

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)

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JUN 03 2009

STATE OF ILLINOIS
Pollution Control Board

ORIGINAL

NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, June 3, 2009, filed with the Office of the Clerk of the Illinois Pollution Control Board, the original and nine (9) copies of Complainant's Request for Final Order, a copy of which is attached and herewith served upon you.

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

BY:


CHRISTOPHER GRANT
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REQUEST FOR FINAL ORDER

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, and hereby requests that the Illinois Pollution Control Board ("Board") issue its final decision in this matter. An immediate decision is necessary and appropriate because of ongoing violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2006), at the Morris Community Landfill ("Landfill"), which may only be addressed after the Board issues its decision.

I. THIS MATTER IS RIPE FOR DECISION

This subject matter of this case, the failure of Community Landfill Company ("CLC") and the City of Morris ("City") to provide compliant financial assurance for their Landfill operations, has now been before the Board for almost nine (9) years. In PCB 00-48/PCB 00-49 the Board upheld the Illinois Environmental Protection Agency's ("Illinois EPA's") findings on the amount of financial assurance required. In PCB 00-170, the Board upheld Illinois EPA's findings on the invalidity of the financial assurance then in place. The Board's findings were

upheld by the Appellate Court almost seven (7) years ago¹. In this enforcement case, the Board found CLC and the City in violation almost forty (40) months ago, and a two-day hearing on remedy was held more than twenty (20) months ago². As shown herein, the Respondents remain in violation of 415 ILCS 5/21(d)(2) and 35 Ill. Adm. Code 811.700. However, they have continued dumping operations. It is time for the Board to make its final ruling and allow the State to enforce the law.

II. FURTHER DELAY WILL PREJUDICE THE STATE

1. There is No Financial Assurance for Closure or Post-Closure Care of the Landfill

As shown by the Affidavit of Brian White³, despite the Board's earlier findings of violation, the Respondents still have not arranged for financial assurance for closure and post-closure care.

The Board has consistently emphasized the important role of financial assurance at landfills. The purpose of financial assurance is to prevent taxpayers from being stuck with costs that should have been borne by the landfills' owners and operators⁴. Here, the financial assurance violations are particularly serious. As shown in Complainant's Post Hearing Brief, Parcel B of the Landfill is both overcapacity, and 13 years overdue for closure. Although both the City and CLC continue to dump illegally at the Landfill, there is no assurance that the

¹331 Ill. App. 3d 1056 (3d Dist., July 17, 2002)

²Between the three cases, the Board has held eight days of hearing on this issue.

³Exhibit A

⁴See, e.g.: *ESG Watts v. Illinois EPA*, PCB 01-63 (April 4, 2002); *People v. Wayne Berger*, PCB 94-373 (May 6, 1999); *People v. ESG Watts* (PCB 96-237 (February 19, 1998)

Landfill will ever be properly closed, or that future costs will be borne by anyone other than State taxpayers. This risk is unacceptable, and the Board must take immediate action.

2. CLC and the City Have Continued Illegal Dumping Operations

Despite the fact that Board found them in violation almost forty months ago, CLC and the City have continued to operate a dumping business at the Landfill, in flagrant violation of the Act, Board Regulations, and Illinois EPA-issued waste disposal permits.

The State provided indisputable evidence of continued dumping at the Landfill without closure and post-closure financial assurance in its Motion for Summary Judgment⁵. In its Motion, the State asked the Board to order CLC and the City to stop this illegal dumping upon finding liability. However, the Board decided that no relief would be ordered until after hearing⁶. For that reason, the State sought an expedited hearing soon after the Board's February 16, 2006 decision⁷.

After the original hearing date was stricken, Complainant asked the Board to order the violations to be corrected in a Motion for Interim Relief. However, the Board again decided that no relief would be granted until hearing on the 33(c) and 42 (h) factors (415 ILCS 5/33(c) and 5/(42(h) (2006))⁸. Despite the State's repeated efforts to expedite, hearing did not take place for another 11 months.

⁵Filed with the Board on July 21, 2005

⁶February 16, 2006 Order, slip op. at 12

⁷The State filed its Motion to Set Expedited Hearing Date on March 6, 2006, which was denied by the Hearing Officer after Motions to Reconsider were filed on March 31, 2006, forty-three days after the Board's finding of liability.

⁸October 16, 2006 Order, slip op. at 4

At hearing on September 11-12, 2007, Complainant again presented undisputable evidence of continued dumping of waste at the Landfill without financial assurance⁹. Plainly, the Respondents had taken advantage of the Board's accommodations to continue illegal dumping operations for 19 more months¹⁰.

Incredibly, Community Landfill Company and the City of Morris are still dumping waste illegally at the Landfill, and will continue to do so, in flagrant disregard of the law, until the Board takes appropriate action. As shown by the Affidavit of Mark Retzlaff¹¹, freshly deposited sludge and construction debris was observed on June 24, 2008, and April 29, 2009. On April 29, 2009, Mr. Retzlaff observed that the elevation of the dump had increased substantially since his 2008 inspection, and also found that the City of Morris was regularly dumping water treatment sludge, asphalt shingles, street sweepings and other debris. He personally observed a City of Morris truck come onto the Landfill and dump its load while he was performing his inspection.

Mr. Retzlaff also learned that Community Landfill Company had apparently arranged for an entire excavation project from Columbia College in Chicago to be dumped at the Landfill, and had dumped 194 loads of contaminated soil in a little over 2 months. The manifest from this dumping showed that the material was classified as 'special waste'. Thus, despite the Board's

⁹See: Complainant's Post-Hearing Brief, p.7.

¹⁰The Board was understandably sympathetic to the health problems of Edward Pruim, a non-party, but an officer of Respondent Community Landfill Company. After obtaining a cancellation of the original hearing date, the Respondents renewed and continued their illegal dumping activities.

¹¹Exhibit B

finding of liability, and despite their failure to arrange for the financial assurance required of all landfills, the Respondents are openly and illegally conducting waste disposal operations at an overcapacity landfill.

All of this dumping is being done in knowing violation of Section 21(d)(2) of the Act, and 35 Ill. Adm. Code 811.700(f), and will continue until the Board takes action.

3. Delay in the Board's Decision is Preventing the State from Enforcing the Act

The Board consistently refused to order any relief until after hearing on the penalty factors in the Act¹². Almost 40 months ago, the Board found that the Respondents were in violation of Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2006), and 35 Ill. Adm. Code Sections 811.700(f) and 811.712(b)¹³. But the Board has yet to order CLC and the City to stop disposing of waste in violation of the Act and to otherwise comply with the law. Until the Board issues such an order, the State is hampered in obtaining relief in another forum, and therefore unable to enforce the law¹⁴.

Unbeknownst to the Board, the unexpected delays in this matter, whether due to the actions of the Respondents or the exigencies of the Board, have enabled ongoing violations of the Act, Board regulations, and Illinois EPA-issued permits at the Landfill. The Respondents have

¹²Based on the Board's ruling on this issue, the State repeatedly sought an early hearing date, and vigorously opposed CLC and the City's attempts to delay hearing on remedy.

¹³February 16, 2006 Order, slip op. at 15.

¹⁴As noted in Complainant's Post-Hearing Brief, Parcel B of the Landfill stopped accepting waste in 1996, but has not yet undergone closure. Having asked that the Board order CLC and the City to stop dumping, provide financial assurance, and perform closure, a circuit court action seeking the same relief is subject to involuntary dismissal under 735 ILCS 5/2-619(3) as "*another action pending between the same parties for the same cause*".

demonstrated neither remorse nor any indication that they will voluntarily comply with the law. Instead, they have taken advantage of the extended delay to continue illegal dumping operations at the Landfill. The Board must not allow this to continue.

Complainant requests that the Board take immediate action against the ongoing violations and the deteriorating conditions at the Landfill. Complainant respectfully request that the Board recognize its previous finding of violation, consider the evidence presented at the 2007 hearing on remedy, and issue its final order in this case as soon as possible.

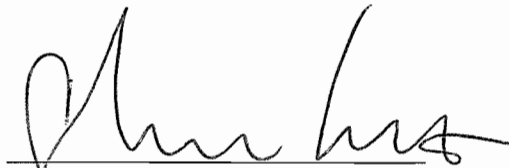
RESPECTFULLY SUBMITTED

PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN,
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

ROSEMARIE CAZEAU, Chief
Environmental Bureau North

BY:



CHRISTOPHER GRANT
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Assistant Attorney General
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(312)814-5388

AFFIDAVIT OF BRIAN WHITE

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

1. I have been employed by the Illinois Environmental Protection Agency ("Illinois EPA") since February 1988.

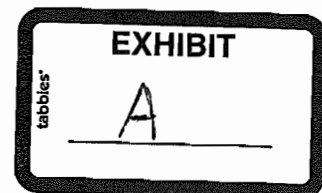
2. My current working title is Compliance Unit Manager for the Bureau of Land and my payroll title is Public Service Administrator. I have been the Compliance Unit Manager since January 1991.

3. As the Compliance Unit Manager, my responsibilities include supervising a staff that coordinate the compliance and enforcement activities for the Bureau of Land and supervising a staff of accountants in the bureau's financial assurance program.

4. I am familiar with the landfill generally known as the Morris Community Landfill ("Landfill") located in Morris, Illinois. The owner of the Landfill is the City of Morris ("City") and the operator is Community Landfill Co. ("CLC"). The Landfill consists of two parcels, Parcels A & B.

5. I have reviewed the Illinois EPA files regarding this matter that relate to CLC and the City's financial assurance obligations at the Landfill.

6. CLC and the City were issued various permits including closure and post-closure care permits for Parcel A, Permit No. 2000-155-LFM, dated August 4, 2000 ("Parcel A Significant Modification Permit") and for Parcel B, Permit No. 2000-156-LFM, dated August 4, 2000 ("Parcel B Significant Modification Permit").



7. CLC and the City were required to have financial assurance for its significant modifications. See 35 Ill. Adm. Code 811.700(b). These financial assurance requirements were initially incorporated into Parcel A Significant Modification Permit and Parcel B Significant Modification Permit. For Parcel A, CLC and the City were required to maintain financial assurance in the amount of \$12,357,756.00. For Parcel B, CLC and the City were required to initially maintain financial assurance in the amount of \$5,069,610.00.

8. On September 11, 2007, I testified at hearing in this matter. The subject matter of my testimony was that, as of that date, CLC and the City had failed to provide Illinois EPA with any Landfill closure and/or post-closure financial assurance meeting the requirements of 35 Ill. Adm. Code 811.700(b).

9. As of the date of this Affidavit, CLC and the City have failed to correct the violations found by the Board on February 16, 2006 in that they have not yet provided to Illinois EPA any Landfill closure and/or post closure financial assurance meeting the requirements of 35 Ill. Adm. Code 811.700(b).

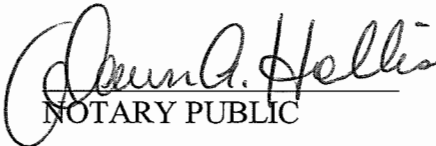
10. CLC and the City do not currently have any financial assurance in place for the Landfill that satisfies the requirements of 35 Ill. Adm. Code Part 811.

11. I have personal direct knowledge of the stated herein, and if called as a witness at a hearing in this matter, could competently testify thereto.

FURTHER AFFIANT SAYETH NOT


Brian White

Subscribed and Sworn to
before me this 2nd day of
June, 2009.


NOTARY PUBLIC



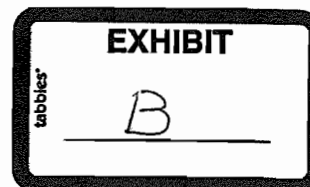
AFFIDAVIT

I, MARK RETZLAFF, being first duly sworn upon oath, depose and state:

1. I am employed by the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, ("Illinois EPA") as an Environmental Protection Specialist in the Field Operations Section, Bureau of Land. My office is located at 9511 W. Harrison Street, Des Plaines, Illinois. Under the direction of my supervisors, I am responsible for the investigation of potential land pollution violations.

2. One of my duties in the Field Operations Section is to conduct inspections of sanitary landfills to determine compliance with the Illinois Environmental Protection Act ("Act"), Illinois EPA and Illinois Pollution Control Board regulations, and the terms and conditions of Illinois EPA-issued landfill permits.

3. Community Landfill Company is the permitted operator of the Morris Community Landfill, located in Morris, Grundy County, Illinois("Landfill"). The Landfill is divided into two parts, with "Parcel A", on the east side of Ashley Road, and "Parcel B" on the west side of Ashley Road. The permitted owner of the Landfill is the City of Morris.



4. Since 2002, I have been responsible for inspecting the Morris Community Landfill. I have personally inspected the Landfill on at least 15 occasions.

5. On September 11, 2007, I testified at hearing in this matter. Included in my testimony were my observations of continued dumping of general refuse and sludge from the City of Morris water treatment plant on June 26, 2007, and additional general refuse observed on August 29, 2007.

6. On June 24, 2008, I inspected the Landfill and observed freshly dumped waste on parcel A. The waste consisted of asphalt shingles, street sweepings, and assorted debris.

7. On April 29, 2009, I again inspected the Landfill. Upon arriving I met with James Pelnarsh, Site Manager for Community Landfill Company.

8. On April 29, 2009, Mr. Pelnarsh told me that the Landfill was accepting contaminated soils from an excavation project at Columbia College in Chicago. I reviewed the records for this dumping and noted that between February 17, 2009 and April 23, 2009, the Landfill had accepted at least 194 truckloads of contaminated soil from this project.

9. Mr. Pelnarsh showed me a copy of a manifest for loads from the Columbia College excavation project which had been

disposed at the Landfill on April 23, 2009. I was able to determine from the manifest that the material being dumped was "special waste" as that term is defined in the Board's waste disposal regulations.

10. On April 29, 2009, Mr. Pelnarsh told me that the City of Morris was continuing to dump waste at the Landfill. He described the City waste as consisting of wastewater treatment sludge, ditch cleanout waste, and street sweepings.

11. On April 29, 2009, I inspected Parcel A of the Landfill, and observed that the elevation was substantially higher than I had observed on June 24, 2008. I also observed an active dumping area with approximate dimensions 150' by 100'. In this area I observed a variety of waste, including wastewater treatment sludge, wood demolition debris, shingles, carpeting, tires, plastic, and other waste which appeared to be partially burned and was consistent with fire-related debris.

12. On April 29, 2009, I observed a City of Morris truck (No. 329) come to Parcel B and dump a load of material.

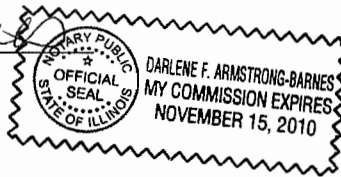
13. I have personal and direct knowledge of the facts stated herein, and if called as a witness at a hearing in this matter, could competently testify thereto.

FURTHER AFFIANT SAYETH NOT.

Mark Retzlaff
MARK RETZLAFF

Subscribed and sworn before me
this 1st day of June, 2009

Darlene F. Armstrong-Barnes
Notary Public



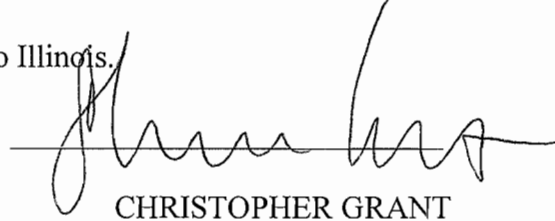
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CERTIFICATE OF SERVICE

STATE OF ILLINOIS
Pollution Control Board

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 3d day of June, 2009, the foregoing Request for Final Order, and Notice of Filing, upon the persons listed below, by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.



CHRISTOPHER GRANT

Service List

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