

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

vs.

COMMUNITY LANDFILL COMPANY, INC.,

an Illinois corporation, and

the CITY OF MORRIS, an Illinois

municipal corporation,

Respondents.

PCB No. 03-191  
(Enforcement-Land)

to: Mr. Mark La Rose  
La Rose & Bosco  
200 N. La Salle Street, #2810  
Chicago, Illinois 60601  
(312)642-0434

Mr. Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
100 W. Randolph, #2001  
Chicago, IL 60601

Mr. Charles Helsten  
Hinshaw & Culbertson  
100 Park Avenue  
Rockford IL 61105-1389  
(815)963-9989

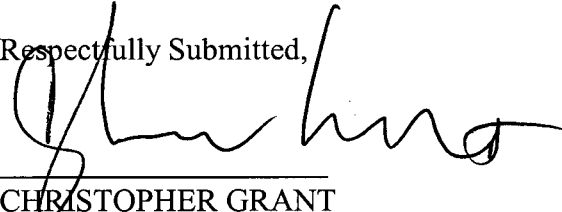
Mr. Scott Belt  
105 East Main Street  
Suite 206  
Morris, Illinois 60450

**NOTICE OF FILING**

PLEASE TAKE NOTICE that we have today, October 13, 2006, filed Complainant's Reply with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing. A copy is attached hereto, and served upon you.

Respectfully Submitted,

BY:

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

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**COMPLAINANT'S REPLY**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, and respectfully requests that the Board consider its Reply to the City of Morris' Response to Motion for Interlocutory Appeal. Pursuant to 35 Ill. Adm. Code 101.500(e), the Board will only consider a under circumstances where the moving party may otherwise be subject to material prejudice. Complainant believes that a Reply is appropriate in this case, because it believes that Respondent City of Morris ("Morris") has provided an incomplete description of the status of compliance at the Morris Community Landfill ("Landfill"). Because Complainant believes the deteriorating conditions at the landfill provide a basis for immediate action by the Board, it believes that this short Reply is necessary to avoid material harm.

**I. Witness Disclosure**

Although the City of Morris had previously disclosed eight witnesses in response to the State's discovery requests, it did not name Edward Pruim as a witness until September 28, 2006, less than one month before hearing, and six days after Respondent Community Landfill Co. had

moved to cancel hearing on the basis of Edward Pruium's unavailability. The State believes the Board may draw its own conclusions about the timing of this late disclosure.

## **II. Deposition Testimony of Devin Moose**

Mr. Devin Moose, described as the "...City's primary technical consultant..." (Response, p.3) was deposed on August 2, 2006. At his Deposition Mr. Moose stated that the cost of closure of Parcels A & B of the Morris Community Landfill was \$7.4 MM (*Exhibit A*, at p. 62). He then testified, as follows:

Q....Have you discussed the various tasks and especially the amount of money that's required to do these tasks?

A. Yes.

Q. Does that City--can the City of Morris afford to do closure at a, say, 7.4 million dollars...But as far as doing closure at 7.4 million dollars, can the City of Morris afford to do that?

A. They tell me no.

Q. Did they give you an idea about how much they could afford to spend?

A. No.

(*Exhibit A*, pp. 62-3).

Mr. Moose's testimony shows the substantial harm to the State from the City and CLC's violation of the financial assurance regulations. The City and CLC have failed to provide compliant financial assurance for closure and post-closure care and now the situation has seriously degraded. Closure costs have increased to \$7.4 MM, but the City has not made provision to cover closure costs. This is precisely the harm sought to be avoided by the financial assurance regulations.

The City's request that the status quo continue is irresponsible. The Board must act now, and require that the Respondents immediately secure financial assurance for closure and post-closure care of the Landfill.

RESPECTFULLY SUBMITTED

BY: 

Christopher Grant  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Flr.  
Chicago, Illinois 60601  
(312) 814-5388

**ORIGINAL**

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

The deposition of DEVIN A. MOOSE, P.E., DEE  
 taken before Linda A. Lance, C.S.R, R.P.R., a Notary  
 Public in and for the County of McHenry, State of  
 Illinois, taken at the offices of Shaw Environmental,  
 Inc., 1150 N. Fifth Avenue, St. Charles, Illinois, on  
 Wednesday the 2nd of August, A.D., 2006, scheduled at  
 the hour of 1 o'clock but commencing at 1:10 p.m.

## PRESENT:

STATE OF ILLINOIS ATTORNEY GENERAL  
 BY: MR. CHRISTOPHER J. GRANT,  
 Assistant Attorney General  
 188 W. Randolph Street, 20th Floor  
 Chicago, IL 60601  
 (312) 814-5388  
 appeared on behalf of Complainant;

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY  
 BY: MR. BRUCE A. KUGLER, Assistant Counsel  
 1021 North Grand Avenue  
 P.O. Box 19276  
 Springfield, IL 62794-9276  
 (217)-782-5544  
 appeared on behalf of Illinois EPA;

EXHIBIT

A

1 million dollars?

2 A Correct.

3 Q And of that 2.6 million is post-closure care?

4 A Correct.

5 Q Okay. You're going to -- I'm going to --  
6 we're going to give you the opportunity to discuss some  
7 of the things and I want to know about what you think  
8 needs to be done. I think that was in your disclosure  
9 as far as the tasks that need to be done at the  
10 landfill. But at this point let me just ask you about  
11 financing the total of the 10 million dollars, the 7.4  
12 and 2.6 million dollars. Your client is the City of  
13 Morris. Have you discussed the various tasks and  
14 especially the amount of money that's required to do  
15 these tasks?

16 A Yes.

17 Q Does the City -- can the City of Morris  
18 afford to do closure at a, say, 7.4 million dollars and  
19 2.6 million -- well, the two, the post-closure care we  
20 can talk, we'll talk about that separately. But as far  
21 as doing closure at 7.4 million dollars, can the City of  
22 Morris afford to do that?

23 A They tell me no.

24 Q Did they give you an idea about how much

1 money they could afford to spend?

2 A No.

3 Q As far as the post-closure care, then let's  
4 assume 2.6 million dollars of post-closure care, have  
5 you discussed that separately with them, in other words,  
6 can the City of Morris afford to put up 2.6 million  
7 dollars of -- to assure post-closure?

8 A No, I did not discuss it separately with  
9 them.

10 Q You're familiar with the regulations. Can  
11 you tell me how with, with the current financial  
12 assurance that's in the permit of 17 plus million  
13 dollars, if you wanted to, as you obviously think that's  
14 incorrect, how would you change the required amount of  
15 financial assurance?

16 A I would implement a plan that focused on  
17 instead of financial assurance a series of tasks that go  
18 to the --

19 Q Before you -- no, I understand. Before we  
20 get into that, and I'm sure we will, I mean you'll agree  
21 that currently the permits for the landfill require at  
22 least 17 million dollars of --

23 A I agree.

24 Q -- closure, post-closure financial assurance?

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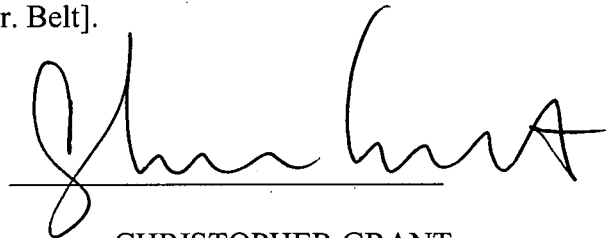
Respondents.

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(Enforcement-Land)

**CERTIFICATE OF SERVICE**

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 13th day of October, 2006, the foregoing Reply and Notice of Filing, upon the persons listed on said Notice by fax and first class mail [to Mr. Helsten and Mr. La Rose], hand delivery [to Hearing Officer Halloran], and by first class mail only [to Mr. Belt].

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

CHRISTOPHER GRANT