

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MAHOMET VALLEY WATER AUTHORITY, )  
CITY OF CHAMPAIGN, ILLINOIS, a municipal )  
corporation, DONALD R. GERARD, CITY OF )  
URBANA, ILLINOIS, a municipal corporation, )  
LAUREL LUNT PRUSSING, CITY OF )  
BLOOMINGTON, ILLINOIS, a municipal )  
corporation, COUNTY OF CHAMPAIGN, )  
ILLINOIS, COUNTY OF PIATT, ILLINOIS, )  
TOWN OF NORMAL, ILLINOIS, a municipal )  
corporation, VILLAGE OF SAVOY, ILLINOIS, )  
a municipal corporation, and CITY OF )  
DECATUR, ILLINOIS, a municipal corporation, )

Complainants, )

v. )

CLINTON LANDFILL, INC., an Illinois )  
corporation, )

Respondent. )

PCB No. 2013-022  
(Enforcement - Land)

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

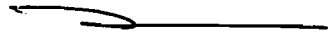
PLEASE TAKE NOTICE that on December 21, 2012, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a MOTION TO INTERVENE, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,  
Attorney General of the  
State of Illinois

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

BY:   
THOMAS DAVIS, Chief  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031

**CERTIFICATE OF SERVICE**

I hereby certify that I did on December 21, 2012, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING and MOTION TO INTERVENE upon the persons listed on the Service List.



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THOMAS DAVIS, Chief  
Assistant Attorney General

This filing is submitted on recycled paper.

**SERVICE LIST**

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**MAHOMET VALLEY WATER AUTHORITY, )  
CITY OF CHAMPAIGN, ILLINOIS, a )  
municipal corporation; DONALD R. GERARD; )  
CITY OF URBANA, ILLINOIS, a municipal )  
corporation; LAUREL LUNT PRUSSING; )  
CITY OF BLOOMINGTON, ILLINOIS, )  
a municipal corporation; COUNTY OF )  
CHAMPAIGN, ILLINOIS; COUNTY OF )  
PIATT, ILLINOIS; TOWN OF NORMAL, )  
ILLINOIS, a municipal corporation; VILLAGE )  
OF SAVOY, ILLINOIS, a municipal )  
corporation, and CITY OF DECATUR, )  
ILLINOIS, a municipal corporation, )**

**Complainants,**

**v.**

**CLINTON LANDFILL, INC., an Illinois )  
corporation, )**

**Respondent. )**

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**MOTION TO INTERVENE**

NOW COMES THE ATTORNEY GENERAL OF THE STATE OF ILLINOIS, LISA MADIGAN, and moves the Pollution Control Board, pursuant to Section 101.402 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.402, to intervene on behalf of the People of the State of Illinois in this citizen enforcement proceeding, and states as follows:

1. The complaint was filed on November 9, 2012 by several local governments and two individuals serving as public officials.

2. Section 101.402(b) provides that in determining whether to grant a motion to intervene, the Board will consider the timeliness of the motion and whether intervention will

unduly delay or materially prejudice the proceeding or otherwise interfere with an orderly or efficient proceeding. The Attorney General's participation in this proceeding will not unduly delay the proceeding because the Board is not expected to make any substantive ruling on the complaint without an appropriate record first being made. Additionally, her participation in this proceeding will not materially prejudice any existing party.

3. Additionally, the Attorney General has an unconditional statutory right to intervene in this proceeding pursuant to Section 101.402(c) on the basis of Section 42 of the Illinois Environmental Protection Act, 415 ILCS 5/42, which *inter alia* authorizes the Attorney General to bring enforcement proceedings before the Board in the name of the People of the State of Illinois, and is consistent with the Attorney General's broad constitutional powers. This constitutional authority is reaffirmed by Section 4 of the Attorney General Act, 15 ILCS 205/4, which provides that the Attorney General shall represent "the state . . . in all cases in which the state or the people of the state are interested." Moreover, the Attorney General's standing to participate in pending litigation under the Environmental Protection Act has been upheld by numerous Supreme Court decisions.<sup>1</sup> Whether viewed in the context of standing under the Constitution or as a statutory right, the Attorney General's ability to intervene and act on behalf of the State and our citizens is unconditional.

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<sup>1</sup> See, e.g., *People ex rel. Hartigan v. E & E Hauling, Inc.* (1992), 153 Ill.2d 473, which held that the Attorney General has standing under the common law powers delegated by Article V, Section 15, of the Illinois Constitution of 1970 ("The Attorney General shall be the legal officer of the State, and shall have the duties and powers that may be prescribed by law."). "The Attorney General's responsibility is not limited to serving or representing the particular interests of State agencies, including opposing State agencies, but embraces serving or representing the broader interests of the State." *EPA v. PCB*, 69 Ill. 2d 394, 401 (1977). In *Pioneer Processing, Inc. v. EPA*, 102 Ill. 2d 119, 138-39 (1984), the court acknowledged that the Attorney General has an obligation to represent the interests of the People so as to ensure a healthful environment for all the citizens of the State.

4. The broader interests of the State are directly at issue in the claims raised in this enforcement action brought by local governments and citizens. "The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy." Article XI, Section 1, of the Illinois Constitution. The legislature declared at Section 2(b) of the Environmental Protection Act, 415 ILCS 5/2(b), that the one of the purposes of the Act is "to establish a unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment. . . ." In this case, in keeping with this public policy and the purpose of the Act, the Attorney General seeks to intervene to ensure compliance with the statutory mandates as to the permitting and local siting approval for pollution control and hazardous waste disposal facilities.

5. The respondent filed a motion to dismiss on December 5, 2012. The Attorney General seeks leave through this intervention request to respond to the motion to dismiss and to participate fully in this action. The disposition of the action without the Attorney General's intervention may impair or impede the ability of the Attorney General to protect the interests set forth above.<sup>2</sup> The Attorney General intends to argue that the Board may rely upon *Landfill, Inc. v.*

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<sup>2</sup> The motion to dismiss contends that the complaint should be dismissed as an improper attack on the permits previously issued by the Illinois EPA. However, no permit has been granted under Section 39.3 of the Environmental Protection Act, 415 ILCS 5/39.3, by which the legislature plainly intended to involve the Attorney General in the permitting of hazardous waste disposal sites. The initial obligation is upon the applicant (through Section 39.3(a) & (b)) to notify the Attorney General. Similarly, once an application is received, the Illinois EPA is required by Section 39.3(c)(ii) to provide notice to the Attorney General. Moreover, Section 39.3(d) allows intervention by any person who may be adversely affected by an Agency decision on the permit application. Despite contentions as to what the current permit does or does not authorize, no application has been made pursuant to Section 39.3 and, if such application had been made, then the Attorney General would have been notified and afforded the opportunity to intervene prior to any permitting decision to authorize disposal of hazardous wastes.

*Pollution Control Board*, 74 Ill.2d 541 (1978), in denying the motion, and seeks leave to file a response to the motion to dismiss within 14 days of intervention being granted.

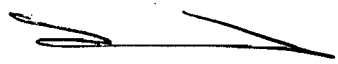
6. The Attorney General raises the possible applicability of *Landfill, Inc. v. Pollution Control Board* and Section 39.3 of the Act within this motion to intervene because Section 101.402(e) provides that an intervenor cannot raise issues that might more properly have been raised at an earlier stage of the proceeding.

WHEREFORE, Lisa Madigan, the Attorney General of the State of Illinois, seeks on behalf of the People of the State of Illinois to intervene in this pending enforcement proceeding filed by local governments and public officials.

Respectfully submitted,

LISA MADIGAN,  
Attorney General  
of the State of Illinois,

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

BY:   
THOMAS DAVIS, Bureau Chief  
Assistant Attorney General  
Environmental Bureau

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Dated: December 21, 2012