

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 03-191
)	(Enforcement-Land)
COMMUNITY LANDFILL COMPANY, INC.,)	
an Illinois corporation, and)	
the CITY OF MORRIS, an Illinois)	
municipal corporation,)	
)	
Respondents.)	

to: Mr. Mark La Rose
La Rose & Bosco
200 N. La Salle Street, #2810
Chicago, IL 60601

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution
Control Board
100 W. Randolph Street
Chicago IL 60601

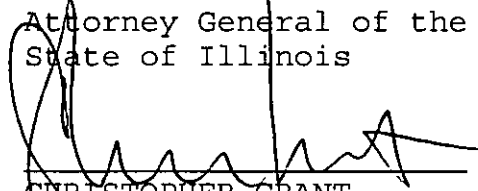
Mr. Charles Helsten
Hinshaw & Culbertson
100 Park Avenue
Rockford IL 61105-1389

NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, October 18, 2005, filed with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing, Complainant's Response to the City of Morris' Cross-Motion for Summary Judgment, a copy of which is attached and herewith served upon you.

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

BY:


CHRISTOPHER GRANT
Assistant Attorneys General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-5388

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Complainant,)	
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the CITY OF MORRIS, an Illinois)	
municipal corporation,)	
)	
Respondents.)	

COMPLAINANT'S RESPONSE TO THE CITY OF MORRIS'
CROSS-MOTION FOR SUMMARY JUDGMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, through its attorney, LISA MADIGAN, Attorney General of the State of Illinois, and hereby responds to Respondent's, THE CITY OF MORRIS' ("Morris") Response to Complainant's Motion for Summary Judgment, and Cross-Motion for Summary Judgment ("Morris Motion").

In support thereof, Complainant states as follows:

I. THE CITY OF MORRIS IS 'CONDUCTING A WASTE DISPOSAL OPERATION', AND IS THEREFORE SUBJECT TO 415 ILCS 5/21(d)(2) AND 35 ILL. ADM. CODE 811.700(f).

1. Respondent's denial of liability and Cross-Motion relies entirely on its argument that it is not 'conducting a waste disposal operation' at the Morris Community Landfill ("Landfill"), and therefore is not subject to either 415 ILCS 5/21(d)(2)(2004) or 35 Ill. Adm. Code 811.700(f). This argument

defies common sense, and is legally incorrect.

2. The City of Morris has actively participated in Landfill decisions since at least 1974. Morris has been permitted as either 'owner' or 'operator' since that time, operated the Landfill until 1982, contracted with Respondent Community Landfill Company ("CLC") for day-to-day operations, acted in concert with CLC on all permitting and financial assurance issues, and financially benefitted from Landfill operations. Clearly, the heavy involvement of the City of Morris in activities at the Morris Community Landfill subjects it to the regulations governing 'conducting waste disposal operations'.

a. Permitting

3. The City of Morris has applied for and obtained at least thirty five (35) Illinois Environmental Protection Agency ("Illinois EPA") permits (including modifications) covering waste disposal at the Morris Community Landfill. See: Second Affidavit of Cristina Roque, attached hereto as Exhibit K. Copies of two of these permits are attached to Complainant's Motion for Summary Judgment ("*Complainant's Motion*") as Exhibits A and B.

4. The Board should find that, as a matter of law, holding an Illinois EPA permit for waste disposal at a landfill constitutes 'conducting a waste disposal operation', thereby subjecting the Permittee to regulation under the waste disposal provisions of the Act, and the relevant Board regulations.

5. Illinois EPA waste disposal permits are required for those who conduct waste disposal operations. Section 21(d) of the Act, 415 ILCS 5/21(d) (2004), provides, in pertinent part, as follows:

Prohibited Acts. No person shall:

* * *

(d) Conduct any waste-storage, waste-storage, or waste disposal operation:

(1) without a permit granted by the Agency or in violation of any conditions imposed by such permit....

It is inconsistent to state that a party could obtain a required waste disposal permit for a disposal site, but not conduct waste operations. The application for and issuance of the permits itself proves Respondent Morris' intent.

6. Permit No. 2000-155-LFM, allows both the City of Morris and CLC to conduct solid waste disposal operations, specifically approving:

* * *

(c) Operation (i.e. waste disposal) within the permitted boundaries of the existing landfill.

* * *

Complainant's Motion, Exhibit A, p.2

7. Respondent Morris obtained not one, but thirty five such permits for the Morris Community Landfill, including operating permits.

8. Morris attempts to mislead the Board by stating that

Illinois EPA employee Brian White "testified that...the City of Morris has never been the permitted operator of the landfill...." [Morris Motion, par. 8]. Mr. White is not responsible for the issuance of permits, and could not be expected to have knowledge of all historical permits issued to the City of Morris. However, a list of waste disposal permits issued to the Respondent is attached hereto as Exhibit K, and shows that five (5) permits were issued to the City of Morris as "owner and operator".

9. Moreover, the City of Morris acknowledged operating the Landfill at its March 2, 2004 deposition. Representative deponent John Enger stated that, though he did not know exactly when the City opened the landfill, the City of Morris operated the landfill until 1982, and contracted with CLC because it had been a 'financial disaster' for the City. Copies of relevant portions of the deposition transcript are attached hereto as Exhibit L.

10. Additionally, the City of Morris submitted interrogatories to Complainant asking for the list of Illinois EPA permits issued to it as 'owner' and 'owner and operator'. The information provided to Morris in response was identical to that contained in Exhibit K. By asserting that an Illinois EPA employee 'testified' that Morris had never been a permitted operator, while knowing that it had obtained permits and operated the Landfill, the City of Morris is attempting to mislead the

Board.

b. Joint Action with Respondent Community Landfill Co.

11. The City of Morris was directly involved in every action at the Morris Community Landfill which resulted in the alleged violations. It contracted with Respondent Morris Community Landfill, applied for and was issued joint waste disposal permits, provided noncompliant financial assurance (in the form of a \$10,081,630 Frontier surety bond), litigated the validity of the Frontier Bonds along with CLC, and failed to replace the Frontier bonds with substitute financial assurance. As owner, it allowed operation of the landfill from 2000 to the present, even after the Frontier Bonds were determined to be noncompliant.

12. Evidence of the City of Morris' intention to jointly conduct waste disposal operations can be seen in the contract addendum negotiated by the Respondents in July, 1999. As described in PCB 01-48/PCB 01-49 (Consolidated), this provision provides, in pertinent part:

WHEREAS, while the Lessor and Lessee disagree with the IEPA that...the proper financial assurance number is \$7,077,716, in an effort to resolve the permit appeals presently pending and the have the significant modification permits issued for the landfill, the Lessor and Lessee are willing to post the IEPA required \$17,159,346 in performance bonds with the IEPA, and have the IEPA issue the significant modification permit...

* * *

5. Lessor and Lessee will file an application with the IEPA to reduce the financial assurance from \$17,159,346 to

\$7,077,716 after the significant modification permit applications have been approved for Parcels A and B. If the IEPA agrees to reduce the financial assurance to \$7,077,716 or less, then the Lessor's \$10,081,630 bond will be terminated and Lessee shall have no further responsibility for it. If the IEPA denies the applications to reduce the bond amount, the lessor and lessee shall jointly file an appeal with the Pollution Control Board and prosecute the same through the Illinois court, if necessary... (*emphasis supplied*)

Complainant's Motion, Exhibit D, pp. 27-28

13. Clearly, waste disposal operations at the Morris Community Landfill were a joint enterprise. The City of Morris took extraordinary steps to obtain issuance of the significant modification permits, including providing over ten million dollars of 'financial assurance', and litigating permit denials through the Third District Appellate Court. Respondent's claim that it merely acted as title owner of the land on which the Landfill operates is clearly false-it was an active participant at the Landfill.

c. Financial Benefits

14. The City also benefitted financially from operations at the Morris Community Landfill. The full amount of royalty and tax payment during the relevant period is now being sought in discovery from Respondent CLC. However, documents produced by the City of Morris show such payments being made. Attached hereto as Exhibit M is a document showing payment of over \$20,000.00 to be due for waste disposal during November, 2001. In addition, the City has received free and/or reduced-rate waste

disposal at the Landfill [*Complainant's Motion*, Exhibit J, at 21-22].

d. The Berger Case is Clearly Distinguishable from our Case

15. In *People v. Wayne Berger and Berger Waste Management*, PCB 94-373 (May 6, 1999), the Board found that landowner Berger Waste Management ("BWM") did not 'conduct a waste disposal operation' by its mere ownership of the landfill. In *Berger*, operator Wayne Berger had transferred ownership of a landfill after being cited for operational and financial assurance violations. However, no permit was transferred by Wayne Berger, and BMW was never issued any Illinois EPA-issued permits. The Board pointed to this fact in its ruling: "Significantly, all permits for the landfill were issued to Wayne Berger". *Berger*, slip op. at 8.

16. In our case, the City of Morris has been covered by thirty five separate permits (including modifications) for waste disposal activities at the Morris Community Landfill. Included are four permits issued to Morris as "owner and operator". The two Permits at issue in this case contain numerous requirements for the 'permittee', without specifying 'owner' or 'operator'. Both Respondents are bound by these conditions.

17. Additionally, the City did not acquire the Landfill after the violations occurred. It has owned the Morris Community Landfill since its original development. And, as shown above,

Morris has been actively involved in Landfill activities throughout.

18. Clearly, the *Berger* decision should be limited to the facts in that case, and not be read to limit the application of 415 ILCS 5/21(d)(2)(2004) only to permitted landfill operators.

II. THE ACT SHOULD BE CONSTRUED TO EFFECT ITS PURPOSE AND AVOID ABSURD RESULTS

19. Illinois Courts are directed to construe statutes to avoid absurd and unreasonable results. See, e.g. *Mulligan v. Joliet Regional Port District*, 123 Ill. 2d 303; 313 (1988). The Board has also determined that statutes are to be construed according to their intent and meaning. *Lionel Trepanier et al, v. Speedway Wrecking Company*, PCB 97-50 (January 6, 2000, slip op. at 9). In this case the Board noted:

"Where the spirit and intention of the legislature in adopting the acts are clearly expressed and their objects and purposes are clearly set forth, the courts are not confined to the literal meaning of the words used, when to do so will defeat the obvious intention of the legislature and result in absurd consequences not contemplated by it."

Trepanier, quoting *People ex. rel. Barrett v. Thillens*, 400 Ill. 224 (1948).

20. The goals of the general assembly are expressed in Section 2 of the Act, 415 ILCS 5/2 (2004), which provides, in pertinent part:

* * *

(b) It is the purpose of this Act, as more specifically

described in later sections, to establish a unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment, and to assure that the adverse effects upon the environment are fully considered and borne by those who cause them.

- (c) The terms and provisions of this Act shall be liberally construed so as to effectuate the purposes of this Act as set forth in subsection (b) of this Section....

Reviewing courts liberally construe the provisions of the Act. See, e.g. *People v. Conrail Corp*, 251 Ill. App. 3d, 550 (4th Dist. 1993); *People v. State Oil Company*, 352 Ill. App. 3d 813 (2d Dist 2004).

21. Respondent Morris is asking the Board to interpret the Act and regulations in a way that would lead to an absurd outcome. Two of Morris' contentions are particularly unreasonable: Its narrow construction of the term 'conduct', and its insistence that the financial assurance regulations contained in Part 811, Subpart G, do not apply to owners of Landfills.

a. The Term 'Conduct a Waste Disposal Operation' Should be Broadly Construed.

22. Morris urges the Board to adopt a restrictive interpretation of 'conduct', and limit its application only to Respondent CLC, the permitted operator. On the facts of this case, such an interpretation would be absurd. The City of Morris has obtained thirty five Illinois EPA waste disposal permits. The permits contain numerous conditions applicable to both the owner and operator.

23. Morris submits that it is merely the "owner of/fee title holder to property that has been used for waste disposal activities for Community Landfill Company" (Respondent's Motion, par. 7). This statement is incorrect. Respondent not only owns the land, it owns the Morris Community Landfill. From its initial development until 1982, it also operated its landfill, using City employees. See: Exhibit L, at 9-10. Because it was a 'financial disaster' it decided to lease its landfill to Community Landfill Company. However it never conveyed title to the Morris Community Landfill, and has continued to be bound under all subsequent permits. Moreover, as described above, it has remained heavily involved in landfill matters, including providing surety bonds and its appeal of permit denials.

24. Taking Respondent's argument to its logical conclusion, Section 21(d) of the Act, and all regulations enforceable thereunder, would only apply to a person, present at the landfill, who is physically involved in disposing of waste. It would also allow for permitted owners to set up a shell 'operator' entity, and personally avoid all of the consequences of violating the Board's landfill management regulations. Such a consequence would be absurd, and contrary to the intent of the General Assembly.

b. Respondent's Interpretation Conflicts With the Subpart G Regulations.

25. Finding that permitted owners do not 'conduct a waste

disposal operation' would render the financial assurance regulations meaningless.

26. Part 811, Subpart G, of the Board regulations applies to the Morris Community Landfill, and includes 35 Ill. Adm. Code 811.700(f), violations of which are alleged in the complaint against both Respondents.

Section 811.700 provides, in pertinent part,:

- (a) This Subpart provides procedure by which the owner or operator of a permitted waste disposal facility provides financial assurance satisfying the requirements of Section 21.1(a) of the Act.
- (b) Financial assurance may be provided, as specified in Section 811.706, by a trust agreement, a bond guaranteeing payment, a bond guaranteeing payment or performance, a letter of credit, insurance or self-insurance. The owner or operator shall provide financial assurance to the agency before the receipt of the waste.

* * *

Section 811.706 of Subpart G provides, in pertinent part as follows:

- (a) the owner or operator of a waste disposal site may utilize any of the mechanisms listed in subsections (a)(1) through (a)(10) to provide financial assurance for closure and postclosure care, and for corrective action at an MSWLF unit. An owner or operator of an MSWLF unit shall also meet the requirements of subsections (b), (c), and (d). The mechanisms are as follows:

* * *

- (c) The owner or operator of an MSWLF unit shall provide financial assurance utilizing one or more of the mechanisms listed in subsection (a) within the following dates:

- 1) by April 9, 1997, or such later date granted pursuant to Section 811.700(g), or prior to the initial receipt of solid waste, whichever is later, in the case of closure or post-closure care;

* * *

(emphasis supplied)

27. The provisions of Subpart G expressly apply to owners or operators. Obtaining financial assurance is mandatory (i.e. "shall"). In our case, neither 'owner' City of Morris or 'operator' Community Landfill Company have provided compliant financial assurance. See: Brian White affidavit, Complainant's Motion, Exhibit G.

28. Clearly, the provisions of Subpart G must be interpreted to require owners and operators to provide financial assurance, although either party may arrange it. Otherwise, both owners and operators could claim that they had no mandatory obligation because the other party was bound-an absurd and unreasonable result.

29. The requirements for "owners or operators" contained throughout Subpart G would be rendered meaningless by construing 811.700(f) to apply only to permitted operators. As the Subpart G regulations require financial assurance of "owners or operators", and prohibit 'persons' from conducting waste disposal operations without financial assurance, the regulations implicitly include both owners and operators within the group

that 'conducts waste disposal operations'.

30. Respondent's assertion that permitted owners of landfills do not conduct waste disposal operations, and therefore are not bound by either Section 811.700(f) or 415 ILCS 5/21(d)(2004), requires an unreasonable and absurd interpretation of these sections.

III. THE CITY OF MORRIS HAS NEVER ARRANGED FOR, OR OFFERED TO ARRANGE FOR, COMPLIANT FINANCIAL ASSURANCE

31. The City of Morris misstates Complainant's argument regarding the application of collateral estoppel in this case. Complainant simply asks the Board to recognize its previous ruling that the Frontier Bonds submitted by the Respondents do not comply with 35 Ill. Adm. Code 811.712. The affidavit of Brian White shows that neither Respondent has substituted any of the ten mechanisms listed in 35 Ill. Adm. Code 811.706.

32. The City of Morris again attempts to mislead the Board by stating that it has offered Illinois EPA financial assurance in the form of a local government guarantee. In fact, the City of Morris has steadfastly refused to provide compliant financial assurance in any form.

33. To be compliant, a financial assurance mechanism must meet the requirements of 35 Ill. Adm. Code 811.706, and fulfil the specific requirements of the relevant regulatory section [e.g. 811.712 for performance bonds]. The amount of financial assurance must total at least \$17,427,366.00 for the two landfill

parcels, and must be updated annually [retroactive to 2000], pursuant to 35 Ill. Adm. Code 811.701. Complainant's Motion asks the Board to order the Respondents to provide financial assurance meeting these requirements.

34. The City of Morris twists the meaning of 'local government guarantee' by claiming that it 'can and would' provide such financial assurance [Morris Motion, par. 19].

35. There is no question that a Local Government Guarantee meeting the requirements of 35 Ill. Adm. Code Section 811.717 would comply with 811.706 and 811.700(f). Section 811.717 provides, in pertinent part:

Section 811.717 Local Government Guarantee

An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by Section 21(a) of the Act and 811, Subpart G by obtaining a written guarantee provide by a unit of local government. The guarantor shall meet the requirements of the local government financial test in Section 811.716, and shall comply with the terms of a written guarantee

* * *

An owner who fully complies with 811.716 and 811.717 has the option to 'pay or perform' closure/post closure/corrective action, or establish a fully funded trust fund per 811.710.

36. 35 Ill. Adm. Code 811.716 imposes a number of requirements on municipalities. First there is a financial standard to be met (811.716(a)). Additionally, the municipality must disclose its closure/post closure liability in its financial

report (811.716(b) and comply with record keeping and reporting requirements (811.716(c)). Further, the amount of closure/post closure costs that may be secured is limited and based on its annual revenue (811.716(d)).

37. Compliance with the Local Government Financial Test was repeatedly emphasized by Illinois EPA's Blake Harris at his deposition (*Morris Motion*, Exhibit A, pp. 52, 54, 56-60.)

38. The City of Morris has not described financial assurance compliant with Sections 811.716 and 811.717. As described in paragraphs 38-39 of its Motion, the City's proposal is to:

"...in fact comply with Section 811.706...by posting a local government guarantee to "perform" leachate collection and treatment activities for the landfill at its local POTW at no cost to the State, to unconditionally reserve that capacity needed for 100 years to address this need, and to implement other closure/post closure measures as the need arises over the applicable closure/post closure period."

However, the City of Morris notes:

"...IEPA has advised the City that the form would not be accepted as adequate financial assurance"

The City of Morris offers no affidavit, or written communication with Illinois EPA, to back up any claim that it is willing to provide financial assurance compliant with 811.716 and 811.717. If such an offer is now made in earnest, the City of Morris should not object to a Board order requiring compliant financial assurance, as sought by Complainant.

39. However, the 'financial assurance' described above

constitutes no more than the same proposal rejected by the Board in PCB 01-48/01-49. In that case, the Respondents sought to reduce the amount of financial assurance by \$10,000,000, through their agreement to treat leachate from the Morris Community Landfill, free or at a reduce cost. Complainant's Motion, Exhibit D, at 26. In rejecting this proposal, the Board noted that, in the event of a failure of Morris' POTW, and treatment was not covered by financial assurance, the burden of treating leachate could fall to the State. *Complainant's Motion, Exhibit D*, at 29.

40. Respondent's 'offer' is to 'perform', by treating leachate at its POTW, and provide compliant financial assurance of approximately \$7,000,000.00. However, Respondent did not [and perhaps can not] agree to comply with the Local Government Financial Test contained in 35 Ill. Adm. Code 811.716. It would be illegal for Illinois EPA to agree to such a proposal, which would violate the Act and Subpart G regulations.

IV. THE CITY OF MORRIS' VIOLATIONS WERE WILFUL AND REPEATED

41. From at least August 8, 2000 until the present, no compliant financial assurance has been in place for the Morris Community Landfill. Since December 5, 2002, when the Illinois Supreme Court refused to hear Respondent's appeal, there has been no question that the Frontier Bonds would have to be replaced with compliant financial assurance. And yet neither Respondent

has done so to the date of filing of this Response.

42. Not only have the Respondents failed to provide financial assurance, they continued to cause and allow the disposal of waste at the Morris Community Landfill. The City of Morris continued to accept royalties from this disposal. Also, it is clear that both Respondents have avoided the cost of providing compliant financial assurance during this period.

43. Despite having been rejected by the Board in its attempt to substitute treatment of leachate at its POTW for \$10,000,000.00 of financial assurance, the City of Morris continues to attempt to justify this position, demonstrating an absence of good faith.

44. Despite its landfill ownership, multiple waste disposal permits, and the clear language of Subpart G applying to 'owners and operators', the City of Morris claims that it is exempt from Section 21(d) of the Act, 415 ILCS 5/21(d) (2004), and thereby also exempt from waste disposal regulations. Complainant believes that this position represents a failure to accept responsibility, and also demonstrates a lack of good faith.

45. The financial assurance requirements of Subpart G are clear and understandable. Prior Board and Appellate Court decisions relating to the Landfill have settled any question as to the amount and type of financial assurance required of the Respondents. Where, as in our case, Respondents continue to

cause and allow landfill operations in the absence of any financial assurance, the Board should find that such violations are knowing and wilful.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board grant its Motion for Summary Judgment against the Respondents, COMMUNITY LANDFILL COMPANY and the CITY OF MORRIS, deny Respondent CITY OF MORRIS' Cross-Motion for Summary Judgment, and issue an order:

1. Finding that the Respondents have violated 415 ILCS 5/21(d)(2)(2004), and 35 Ill. Adm. Code Sections 811.700(f) and 811.712;
2. Finding that the Respondents' violations were wilful, knowing, and/or repeated;
3. Ordering the Respondents to cease and desist from transporting and depositing any additional material at the Morris Community Landfill until they are in full compliance with their Permits, and the Board's financial assurance regulations;
4. Requiring the Respondents to immediately provide financial assurance as required by the Act, Part 811, Subpart G, of the Board solid waste regulations, and the Respondents' Permits;
5. Requiring the Respondents to update the closure/postclosure costs in accordance with the Subpart G regulations, Permits No. 2000-155-LFM, 2000-156-LFM, and

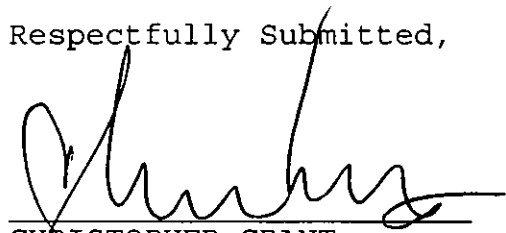
modifications thereto;

6. Ordering the Respondents to initiate closure of parcels A & B of the Landfill; and

7. Setting a date for hearing on the issue of civil penalty.

Respectfully Submitted,

BY:



CHRISTOPHER GRANT
JENNIFER TOMAS
Assistant Attorneys General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, Illinois 60601
(312) 814-5388
(312) 814-0609

EXHIBIT K

SECOND AFFIDAVIT OF CRISTINA ROQUE

I, Cristina Roque, after being duly sworn on oath, state that if called upon to testify in this matter, I would competently testify as follows:

1. I am a Environmental Protection Engineer for the Illinois Environmental Protection Agency ("Illinois EPA").

2. I have been employed with the Illinois EPA since 1992.

3. I received a Bachelor of Science Degree in Engineering Management in December, 1991, from the University of Illinois.

4. I am a member of the Illinois EPA, Permit Section. My responsibilities include the review of permit applications for construction, operation, and closure of non-hazardous solid waste management facilities.

5. I am familiar with the landfill generally known as the Morris Community Landfill ("Landfill") located in Morris, Illinois.

6. The following permits were issued to the City of Morris as "Owner and Operator":

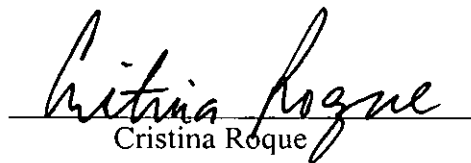
Permit No. 1974-22-DE
Permit No. 1974-22-OP
Supplemental Permit No. 78-1148
Supplemental Permit No. 1980-160
Supplemental Permit No. 1989-005-SP

7. The following permits were issued to the City of Morris as "Owner":

Permit No. 1974-22-DE
Permit No. 1974-22-OP
Supplemental Permit No. 78-1148
Supplemental Permit No. 1980-160
Permit No. 1974-22-OP (Permit Transfer)
Permit No. 1974-22-DE (Permit Transfer)

Supplemental Permit No. 1983-26
Supplemental Permit No. 1983-172-SP
Supplemental Permit No. 1988- 253-SP
Supplemental Permit No. 1989-005-SP
Permit No. 1990-048-DE/OP
Supplemental Permit No. 1990-523-SP
Supplemental Permit No. 1991-114-SPX
Supplemental Permit No. 1991-195-SP
Supplemental Permit No. 1991-262-SP
Supplemental Permit No. 1993-066-SP
Supplemental Permit No. 1991-114-SPX (Log. No. 1993-120)
Permit No. 1990-048-DE/OP (Log No. 1993-119)
Interim Permit No. 1993-401-IN
Supplemental Permit No. 1994-388-SP
Supplemental Permit No. 1996-196-SP
Permit Nos. 1974-22-DE and 1974-22-OP (Log No. 1996-218)
Supplemental Permit No. 1996-240-SP
Supplemental Permit No. 1996-196-SP (Log No. 1997-213)
Supplemental Permit No. 1999-175-SP
Permit No. 2000-155-LFM
Permit No. 2000-155-LFM Modification No.1
Permit No. 2000-155-LFM Modification No.2
Permit No. 2000-155-LFM Modification No.3
Permit No. 2000-155-LFM Modification No.4
Permit No. 2000-156-LFM
Permit No. 2000-156-LFM Modification No.1
Permit No. 2000-156-LFM Modification No.2
Permit No. 2000-156-LFM Modification No.3

FURTHER AFFIANT SAYETH NOT


Cristina Roque

Subscribed and Sworn to
before me this 17th day of
October 2005.


NOTARY PUBLIC

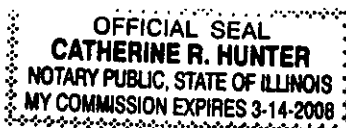


EXHIBIT L

Page 1

Page 3

S48478

BEFORE THE ILLINOIS
POLLUTION CONTROL BOARDPEOPLE OF THE STATE OF)
ILLINOIS,)

Complainant,)

vs.) PCB 03-191

COMMUNITY LANDFILL)
COMPANY, INC., an)
Illinois corporation, and)
THE CITY OF MORRIS, an)
Illinois municipal)
corporation,)

Respondents.)

Deposition of JOHN D. ENGER, called as a witness by the Complainant, pursuant to the provisions of the Illinois Code of Civil Procedure and the rules of the Supreme Court thereof pertaining to the taking of depositions for the purpose of discovery, before Deborah L. Fabritz, C.S.R., R.P.R., Notary Public in and for the County of DeKalb, State of Illinois, taken at Morris City Hall, 320 Wauponsee Street,

LaROSE & BOSCO, LTD., by
MR. MARK A. LaROSE,
734 North Wells Street
Chicago, IL 60610
(312) 642-4414

Appearing telephonically on behalf of
Community Landfill Company, Inc.

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Morris, Illinois, on the 2nd day of March, A.D.
2004, at the hour of 3:25 p.m.

PRESENT:

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS, by

MR. CHRISTOPHER J. GRANT and
MR. JOEL J. STERNSTEIN,
Assistant Attorney Generals
Environmental Bureau North

188 West Randolph Street
20th Floor
Chicago, IL 60601
(312) 814-5388

Appearing on behalf of the Complainant;
and

HINSHAW & CULBERTSON, by
MR. CHARLES F. HELSTEN,
100 Park Avenue
Rockford, IL 61105
(815) 490-4900

And
LAW OFFICES OF SCOTT M. BELT & ASSOCIATES, P.C.,
by

MR. SCOTT M. BELT,

Suite 206
105 E. Main Street
Morris, IL 60450

Appearing on behalf of the City of
Morris; and

DEPOSITION OF JOHN D. ENGER

EXAMINATION

By Mr. Grant 5
By Mr. LaRose 65
By Mr. Grant 74

EXHIBITS

Respondent Exhibit No. 1 15
Respondent Exhibit No. 2 26
Respondent Exhibit No. 3 36
Respondent Exhibit No. 4 37

1 (Pages 1 to 4)

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1 don't know what, what day it was, but it was
 2 1982, I believe.
 3 Q The original contract, the contract between
 4 which parties?
 5 A With Community Landfill and the City.
 6 Q Okay. Let me restate my question.
 7 Did -- for the Morris Community Landfill
 8 or what is now known as the Morris Community
 9 Landfill, do you know when that first began
 10 operations, not necessarily -- just when
 11 Community Landfill Company became involved in
 12 it?
 13 A Could you repeat that?
 14 Q Sure. Do you know when the landfill, I assume
 15 that it was always called the Morris Community
 16 Landfill, that may be incorrect, but do you
 17 know how long the Morris Community Landfill has
 18 been operating under anybody's auspices?
 19 A I don't know but -- I don't know.
 20 I know that prior to that, the City
 21 tried to operate the landfill themselves and it
 22 was a disaster, financial disaster. And that
 23 was, it's been out there -- I've lived in
 24 Morris 49 years, we've always had a landfill at

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1 that site.
 2 Q Okay. And did you say that at some point the
 3 City operated the landfill?
 4 A Prior to 1982.
 5 It's my recollection that they did.
 6 Q Was it operated with City employees?
 7 A Yes.
 8 Q Okay. Do you know at that time, when it first
 9 began operations prior to 1982, what type of
 10 refuse or waste was disposed of at the Morris
 11 Community Landfill?
 12 A General municipal waste as far as I know.
 13 Q Let me just stop right here and tell you, the
 14 Morris Community Landfill's divided into two
 15 parcels, Parcel A and Parcel B.
 16 Unless I specifically mention Parcel A
 17 or Parcel B, I'm talking about both.
 18 So when I ask you about the Morris
 19 Community Landfill --
 20 A Okay.
 21 Q Jumping ahead to what you just said --
 22 MR. HELSTEN: Chris, for purposes
 23 of clarification, Parcel A is which side of the
 24 road and parcel -- which do you want to call

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1 them?
 2 The only reason I ask that, I've had
 3 people in this area interchangeably say Parcel
 4 A is the east side and other people, no, it's
 5 the west side.
 6 So we should probably have an
 7 understanding so that Mr. Enger and you and the
 8 rest of us aren't tracking on the wrong --
 9 generally, I call Parcel A the east side and
 10 Parcel B the west side; is that --
 11 MR. LaROSE: Me, too.
 12 MR. GRANT: So Parcel A is the
 13 east side?
 14 MR. HELSTEN: Parcel B would be
 15 the west side.
 16 BY MR. GRANT:
 17 Q Okay. You mentioned a contract. I think
 18 you're talking about a contract with the
 19 Community Landfill Company?
 20 A Yes.
 21 Q Correct me if I'm wrong, I think you said it
 22 was 1982?
 23 A I believe so.
 24 Q Okay. Do you recall the circumstances of why

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1 the City of Morris wanted to contract with
 2 another party to --
 3 A It's my recollection, I was on the Council in
 4 '81, the City was losing several hundred
 5 thousand dollars a year. We had a new
 6 administration come in in '81, and they took a
 7 look at it and thought it would be, you know,
 8 more profitable to the City if it were leased
 9 out to a private concern.
 10 Q Okay. Do you know how Community Landfill
 11 Company was selected?
 12 A No.
 13 Q Okay. Do you know who the owners were of
 14 Community Landfill Company at approximately
 15 that date? In other words, about 1982.
 16 A I believe it's the Pruims or was the Pruims.
 17 There was -- I think the first manager out
 18 there was a man by the name of -- I don't
 19 recall his name. I know he's from Joliet, but
 20 I don't recall his name.
 21 Q Okay. Mr. Enger, are you familiar with
 22 Illinois EPA permits and permit applications
 23 regarding the Morris Community Landfill?
 24 A I have seen some of them.

3 (Pages 9 to 12)

EXHIBIT M

STATEMENT

CITY OF MORRIS

320 WAUPONSEE STREET
MORRIS, ILLINOIS 60450
PHONE: 815/942-4026

Date January 21, 2002

Community Landfill
13901 S. Ashland Ave.
Riverdale, IL 60827

TERMS:

\$ 20,404.21

PLEASE DETACH AND RETURN WITH YOUR REMITTANCE

Date	Charges and Credits	Balance	
	Balance Forward →		
1/21/02	Royalties due to City of Morris under new contract - November 1, 2001 thru November 30, 2001		
	Loads under 2 c.y. - 0 loads @ \$ 3.15 each	0	00
	Loads 2 to 4 c.y. - 88 loads @ \$ 4.81 each	423	28
	Loads 5 to 10 c.y. - 75 loads @ \$ 7.99 each	599	25
	Loads over 10 c.y. - 486 loads @ \$39.88 each	19,381	68
	AMOUNT DUE	\$20,404	21

CITY OF MORRIS

CAL'S PRINTING, MORRIS, IL

Thank You

→
PAY LAST AMOUNT
IN THIS COLUMN

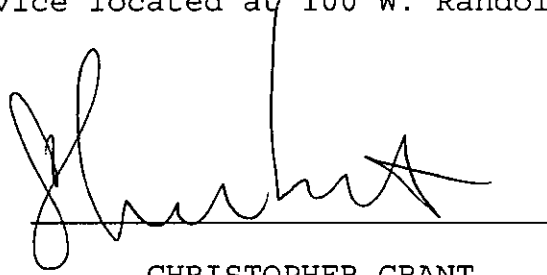
0411

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 03-191
)	(Enforcement-Land)
COMMUNITY LANDFILL COMPANY, INC.,)	
an Illinois corporation, and)	
the CITY OF MORRIS, an Illinois)	
municipal corporation,)	
)	
Respondents.)	

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 18th day of October, 2005, the foregoing Response to the City of Morris' Cross-Motion for Summary Judgment, and Notice of Filing, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.

A handwritten signature in black ink, appearing to read 'Christopher Grant', is written over a horizontal line.

CHRISTOPHER GRANT