BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:	)
	)
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,	)
	) PCB 2013 - 022
v.	)
	) (Enforcement - Land)
CLINTON LANDFILL, INC.,	)
an Illinois corporation,	)
	)
Respondent.	)

NOTICE OF ELECTRONIC FILING

TO: All Parties of Record

PLEASE TAKE NOTICE that on January 7, 2013, I filed the following documents electronically with the Clerk of the Pollution Control Board of the State of Illinois:

1. Notice of Electronic Filing

2. Motion for Leave to File Reply

Copies of the above-listed documents are being served upon you via U.S. Mail, First Class Postage Prepaid, sent on January 7, 2013, as is stated in the Certificate of Service appended hereto.

Respectfully submitted,

CLINTON LANDFILL, INC.
Respondent

By:_____
One of its attorneys

Brian J. Meginnes, Esq. (bmeginnes@emrslaw.com)
Janaki Nair, Esq. (jnair@emrslaw.com)
Elias, Meginnes, Riffle & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
Telephone: (309) 637-6000
Facsimile: (309) 637-8514

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MOTION FOR LEAVE TO FILE REPLY

NOW COMES the Respondent, Clinton Landfill, Inc. ("CLI"), by and through its undersigned attorneys, and as and for its Motion for Leave to File a Reply in support of its Motion to Dismiss filed on December 5, 2012, responding to the Response filed by the Complainants, 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, a municipal

corporation (collectively, the "Complainants") on December 24, 2012, pursuant to 35 Ill. Admin. Code §101.500(e) and other applicable regulations, states as follows:

1. CLI filed its Motion to Dismiss in this case on December 5, 2012.

2. On December 24, 2012, the Complainants filed a Response to CLI's Motion to Dismiss, in which the Complainants substantively misrepresent the facts and the law.

3. CLI has prepared a Reply in support of its Motion to Dismiss responding to the Complainants' Response, which Reply is attached hereto.

4. CLI respectfully submits that the filing of the attached Reply will prevent material prejudice and injustice.

5. This Motion is being filed on January 7, 2013, within fourteen (14) days after service of the Complainants' Response on CLI, in accordance with 35 Ill. Admin. Code §101.500(e).

WHEREFORE, CLI requests that the Pollution Control Board or the hearing officer grant CLI leave to file the attached Reply, direct the Clerk to file the attached Reply instanter, and award CLI such other and further relief as is deemed appropriate under the circumstances.

Respectfully submitted,

CLINTON LANDFILL, INC.,
Respondent

By: _____
One of its attorneys

Brian J. Meginnes, Esq. (bmeginnes@emrslaw.com)
Janaki Nair, Esq. (jnair@emrslaw.com)
Elias, Meginnes, Riffle & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
Telephone: (309) 637-6000
Facsimile: (309) 637-8514

912-1201

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:	)
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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,	)
	) PCB 2013 - 022
v.	)
	) (Enforcement - Land)
CLINTON LANDFILL, INC., an Illinois corporation,	)
	)
Respondent.	)

REPLY IN SUPPORT OF MOTION TO DISMISS
RESPONDING TO COMPLAINANTS' RESPONSE

NOW COMES the Respondent, Clinton Landfill, Inc. ("CLI"), by and through its undersigned attorneys, and as and for its Reply in support of its Motion to Dismiss the Complaint filed in this case by the Complainants, 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, a municipal corporation (collectively, the "Complainants"), responding to the Complainants' Response to CLI's Motion to Dismiss, states as follows:

I. THE BOARD LACKS JURISDICTION OVER THIS CASE, WHICH IS THEREFORE FRIVOLOUS AS A MATTER OF LAW.

Administrative agencies are creatures of statute. As such, they have no inherent, general or common law powers. Rather, they only have the powers specifically conferred upon them by the legislature. *See* Granite City Div. of Nat. Steel Co. v. Illinois Pollution Control Bd., 155 Ill. 2d 149, 171, 613 N.E.2d 719, 729 (1993); City of Chicago v. Fair Employment Practices Comm'n, 65 Ill. 2d 108, 112-13, 357 N.E.2d 1154, 1155 (1976). In the same vein, the right to review the decision of an administrative agency is entirely statutory. *See* ESG Watts, Inc. v. Pollution Control Bd., 191 Ill. 2d 26, 29, 727 N.E.2d 1022, 1024 (2000) ("there is no constitutional right to appeal administrative decisions…"). The Complainants cannot escape the fact that the Illinois General Assembly has limited administrative review of permits issued by the Illinois Environmental Protection Agency (the "Agency") to permit applicants, and has denied third parties any such right of review.

A. The Board lacks jurisdiction over Counts I, II, and III of the Complaint because these Counts collaterally attack the Permit modifications.

Regarding Counts I, II, and III of the Complaint, the Complainants admit in their Response that their claims are based entirely on their allegation that CLI should have obtained approval from DeWitt County before developing, constructing, and operating the Chemical Waste Unit at Clinton Landfill No. 3 (the "CWU"), in addition to the siting approval previously granted by DeWitt County for Clinton Landfill No. 3 generally. (*See* Response, pgs. 11-12; "The Complaint alleges the following actions were taken by CLI without first obtaining local siting authority…" (pg. 11)). The Complainants attempt to distinguish the law and cases cited by

CLI in its Motion to Dismiss on the grounds that their Complaint is fashioned as an "enforcement" action rather than a permit appeal, and that the Agency has not been joined as a defendant.

Both of the Complainants' arguments impermissibly seek to elevate form over substance. As the Illinois Supreme Court held in City of Elgin v. County of Cook, 169 Ill. 2d 53, 65, 660 N.E.2d 875, 882 (1995), "collateral attacks" on permits issued by the Agency are not permitted. In that case, the plaintiff municipalities attempted to challenge an Agency permit without filing suit against the Agency itself, by instead suing the local siting authority and challenging the validity of the siting approval on which the permit was based. Id. at 61-62, 880. The Illinois Supreme Court held that the suit was barred as "an impermissible collateral attack on the Agency development permit approving the balefill." Id. at 65, 882. As the Illinois Supreme Court noted, "[t]hough the plaintiff municipalities contend that they are not attacking the Agency's decision to grant the permit but, rather, the Cook County board's zoning ordinance granting the permit, this distinction does not withstand scrutiny." Id. The fact that the Agency itself was not a party to the case was irrelevant to the Court's determination. Notably, the Complainants fail to address this case in their Response.

The Complainants argue that "[t]he allegations in the Complaint are not an attack on or challenge to the Agency's performance of its duties." (Response, pg. 5). This is simply not true. In issuing the modifications to the Permit allowing for the development, construction, and operation of the CWU, **the Agency** was required, as a matter of law, to determine whether the CWU constituted a "new pollution control facility" such that local siting was required. *See* 415 ILCS §5/39(c). In City of Waukegan v. Illinois E.P.A., the Second District Appellate Court described this process as follows:

> The express language of section 39(c) instructs the Agency that it may not issue a permit for a new pollution control facility absent proof of local siting approval. Thus, section 39(c) requires **the Agency** to decide, before issuing a permit, whether local siting approval is required and, if it is, to make sure that the applicant has submitted proof thereof. **Section 39(c) thereby bestows upon the Agency the power to determine [cases] of the general class of cases to which this case belongs.** Further, we believe the Agency's expertise is a necessary part of determining whether a facility constitutes a "new pollution control facility."

City of Waukegan v. Illinois E.P.A., 339 Ill. App. 3d 963, 975-76, 791 N.E.2d 635, 645 (2nd Dist. 2003) (emphasis added).

In this case, as in City of Waukegan, **the Agency** determined that the CWU was **not** a new pollution control facility, and therefore local siting was **not** required. In the Complaint, the Complainants claim that the CWU **was** a new pollution control facility, and therefore local siting **was** required. Therefore, the Complainants claim that **the Agency's** reasoned determination that the CWU was not a new pollution control facility was **incorrect**. The allegations in the Complaint are "an attack on and challenge to the Agency's performance of its duties." (Response, pg. 5). As in City of Waukegan, "the [Complainants] simply disagree[] with the Agency's decision that local siting approval is not required." City of Waukegan, 339 Ill. App. 3d at 976, 791 N.E.2d at 645. Therefore, just like City of Waukegan, this case should be dismissed.

Finally, regarding the naming of the Agency as a defendant in this case, if the Board denies all or any part of CLI's Motion to Dismiss, CLI will move for the joinder of the Agency as a necessary party in this case.

For the foregoing reasons, CLI submits that Counts I, II, and III of the Complaint are "frivolous" as defined in 35 Ill. Admin. Code §101.202, in that they constitute "request[s] for relief that the Board does not have the authority to grant," and should therefore be dismissed.

B. The Board lacks jurisdiction over Count IV because it collaterally attacks the Permit modifications, or alternatively, because Count IV of the Complaint is barred by 35 Ill. Adm. Code 35 Ill. Adm. Code 813.107.

In Count IV of the Complaint, the Complainants claim that CLI is disposing of certain wastes in the CWU without a permit from the Agency. (*See* Complaint, Count IV; Response, pg. 12). The Count is titled "Disposal of Hazardous Waste (MGP Waste Exceeding Regulatory Levels of 35 Ill. Admin. Code 721.124(b)) Without RCRA Permit." (Complaint, pg. 45). However, the Complainants have also conceded that "the Agency Permit Modification No. 9 (and the Permit Renewal) **on its face** allow CLI to dispose of hazardous waste [manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b)] in the Chemical Waste Unit without a RCRA Permit." (Response, pg. 13; emphasis added).[1] The Complainants are, in fact, correct that the modifications to the Permit issued to CLI by the Agency (attached to the Complaint and incorporated therein) allow CLI to dispose of manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) in the CWU. (*See* Permit Modification 9, Exhibit D to the Complaint, pg. 18, Clarifications (f); Permit Modification 29, Exhibit E to the Complaint, pg. 23, Clarifications (f)). Therefore, the Complainants acknowledge that CLI is **not** "disposing of waste without a permit"; rather, the Complainants are alleging that CLI's Permit **should not** allow CLI to dispose of certain wastes.

Insofar as the Complainants allege or assert that the Agency erred in issuing the Permit modifications allowing for disposal of manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b), or that the Agency exceeded its authority in

[1] The Permit issued by the Agency to CLI, as modified, is a "RCRA Permit," as it was issued pursuant to and in accordance with Subtitle D of the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6941 *et seq.*).

issuing such Permit modifications, the Complainants are challenging the validity of the Permit and the Agency's performance of its duties. This constitutes an impermissible collateral attack on the Permit modifications, which the Complainants lack standing to pursue, and the Board lacks jurisdiction to hear.

In the alternative, 35 Ill. Adm. Code 813.107 provides as follows: "The issuance and possession of a permit shall not constitute a defense to a violation of the Act or any Board regulations set forth in 35 Ill. Adm. Code: Chapter I **except for the development and operation of a landfill without a permit**." (Emphasis added). In other words, if a complainant alleges that a respondent is violating the Act by operating without a permit, the fact that the respondent has a permit is a defense to the complaint. As is apparent in Exhibits D and E to the Complaint, CLI's Permit, as modified, allows for the disposal of manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) in the CWU. Therefore, pursuant to 35 Ill. Adm. Code 813.107, the existence of the Permit provides a complete defense to Count IV of the Complaint.

For the foregoing reasons, CLI submits that Count IV of the Complaint is "frivolous" as defined in 35 Ill. Admin. Code §101.202, in that it constitutes a "request for relief that the Board does not have the authority to grant," and should therefore be dismissed.

II. IN THE ALTERNATIVE, COUNT IV OF THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION UPON WHICH RELIEF CAN BE BASED, AND IS THEREFORE FRIVOLOUS AS A MATTER OF LAW.

It appears that the sole basis for the Complainants' claim in Count IV of their Complaint that CLI is disposing of hazardous waste in the CWU, is their allegation that "[m]anufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) is classified as a type of 'hazardous waste as defined by Illinois Administrative Code Title 35,

Section 721,' and constitutes a 'hazardous waste' pursuant to Section 3.220 of the Act, 415 ILCS 5/3.220." (Complaint, ¶123). (*See also* Complaint, ¶134: "From at least January 8, 2010, and continuing through the date of filing of the instant complaint, CLI has failed [to] obtain a RCRA permit pursuant to Section 39(d) of the Act and pursuant to Sections 703.121(a) and (b) of the Board's Waste Disposal Regulations for the disposal in the Chemical Waste Landfill or in any part of Clinton Landfill No. 3 of hazardous waste in the form of manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b), in violation of or in threatened violation of Sections 39(a), 39(c), 39(d) and 39.2 of the Act. 415 ILCS 5/39(a), 39(c), 39(d) and 39.2.; 35 Ill. Admin. Code 703.121(a) and (b)."). This allegation is **false**.

A. CLI is permitted to dispose of manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) in the CWU because such manufactured gas plant waste is not hazardous.

Permit Modification 9 (Exhibit D to the Complaint, pg. 18, Clarifications (f)) and Permit Modification 29 (Exhibit E to the Complaint, pg. 23, Clarifications (f)) do allow CLI to dispose of "[m]anufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) … in the CWU" because such wastes are **non-hazardous** as a matter of law, unless they exhibit the characteristics of ignitability, corrosivity, or reactivity.

Illinois law (which is "identical in substance" to Federal law on this point) provides that certain solid wastes that are not specifically listed as hazardous wastes may be deemed "hazardous" if they exhibit one or more of four characteristics, namely, ignitability, corrosivity, reactivity, or toxicity. In order to determine whether a solid waste exhibits the characteristic of toxicity, the Board has adopted a test called the Toxicity Characteristic Leaching Procedure ("TCLP"). (*See* 35 Ill. Adm. Code 721.124(a); *see also* 40 C.F.R. §261.24). The Illinois regulations provide, in pertinent part, as follows:

> A solid waste (**except manufactured gas plant waste**) exhibits the characteristic of toxicity if, using Method 1311 (Toxicity Characteristic Leaching Procedure (TCLP)) in 'Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,' USEPA publication number EPA 530/SW-846, as incorporated by reference in 35 Ill. Adm. Code 720.111(a), the extract from a representative sample of the waste contains any of the contaminants listed in the table in subsection (b) of this Section at a concentration equal to or greater than the respective value given in that table.

35 Ill. Adm. Code 721.124(a) (emphasis added). The regulations include no test or criteria pursuant to which manufactured gas plant waste may be determined to exhibit the characteristic of toxicity. Therefore, manufactured gas plant waste **cannot** exhibit the characteristic of toxicity, as a matter of law.

In their Response to the Motion to Dismiss, the Complainants assert that "**[r]egardless of the exemption contained in Section 721.124(a) for manufactured gas plant wastes**, the Agency Permit Modification No. 9 (and the Permit Renewal) on its face allow CLI to dispose of hazardous waste in the Chemical Waste Unit without a RCRA Permit." (Response, pg. 13; emphasis added). The Complainants cannot simply disregard the exemption of manufactured gas plant waste from the category of wastes identified as hazardous because they exhibit the characteristic of toxicity.

The fact is that manufactured gas plant waste **cannot be hazardous** as a result of exhibiting the characteristic of toxicity, as a matter of law. Rather, only if the waste exhibits the characteristics of ignitability, corrosivity, or reactivity will the waste be deemed characteristically hazardous. The Complainants have not alleged that CLI has disposed of manufactured gas plant waste that exhibits the characteristics of ignitability, corrosivity, or reactivity. Therefore, the Complainants have not sufficiently alleged that CLI has disposed of waste that is hazardous.

B. CLI is prohibited from disposing of any hazardous waste at Clinton Landfill No. 3, including in the CWU.

All iterations of and modifications to the permit issued to CLI **prohibit** the disposal of any **hazardous** waste in Clinton Landfill No. 3. If a particular quantity of manufactured gas plant waste was determined to be hazardous because it exhibited the characteristics of ignitability, corrosivity, or reactivity, that waste could not be disposed of in the CWU or in any other unit of Clinton Landfill No. 3. The original Permit and the modifications attached to the Complaint all provide for development, construction, and operation of a "municipal solid waste and **non-hazardous** special waste landfill." (Exhibit A to the Complaint, pg. 1; Exhibit D to the Complaint, pg. 1; Exhibit E to the Complaint, pg. 1; emphasis added). Furthermore, the original Permit and the modifications attached to the Complaint all state as follows:

> Pursuant to 35 Ill. Adm. Code 722.111, the generator of a solid waste is required to determine if the waste is hazardous and comply with all applicable hazardous waste regulations. For any waste that has been determined to be hazardous, the results of quality assurance testing for the treatment program, taken at an appropriate frequency to demonstrate the waste is no longer hazardous, must be obtained. Verification that the waste meets the land disposal restrictions must also be documented. These requirements are in addition to the other standard special waste test requirements.

(Exhibit A to the Complaint, pg. 14, Clarifications (g); Exhibit D to the Complaint, pg. 18, Clarifications (g); Exhibit E to the Complaint, pgs. 23-24, Clarifications (g)). Therefore, the Permit and the modifications thereto do **not** permit the disposal of hazardous waste at Clinton Landfill No. 3.

C. CLI is permitted to dispose of manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) in the CWU only, in keeping with *Association of Battery Recyclers*.

The exemption from the toxicity characteristic for manufactured gas plant wastes was adopted by the Board in R02-12 (cons. R02-1 and R02-17), on April 18, 2002. The exemption was adopted so that Illinois regulations would remain "identical in substance" to the parallel Federal regulations under Subtitle C of the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6921 *et seq.* (2000)), pursuant to Sections 7.2 and 22.4(a) of the Illinois Environmental Protection Act (415 ILCS §§5/7.2 and 22.4(a) (2000)). In its Opinion and Order, the Board noted as follows:

> On March 13, 2002, USEPA amended its rules in response to the federal court's decision in Association of Battery Recyclers, Inc. v. EPA, 208 F.3d 1047 (D.C. Cir. 2000). * * *. USEPA also amended the rule to reflect the fact that use of the toxicity characteristic leaching procedure (TCLP) test is not allowed to determine whether manufactured gas plant (MGP) waste is hazardous.

(R02-12, Final Order, April 18, 2002, pgs. 27-28). Based on the foregoing, the Board added the exemption in 35 Ill. Adm. Code 721.124(a) from the TCLP for manufactured gas plant waste.

In Association of Battery Recyclers, the D.C. Circuit Court considered whether the TCLP was appropriate to determine whether manufactured gas plant waste exhibited the characteristic of toxicity. 208 F.3d at 1060, *et seq.* In particular, the Circuit Court revisited its holding in Edison Electric Institute v. EPA, 2 F.3d 438, 442 (D.C.Cir.1993), that "the EPA's attempt to apply the TCLP to mineral processing wastes in general and in particular to those mineral processing wastes known as manufactured gas plant (MGP) waste" was "arbitrary and capricious," because "although the 'EPA need not demonstrate that mineral wastes [including MGP waste] are typically or commonly deposited in [municipal solid waste] landfills ... the Agency must at least provide some factual support for its conclusion that such a mismanagement

scenario is plausible.'" Id. at 1061. The Circuit Court found "that the EPA has failed to justify application of the TCLP to MGP waste" and therefore "vacate[d] the Phase IV Rule insofar as it provides for use of the TCLP to determine whether MGP waste exhibits the characteristic of toxicity." Id., pg. 1061. In other words, the Circuit Court held that because manufactured gas plant waste was not being "co-disposed" with municipal solid waste, the TCLP was not appropriate.

In keeping with the holding in Association of Battery Recyclers, the original Permit (Exhibit A to the Complaint, pg. 14, Clarifications (g)), Permit Modification 9 (Exhibit D to the Complaint, pg. 18, Clarifications (g)), and Permit Modification 29 (Exhibit E to the Complaint, pgs. 23-24, Clarifications (g)) all provide as follows:

> Notwithstanding the exception for manufactured gas plant waste contained in 35 Ill. Adm. Code 721.124(a), no manufactured gas plant waste shall be disposed in Clinton Landfill 3's MSW [municipal solid waste] unit, unless: i) the waste has been tested in accordance with subsection (d) of this special condition, and ii) the analysis has demonstrated that the waste does not exceed the regulatory levels for any contaminant given in the table contained in 35 Ill. Adm. Code 721.124(b).

Therefore, CLI cannot dispose of manufactured gas plant waste that exceeds the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) in the Clinton Landfill No. 3 municipal solid waste unit. Such waste can only be disposed of in the CWU, thereby avoiding the "co-disposal" scenario identified in Association of Battery Recyclers.

D. As a matter of law, CLI is not disposing of hazardous waste without a RCRA Permit.

As above, in Count IV of their Complaint, the Complainants claim that CLI is disposing of hazardous waste in the CWU without an appropriate RCRA hazardous waste permit, because "[m]anufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code

721.124(b) is classified as a type of 'hazardous waste as defined by Illinois Administrative Code Title 35, Section 721,' and constitutes a 'hazardous waste' pursuant to Section 3.220 of the Act, 415 ILCS 5/3.220." (Complaint, ¶123). This claim is false, as a matter of law. The Complainants have not alleged (and cannot truthfully allege) that CLI has disposed of any waste in the CWU that is deemed hazardous under the law. Therefore, Count IV of the Complaint should be dismissed as "frivolous" because it "fails to state a cause of action upon which the Board can grant relief." 35 Ill. Admin. Code 101.202.

WHEREFORE, CLI respectfully requests that this Board dismiss the Complainants' Complaint in its entirety, and award CLI such other and further relief as is deemed appropriate under the circumstances.

Respectfully submitted,

CLINTON LANDFILL, INC.,
Respondent

By: _____
One of its attorneys

Brian J. Meginnes, Esq. (bmeginnes@emrslaw.com)
Janaki Nair, Esq. (jnair@emrslaw.com)
Elias, Meginnes, Riffle & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
Telephone: (309) 637-6000
Facsimile: (309) 637-8514

912-1202.2

CERTIFICATE OF SERVICE

The undersigned certifies that on January 7, 2012, the foregoing document (including the Notice of Electronic Filing, the Motion for Leave to File Reply, and the Reply attached thereto) will be served upon each party to this case by enclosing a true copy of same in an envelope addressed to the attorney of record of each party or the party as listed below, with FIRST CLASS postage fully prepaid, and depositing each of said envelopes in the United States Mail at 5:00 p.m. on said date.

David L. Wentworth II
David B. Wiest
Hasselberg, Williams, Grebe,
Snodgrass & Birdsall
124 SW Adams Street, Suite 360
Peoria, IL 61602-1320

Albert Ettinger
53 W. Jackson Street, Suite 1664
Chicago, IL 60604

Thomas E. Davis, Chief
Environmental Bureau/Springfield
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

Tony Martig
Toxics Program Section Chief
USEPA Region 5 (Mail Code LC-8J)
77 W. Jackson Blvd.
Chicago, Illinois 60604-3507

John J. Kim, Interim Director
Illinois Environmental Protection Agency
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Attorney

Brian J. Meginnes, Esq. (bmeginnes@emrslaw.com)
Janaki Nair, Esq. (jnair@emrslaw.com)
Elias, Meginnes, Riffle & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
Telephone: (309) 637-6000
Facsimile: (309) 637-8514