Code), Section 807.205. This action may be considered a denial for purposes of review pursuant to Section 40 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/40)."

23. Those grounds indicate that the denial is based on the alleged incompleteness of Petitioners' permit application rather than on the substance of the application itself.

24. The IEPA's response to Petitioners' application was not sent until May 15, 2003 – a full 45 days after the March 31, 2003 receipt of the application.

25. Because the Petitioners' operating permit application was denied on the basis of incompleteness, IEPA's notice of incompleteness was required to be sent no later than April 30, 2003. 35 IAC 807.205(f)

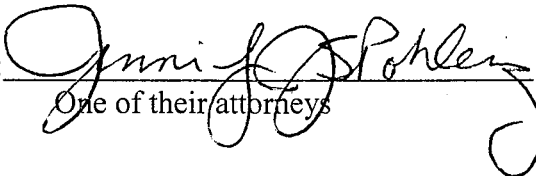
26. Because the IEPA's notice of incompleteness was not sent until May 15, 2003 – more than 30 days after receipt of Petitioners' application – the application is deemed to be complete as a matter of law, and should therefore be deemed granted in all respects.

WHEREFORE, Petitioner, United Disposal of Bradley, Inc. and Municipal Trust & Savings Bank as Trustee Under Trust 0799, respectfully request the Board enter an order: (a) finding that the IEPA's denial of the application for permit modification was incorrect because the modification requested only the striking of otherwise unconstitutional language from Special Condition No. 9 and reversing that denial, and/or alternatively, finding that Section 39.2 siting approval was not necessary for the modification of an operating permit, and/or alternatively, finding that approval of its permit application pursuant to Section 39.2 was not required because Section 39.2 is unconstitutional as applied to the facts of United Disposal's application; (b) alternatively, finding that United Disposal did not require a Development Permit due to the fact that no modification of its operating permit was required, and that any denial of the application based on the lack of a Development Permit is moot, or, alternatively, no change in the development permit was required or, alternatively, remanding this matter to the IEPA for Petitioners to file a development permit; (c) alternatively, finding that the United Disposal application is deemed to be complete as a matter of law based on IEPA's notice of incompleteness sent more than 30 days after receipt of the application, and that the application and subject permit is therefore deemed granted; and (d), providing such other and further relief as the Illinois Pollution Control Board deems appropriate.

Dated: June 19, 2003

Respectfully submitted,

UNITED DISPOSAL OF BRADLEY, INC. and  
MUNICIPAL TRUST & SAVINGS BANK, AS  
TRUSTEE UNDER TRUST 0799

By:   
One of their attorneys

Jennifer J. Sackett Pohlenz  
David E. Neumeister  
**Querrey & Harrow, LTD.**  
175 W. Jackson Blvd., Suite 1600  
Chicago, Illinois 60604  
Phone: (312) 540-7000  
Fax: (312) 540-0578

Doc. No.: 833600



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601

ROD R. BLAGOIEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

217/524-3300

May 15, 2003

Certified Mail

7099 3400 0014 9526 2232

7099 3400 0014 9526 2249

Owner

Municipal Trust & Savings Bank
As Trustee under Trust 0799
Contact: Merlin Karlock
P.O. Box 146
Bourbonnais, Illinois 60914

Operator

United Disposal of Bradley, Inc.
Michael Watson, President
1000 E. Liberty
Bradley, Illinois 60915

Re: 0910200013 -- Kankakee County
United Disposal of Bradley, Inc.
Date Application Received: March 31, 2003
Log No. 2003-101
Permit File

Dear Mr. Karlock and Mr. Watson:

This letter responds to the application for permit to modify the operating permit you submitted on the date shown above.

The subject application for permit is deemed not to have been filed because it fails to set forth information, documents or authorizations as required pursuant to Title 35, Illinois Administrative Code (hereinafter 35 Ill. Adm. Code), Section 807.205. This action may be considered a denial for purposes of review pursuant to Section 40 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/40).

Section 807.205(f) of 35 Ill. Adm. Code states that an application for permit shall not be deemed filed until the Illinois EPA has received all information, documents and authorizations in the form and with the contents required by the Part 807 rules.

The following deficiency is noted at this time:

- 1. You failed to provide proof of local siting approval as required pursuant to Section 39(c) of the Act (415 ILCS 5/39(c)). Section 807.207(a) provides in part that the Illinois EPA shall not grant any permit unless the applicant submits adequate proof that the solid waste management site will be developed, modified or operated so as not to cause a violation of the Act or Part 807 rules. Your application only addresses the revision of your operating permit. An application for supplemental permit to revise the operating permit is not the



appropriate method to remove the condition in question (i.e., Condition #9 of the operating permit), since there must also be a corresponding change to the development (DE) permit. The nature of the request made in the permit application requires that the applicant provide proof of local siting approval as described in Section 39.2 of the Act (415 ILCS 5/39.2). The resolution from the Village of Bradley included in your application does not conform to the procedures in Section 39.2 of the Act and therefore is not sufficient proof of siting approval as required by Section 39(c) of the Act.

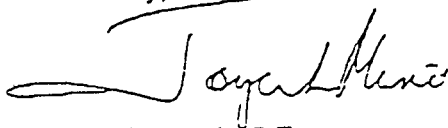
Due to the deficiency noted above the Illinois EPA has not performed a technical review of the application. The technical review may reveal that the Illinois EPA needs additional information, or result in denial of permit.

Within 35 days after the date of mailing of the Illinois EPA's final decision, the applicant may petition for a hearing before the Illinois Pollution Control Board to contest the decision of the Illinois EPA, however, the 35-day period for petitioning for a hearing may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Illinois EPA within the 35-day initial appeal period.

If you wish to seek an extension of the time period for petitioning for a hearing, send a request for such an extension to John Kim, Assistant Counsel, Illinois EPA, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276.

Any resubmission of the permit application should be a complete application without referencing previous submissions. Any questions or requests for assistance may be directed to Sallie Springer at 217/524-3293 or the address above.

Sincerely,



Joyce L. Murie, P.E.  
Manager, Permit Section  
Bureau of Land

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SAS

cc: John Bevis, Kankakee County Health Department

KDA

# UNITED DISPOSAL

1000 E. LIBERTY ★ P. O. BOX 179 ★ BRADLEY, ILLINOIS 60915 ★ 933-0081

March 27, 2003

Illinois Environmental protection Agency  
Bureau of Land, Permit Division  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Re: Application for Modification to Operation Permit 1994-30-OP

Dear Madam or Sir:

I am enclosing a General Application (LPC-PA1) form seeking to modify a portion of Special Condition #9 of the above referenced operating permit. The enclosed application requests the deletion of the following sentence currently included in Special Condition #9: "No waste generated outside the municipal boundaries of the Village of Bradley may be accepted at this facility." This is the only modification to the permit being requested in the enclosed application. The application seeks no modification to the physical structure or property boundaries of the currently permitted facility.

This facility is located in the municipal boundaries of the Village of Bradley, Illinois. Although United Disposal of Bradley, Inc. can find no legal requirement that it seek approval of the modification requested in the enclosed application from the Village of Bradley, it has sought and received, by unanimous resolution of the Village of Bradley, the Village's support for the requested operating permit modification. I am enclosing a copy of that resolution with the permit application.

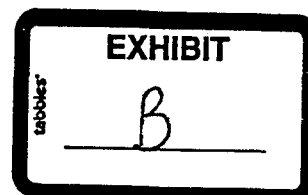
Please contact me upon your receipt and initial review of the enclosed application to let me know whether it is complete. Additionally, if you have any questions, please do not hesitate to contact me. I look forward to discussing this application with you in the near future.

Sincerely,

*Michael Watson*

Michael Watson  
President

United Disposal of Bradley, Inc.







# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

RENEE CIPRIANO, DIRECTOR

## General Application for Permit (LPC-PA1)

This form must be used for any application for permit, except for landscape waste composting or hazardous waste management facilities regulated in accordance with RCRA, Subtitle C from the Bureau of Land. One original and two (2) photocopies, or three (3) if applicable, of all permit application forms must be submitted. Attach the original and appropriate number of copies of any necessary plans, specifications, reports, etc. to fully support and describe the activities or modifications being proposed. Attach sufficient information to demonstrate compliance with all applicable regulatory requirements. Incomplete applications will be rejected. Please refer to the instructions for further guidance.

Note: Permit applications which are hand-delivered to the Bureau of Land, Permit Section must be delivered to 1021 North Grand Avenue East between the hours of 8:30 a.m. to 5:00 p.m., Monday through Friday (excluding State holidays).

Please type or print legibly.

### I. SITE IDENTIFICATION

Name: United Disposal of Bradley, Inc. Site # (Illinois EPA): 0 9 1 0 2 0 0 0 1 3  
Physical Site Location (street, road, etc.): 1000 E. Liberty  
City, Zip Code: Bradley, 60915 County: Kankakee  
Existing DE/OP Permit Nos. (if applicable): 1994-306-OP

### II. OWNER/OPERATOR IDENTIFICATION

	OWNER	OPERATOR
Name:	<u>Municipal Trust &amp; Savings Bank</u>	<u>United Disposal of Bradley, Inc.</u>
Address:	<u>as Trustee under trust 0799</u>	<u>1000 E. Liberty</u>
	<u>P.O. Box 146</u>	<u>Bradley, IL 60915</u>
	<u>Bourbonnais, IL 60914</u>	
Contact Name:	<u>Merlin Karlock</u>	<u>Michael Watson</u>
Phone #:	<u>(815) 935-8000</u>	<u>(815) 933-0081</u>

### III. PERMIT APPLICATION IDENTIFICATION

<b>TYPE SUBMISSION/REVIEW PERIOD:</b>	<b>TYPE FACILITY:</b>	<b>TYPE WASTE:</b>
<input type="checkbox"/> New Landfill/180 days (35 IAC Part 813)	<input type="checkbox"/> Landfill	<input checked="" type="checkbox"/> General Municipal Refuse
<input type="checkbox"/> Landfill Expansion/180 days (35 IAC Part 813)	<input type="checkbox"/> Land Treatment	<input type="checkbox"/> Hazardous
<input type="checkbox"/> Sign. Mod to Operate/90 days (35 IAC Part 813)	<input checked="" type="checkbox"/> Transfer Station	<input type="checkbox"/> Special (Non-hazardous)
<input type="checkbox"/> Other Sign. Mod/90 days (35 IAC Part 813)	<input type="checkbox"/> Treatment	<input type="checkbox"/> Chemical Only (exc. putrescible)
<input type="checkbox"/> Renewal of Landfill 90 days (35 IAC Part 813)	<input type="checkbox"/> Storage	<input checked="" type="checkbox"/> Inert Only (exc. chemical and putrescible)
<input type="checkbox"/> Developmental/90 days (35 IAC Part 807)	<input type="checkbox"/> Incinerator	<input type="checkbox"/> Used Oil
<input type="checkbox"/> Operating/45 days (35 IAC Part 807)	<input type="checkbox"/> Composting	<input type="checkbox"/> Potentially Infectious Medical Waste
<input checked="" type="checkbox"/> Supplemental/90 days (35 IAC Part 807)	<input checked="" type="checkbox"/> Recycling/Reclamation	<input checked="" type="checkbox"/> Landscape Waste
<input type="checkbox"/> Permit Transfer/90 days (35 IAC Part 807)	<input type="checkbox"/> Other (Specify)	<input type="checkbox"/> Other (Specify)
<input type="checkbox"/> Renewal of Experimental Permit (35 IAC Part 807)		

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

DESCRIPTION OF THIS PERMIT REQUEST: (Include a brief narrative description here.)

Revise condition #9 on permit 1994-30-OP to delete the following  
sentence "No waste generated outside the municipal boundaries of  
the Village of Bradley may be accepted at this facility."

GEORGE H. RYAN, GOVERNOR

This Agency is authorized to require this information under Revised Statutes, 1979, Chapter 111 1/2, Section 1039. Disclosure of this information is required under that Section. Failure to provide this information may prevent this form from being processed and could result in your application being denied. This form has been approved by the Forms Management Center.

## EXCULPATORY RIDER

This instrument is executed by Municipal Trust and Savings Bank, as Trustee under the provisions of a Trust Agreement dated 02-04-94 and known as Trust no. 0799, not personally, but solely as Trustee aforesaid, in the exercise of power and authority conferred upon and vested in it as such Trustee. This instrument is executed and delivered by the Trust solely in the exercise of the powers expressly conferred upon the Trustee under the Trust and upon the written direction of the beneficiaries and/or holders of power of direction of said Trust and Municipal Trust and Savings Bank, warrants that it possesses full power and authority to execute this instrument. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings and agreements herein made on the part of the trustee while in form purporting to be the said representations, warranties, covenants, undertakings and agreement of said Trustee are each and every one of them not made with the intention of binding Municipal Trust and Savings Bank, in its individual capacity, but are made and intended solely for the purpose of binding only that portion of the Trust property specifically described herein. No personal liability or personal responsibility is assumed by or nor shall at any time be asserted or enforceable against the Municipal Trust and Savings Bank on account of any representations, Warranties, (including but not limited to any representations and/or warranties in regards to potential and/or existent Hazardous Waste) covenants, undertakings and agreements contained in the instrument, (including but not limited to any indebtedness accruing plus interest hereunder) either express or implied or arising in any way out of the transaction in connection with which this instrument is executed, all such personal liability or responsibility, if any, being expressly waived and released, and any liability (including any and all liability for any violation under the Federal and/or state Environmental or Hazardous Waste laws) hereunder being specifically limited to the Trust assets, if any, securing this instrument. Any provision of this instrument referring to a right of any person to be indemnified or held harmless, or reimbursed by the Trustee for any costs, claims, losses, fines, penalties, damages, costs of any nature including attorney's fees and expenses, arising in any way out of the execution of this instrument or in connection thereto are expressly waived and released by all parties to and parties claiming, under this instrument. Any person claiming or any provision of this instrument referring to a right to be held harmless, indemnified or reimbursed for any and all costs, losses and expenses of any nature in connection with the execution of this instrument, shall be construed as only a right of redemption out of the assets of the Trust. Notwithstanding anything in this instrument contained, in the event of any conflict between the body of this exoneration and the body of this instrument, the provisions of this paragraph shall control. Trustee being fully exempted, nothing herein contained shall limit the right of any part to enforce the personal liability of any other party to this instrument.

State of Illinois        }  
                                  }  
                                  } SS  
County of Kankakee    }

CERTIFICATE

I, Gail Schultz, Deputy Village Clerk of the Village of Bradley, Illinois, do hereby certify that the attached is a true and correct copy of the original on file in the office of the Village Clerk.

Resolution R-3-03-4 passed and approved by the President and Board of Trustees on the 24<sup>th</sup> day of March 2003.

  
\_\_\_\_\_  
Gail Schultz, Deputy Village Clerk

3-25-03  
Date

(Seal)

## **RESOLUTION NO. R-3-03-4**

WHEREAS, United Disposal of Bradley, Inc., has applied for a Supplemental Operating Permit to the Illinois Environmental Protection Agency concerning its operation of the transfer station located on Liberty Street, in the Village of Bradley, Illinois; and

WHEREAS, United Disposal of Bradley, Inc., seeks support of the Village of Bradley and approval of the Supplemental Operating Permit; and

WHEREAS, United Disposal of Bradley has obtained its permit to construct the transfer facility, has obtained a permit to operate the facility from the Village of Bradley, and has been operating the facility since that time; and

WHEREAS, condition number 9 of its operating permit states that United Disposal of Bradley, Inc. may not accept any waste generated outside the municipal boundaries of the Village of Bradley; and

WHEREAS, United Disposal of Bradley, Inc. currently has customers outside of the Village of Bradley and it is necessary to request the amendment of condition number 9 in order to maintain a viable business; and

WHEREAS, the viability of the business of United Disposal of Bradley, Inc. is of interest to the municipal government and to the citizens of the Village of Bradley due to the fact that United Disposal of Bradley, Inc. is the waste hauler of the municipal government of the Village of Bradley serving all residential citizens of the Village of Bradley.

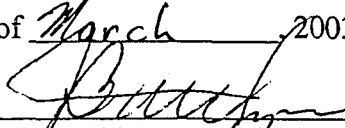
NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND THE BOARD OF TRUSTEES OF THE VILLAGE OF BRADLEY that its does support the request of United Disposal of Bradley, Inc. to amend its operating permit to repeal condition number 9 of the operating permit of United Disposal of Bradley, Inc.

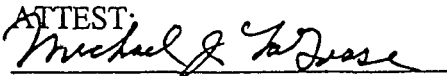
TRUSTEES:

Robert O. Martin:	Aye - <u>X</u>	Nay - <u>   </u>	Absent - <u>   </u>
Robert Redmond:	Aye - <u>X</u>	Nay - <u>   </u>	Absent - <u>   </u>
Bruce Adams:	Aye - <u>X</u>	Nay - <u>   </u>	Absent - <u>   </u>
Dennis Coy:	Aye - <u>X</u>	Nay - <u>   </u>	Absent - <u>   </u>
Caryl Wadley-Foy	Aye - <u>X</u>	Nay - <u>   </u>	Absent - <u>   </u>
George Dagnan	Aye - <u>X</u>	Nay - <u>   </u>	Absent - <u>   </u>
Jerry Balthazor:	Aye - <u>   </u>	Nay - <u>   </u>	Absent - <u>   </u>

TOTALS:            AYE - 6    NAY - 0    ABSENT - 0

APPROVED this 24<sup>th</sup> day of March, 2003.

  
\_\_\_\_\_  
Jerry Balthazor, President of the Board of Trustees of the Village of Bradley

ATTEST:  
  
\_\_\_\_\_  
Michael J. LaGessee, Village Clerk



# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

RENEE CIPRIANO, DIRECTOR

## NOTICE OF APPLICATION FOR PERMIT TO MANAGE WASTE (LPC-PA16)

Date: MARCH 28 2003

To Elected Officials and Concerned Citizens:

The purpose of this notice is to inform you that a permit application has been submitted to the IEPA, Bureau of Land, for a solid waste project described below. You are not obligated to respond to this notice, however, if you have any comments, please submit them in writing to the address below, or call the Permit Section at 217/524-3300, within twenty-one (21) days.

Illinois Environmental Protection Agency  
Bureau of Land, Permit Section (#33)  
1021 North Grand Avenue East, Post Office Box 19276  
Springfield, Illinois 62794-9276

The permit application, which is identified below, is for a project described at the bottom of this page.

### SITE IDENTIFICATION

Site Name: United Disposal of Bradley, Inc. Site # (IEPA): 0910200013

Address: 1000 E. Liberty

City: Bradley

County: Kankakee

<u>TYPE PERMIT SUBMISSIONS:</u>	<u>TYPE FACILITY:</u>	<u>TYPE WASTE:</u>
New Landfill _____	Landfill _____	General Municipal Refuse <u>X</u>
Landfill Expansion _____	Land Treatment _____	Hazardous _____
First Significant Modification _____	Transfer Station <u>X</u>	Special (Non-Hazardous) Chemical Only _____
Significant Modification to Operate _____	Treatment Facility _____	(exec. putrescible) _____
Other Significant Modification _____	Storage _____	Inert Only _____
Renewal of Landfill Development _____	Incinerator _____	(exec. chem. & putrescible) <u>X</u>
Operating Supplemental _____	Composting _____	Used Oil _____
Transfer _____	Recycling/Reclamation <u>X</u>	Solvents _____
Name Change _____	Other _____	Landscape/Yard Waste <u>X</u>
Generic _____		Other (Specify _____) _____

### DESCRIPTION OF PROJECT:

Revise condition #9 on permit 1994-30-OP to delete the following sentence "No waste generated outside the municipal boundaries of the Village of Bradley may be accepted at this facility."

Please retain a copy for your own use.

STATE OF ILLINOIS )

COUNTY OF KANKAKEE )

SS:

**CERTIFICATE OF SERVICE**

TO:

Debbie Halvorson  
State Senator  
241 W. Joe Orr Rd.  
Chicago Heights, IL 60411

Village of Bradley  
Village Clerk  
147 S. Michigan  
Bradley, IL 60915

Phil Novak  
State Representative  
135 S. Schuyler  
Kankakee, IL 60901

City of Kankakee  
City Clerk  
385 E. Oak  
Kankakee, IL 60901

States Attorney  
Kankakee County  
450 E. Court St.  
Kankakee, IL 60901

Village of Bourbonnais  
Village Clerk  
700 N.W. Main  
Bourbonnais, IL 60914

Karl Kruse  
County Board Chairman  
189 E. Court St.  
Kankakee, IL 60901

Village of Aroma Park  
Village Clerk  
2200 S. Lowe Rd.  
Aroma Park, IL 60910

Bruce Clark  
Kankakee County Clerk  
189 E. Court St.  
Kankakee, IL 60901

I, Jana Glenzinski, certify that I served a copy of the attached Notice of Application form Permit to Manage Waste and this Certificate of Service, via certified mail, return receipt requested from the mailbox located at P.O. Box 179 Bradley, Illinois, to the persons/entities identified above, at or prior to the hour of 5:00 p.m. on March 28, 2003, with proper postage prepaid.

Dated: March 28, 2003

By: Jana Glenzinski

Printed Name: Jana Glenzinski

Under penalties as provided by law pursuant to ILL. REV. STAT CHAP. 110, SEC. 1-109, I certify that the statements set forth herein are true and correct.

By: Jana Glenzinski

**U.S. Postal Service  
CERTIFIED MAIL RECEIPT  
(Domestic Mail Only; No Insurance Coverage Provided)**

**OFFICIAL USE**

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
<b>Total Postage &amp; Fees</b>	<b>\$ 4.42</b>

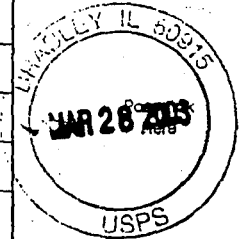


Sent To  
Village of Bourbonnais-Village Clerk  
Street, Apt. No.,  
or PO Box No. 700 N.W. Main  
City, State, ZIP+4  
Bourbonnais, IL 60914  
PS Form 3800, January 2001 See Reverse for Instructions

**U.S. Postal Service  
CERTIFIED MAIL RECEIPT  
(Domestic Mail Only; No Insurance Coverage Provided)**

**OFFICIAL USE**

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Certified Fee	
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Restricted Delivery Fee (Endorsement Required)	
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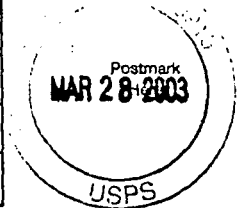


Sent To  
STATES ATTORNEY KANKAKEE COUNTY  
Street, Apt. No.,  
or PO Box No. 450 E COURT ST.  
City, State, ZIP+4  
KANKAKEE IL 60901  
PS Form 3800, January 2001 See Reverse for Instructions

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CERTIFIED MAIL RECEIPT  
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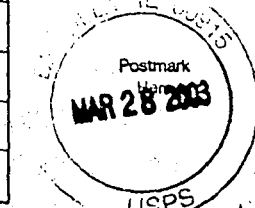


Sent To  
Debbie Halvorson State Senator  
Street, Apt. No.,  
or PO Box No. 241 W. Joe Orr Rd.  
City, State, ZIP+4  
Chicago Heights, IL 60411  
PS Form 3800, January 2001 See Reverse for Instructions

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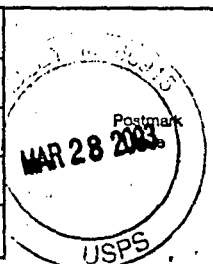


Sent To  
Karl Kruse County Board  
Chairman  
Street, Apt. No.,  
or PO Box No. 189 E Court St.  
City, State, ZIP+4  
Kankakee, IL 60901  
PS Form 3800, January 2001 See Reverse for Instructions

**U.S. Postal Service  
CERTIFIED MAIL RECEIPT  
(Domestic Mail Only; No Insurance Coverage Provided)**

**OFFICIAL USE**

Postage	\$
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Restricted Delivery Fee (Endorsement Required)	
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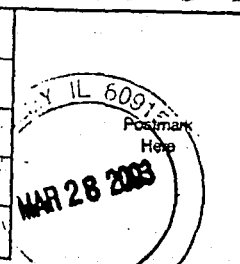


Sent To  
Village of Aroma Park-Village Clerk  
Street, Apt. No.,  
or PO Box No. 2200 S. Lowe Rd.  
City, State, ZIP+4  
Aroma Park, IL 60910  
PS Form 3800, January 2001 See Reverse for Instructions

**U.S. Postal Service  
CERTIFIED MAIL RECEIPT  
(Domestic Mail Only; No Insurance Coverage Provided)**

**OFFICIAL USE**

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
<b>Total Postage &amp; Fees</b>	<b>\$ 4.42</b>



Sent To  
Village of Bradley-Village Clerk  
Street, Apt. No.,  
or PO Box No. 147 S. Michigan  
City, State, ZIP+4  
Bradley, IL 60915  
PS Form 3800, January 2001 See Reverse for Instructions

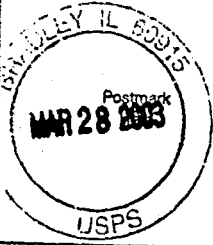


U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

7001 1940 0007 1100 0010 0467 1001

**OFFICIAL USE**

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
<b>Total Postage &amp; Fees</b>	<b>\$ 4.42</b>



Sent To  
**Bruce Clark Kankakee County Clerk**  
 Street, Apt. No.;  
 or PO Box No. **189 E COURT ST.**  
 City, State, ZIP+4  
**Kankakee IL 60901**

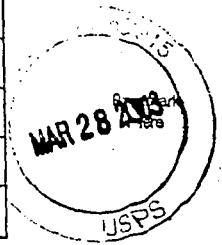
PS Form 3800, January 2001 See Reverse for Instructions

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

7001 1940 0007 1100 0010 0467 1001

**OFFICIAL USE**

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Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
<b>Total Postage &amp; Fees</b>	<b>\$ 4.42</b>



Sent To  
**City of Kankakee, City Clerk**  
 Street, Apt. No.;  
 or PO Box No. **385 E. Oak St.**  
 City, State, ZIP+4  
**Kankakee, IL 60901**

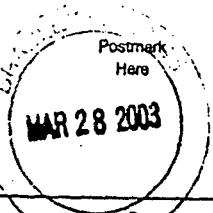
PS Form 3800, January 2001 See Reverse for Instructions

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Restricted Delivery Fee (Endorsement Required)	
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Sent To  
**Phil Novak State Representative**  
 Street, Apt. No.;  
 or PO Box No. **135 S. Schuyler**  
 City, State, ZIP+4  
**Kankakee, IL 60901**

PS Form 3800, January 2001 See Reverse for Instructions

# Querrey & Harrow

Querrey & Harrow, Ltd.  
175 West Jackson Blvd.  
Suite 1600  
Chicago, IL 60604-2827  
TEL (312) 540-7000  
FAX (312) 540-0578  
www.querrey.com

David E. Neumeister  
Direct No.: (312) 540-7554  
E-Mail: dneumeister@querrey.com

*Other Offices:*  
Crystal Lake, IL  
Joliet, IL  
Waukegan, IL  
Wheaton, IL  
Merrillville, IN  
New York, NY  
*Representative*  
U.K. Office:  
London

June 19, 2003

## Via Messenger

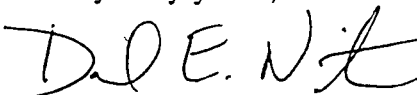
Lisa M. Madigan, Esq.  
Illinois Attorney General  
100 West Randolph Street  
12<sup>th</sup> Floor  
Chicago, Illinois 60601

Re: Notice of challenge of constitutionality of statute  
and related provisions

Dear Ms. Madigan:

Pursuant to Illinois Supreme Court Rule 19, this will serve as notice to your office of a challenge to the constitutionality of a permit condition which was imposed by the Illinois Environmental Protection Agency, pursuant to a former State of Illinois statute, specifically former versions of Sections 39.2 and 3.32 of the Illinois Environmental Protection Act (415 ILCS 39.2 and 3.32), and related provisions, which were in effect in 1994 and subsequently amended to delete the unconstitutional provisions. In the attached proceeding before the Illinois Pollution Control Board filed on today's date, our clients, United Disposal of Bradley, Inc. and Municipal Trust & Savings Bank as Trustee under Trust 0799, will seek to have a permit condition imposed under those former statutes declared to be in violation of the Commerce Clause of the Constitution of the United States to the extent that the statute prohibits a validly permitted waste transfer station from accepting waste from beyond the municipal boundaries of the Village of Bradley, Illinois, thereby wrongfully preventing and restricting the movement of articles in commerce.

Very truly yours,

  
David E. Neumeister

NEU/jc  
Enclosure



JUN 19 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD OF ILLINOIS  
STATE OF ILLINOIS  
Pollution Control Board

UNITED DISPOSAL OF BRADLEY, INC.,  
and MUNICIPAL TRUST & SAVINGS BANK,  
as Trustee Under Trust 0799

Petitioners,

vs.

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY,

Respondent.

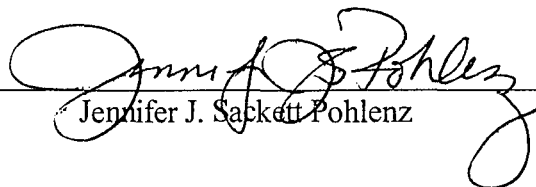
No. PCB 03-235

(Permit Appeal - Land)

APPEARANCE

I hereby file my appearance in this proceeding on behalf of Petitioners, United Disposal of Bradley, Inc. and Municipal Trust & Savings Bank, Trustee Under Trust 0799.

QUERREY & HARROW, LTD.

  
Jennifer J. Sackett Pohlenz

Name Jennifer J. Sackett Pohlenz  
Attorney for Petitioners  
Address 175 W. Jackson, Suite 1600  
City Chicago, Illinois 60604  
Telephone (312) 540-7000

Document #: 835029

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD STATE OF ILLINOIS  
Pollution Control Board

UNITED DISPOSAL OF BRADLEY, INC.,  
and MUNICIPAL TRUST & SAVINGS BANK,  
as Trustee Under Trust 0799

Petitioners,

vs.

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY,

Respondent.

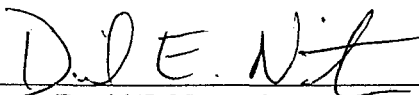
No. PCB 03-235

(Permit Appeal - Land)

APPEARANCE

I hereby file my appearance in this proceeding on behalf of Petitioners, United Disposal of Bradley, Inc. and Municipal Trust & Savings Bank, Trustee Under Trust 0799.

QUERREY & HARROW, LTD.

  
\_\_\_\_\_  
David E. Neumeister

Name David E. Neumeister  
Attorney for Petitioners  
Address 175 W. Jackson, Suite 1600  
City Chicago, Illinois 60604  
Telephone (312) 540-7000

Document #: 835032