BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13-28
	)	
ATKINSON LANDFILL CO.,	)	
	)	
Respondents.	)	

ORIGINAL

MOTION TO STRIKE AND DISMISS
AND SUPPORTING MEMORANDUM

Respondent, ATKINSON LANDFILL CO. ("ALC"), by its attorney, Kenneth Anspach, pursuant to § 2-615 of the Code of Civil Procedure, 735 ILCS 2-615(a), § 2-619((a)(9) of the Code of Civil Procedure, 735 ILCS 2-619((a)(9), and §§ 101.100, 101.500 and 101.506 of the General Rules of the Pollution Control Board, 35 Ill. Adm. Code 101.100, 101.500 and 101.506, hereby moves the Pollution Control Board (the "Board") to strike and dismiss the Complaint (the "Complaint") of complainant, PEOPLE OF THE STATE OF ILLINOIS ("the STATE"), and in support thereof states as follows:

ALC is moving the Board to strike and dismiss the Complaint on the basis that it is substantially insufficient in law. For purposes of ruling on a motion to dismiss, all well-pled facts contained in the pleading must be taken as true, and all inferences from them must be drawn in favor of the non-movant. *People v. Stein Steel Mills Services, Inc.*, PCB 02-1 (Nov. 15, 2001). It is well settled in this state that, although pleadings are to be liberally construed, and a defendant's motion to dismiss admits all facts well pleaded, nonetheless, in considering a motion to dismiss, the pleadings are to be construed strictly against the pleader. *Knox College v. Celotex Corporation*, 88 Ill. 2d 407, 422 (1981). The purpose of requiring that defects in pleadings be attacked by motion is to point out the defects in the pleadings so that the pleader will have an

opportunity to cure them before trial. *Id.* Notice pleading, which prevails under the federal rules is not sufficient under the Illinois Code of Civil Procedure, formerly the Illinois Civil Practice Act. *Knox College*, 88 Ill. 2d at 424. The pleader must state the facts essential to his cause of action. *Id.* A pleading which merely paraphrases the law, as though to say that the pleader's case will meet the legal requirements, without stating the facts, is insufficient. *Id.* Construing the Complaint strictly against the STATE, the Board must find that the Complaint is insufficient in law and must be stricken and dismissed.

I. COUNTS I-II RELATING TO ALLEGED DISCHARGES INTO THE VILLAGE STP ARE SUBSTANTIALLY INSUFFICIENT IN LAW AND MUST BE DISMISSED PURSUANT TO § 2-615 OF THE CODE OF CIVIL PROCEDURE, 735 ILCS 5/2-615.

A. Counts I and II Each Fail to State a Cause of Action and Must Be Dismissed Pursuant to § 2-615 of the Code of Civil Procedure, 735 ILCS 5/2-615, Because No Permit Was Required for the Alleged Discharges That Purportedly Violated Permit No. 2008-E0-0331.

As set forth more fully below, Counts I and II of the Complaint allege that ALC allegedly disposed of leachate at the Village of Atkinson sewage treatment plant (the "Village STP") in purported excess of the purported limits imposed by Permit No. 2008-E0-0331 and at a location purportedly other than that specified in Permit No. 2008-E0-0331 and thereby allegedly violated §§ 12(a), (b) and (c) of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/12(a), (b) and (c). At the outset, it is important to note that Counts I and II fail to allege a violation of §§ 12(a), (b) and (c) of the Act, 415 ILCS 5/12(a), (b) and (c), because *no permit was required* for that alleged disposal of leachate.

Section 12(f) of the Act, 415 ILCS 5/12(f), provides in pertinent part:

> No permit shall be required under this subsection and under Section 39(b) of this Act for any discharge for which a permit is not required under the Federal Water Pollution Control Act, as now or hereafter amended [33 U.S.C. § 1251 et seq.], and regulations pursuant thereto.

Thus, no permit is required under the Act for which a permit is *not* required under the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. § 1251 et seq. ("CWA"). Under the CWA, a permit, known as a National Pollution Discharge Elimination System ("NPDES") permit, *is* required under for any discharge of a pollutant from a point source to waters of the United States.[1] However, an NPDES permit is *not* required discharges directly into a wastewater treatment system, also known as a publicly owned treatment works ("POTW"),[2] which is excluded from the definition of "waters of the United States".[3] Accordingly, no permit is required for a discharge into a POTW pursuant to §12(f) of the Act, 415 ILCS 5/12(f).

The Village STP is a POTW. Thus, no permit was required for any discharge into the Village STP. The issuance of Permit No. 2008-E0-0331 to ALC was, at best, gratuitous. Given that no permit was required for any discharge into the Village STP, there could not have been any permit violation for any discharge into the Village STP under §§ 12(a), (b) and (c) of the Act, 415 ILCS 5/12(a), (b) and (c).

Despite the requirements of §12(f) of the Act, 415 ILCS 5/12(f), the Complaint alleges in Count II, paragraphs 18-21, that a permit *is required* for discharges into a treatment works pursuant to 35 Ill. Adm. Code 309.204(a). That regulation states that "an operating permit issued

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[1] CWA, §402, 33 U.S.C. §1342.

[2] 40 CFR § 403.3(q) and 9 VAC 25-31-10[2] provide as follows:
(q) The term Publicly Owned Treatment Works or POTW means a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by § 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works. Thus, under 40 CFR 403.3(q), the Village of Atkinson STP, referred to in the Permit, is a Publicly Owned Treatment Works or POTW. Under § 502(4) of the Clean Water Act, 33 U.S.C. § 1362(4), the term "municipality" includes "town...or other public body having jurisdiction over disposal of sewage, industrial wastes, or other wastes," and would, accordingly, include the Village of Atkinson.

[3] CWA, § 212(2)(A), 33 U.S.C. § 1292(2)(A); 40 C.F.R. 403.3(q); 40 C.F.R. 122.3(c); D.K. McCall, III, *Clean Water Act*, in Environmental Law Handbook (T. Sullivan ed. 2011) ("McCall") at 323-324.

by the Agency" is required for the "operation of any...wastewater source." Yet, 35 Ill. Adm. Code 309.204 directly contradicts §12(f) of the Act, 415 ILCS 5/12(f). Specifically, 35 Ill. Adm. Code 309.204(b)(1) provides that:

> No operating permit is required under this Section for any discharge...[f]or which an NPDES permit is required.

So, § 12(f) of the Act, 415 ILCS 5/12(f), provides that, "No permit shall be required... for any discharge for which a [NPDES] permit is *not required,*" while 35 Ill. Adm. Code 309.204(b)(1) provides that, "No operating permit is required...for any discharge...[f]or which an NPDES permit *is required*![4]

This contradiction between the statute and the regulation is exactly what the Illinois legislature was trying to avoid when it adopted § 12(f) of the Act, 415 ILCS 5/12(f). The intention of the General Assembly was set forth in *EPA v. Culligan DuPage Soft Water Service*, PCB No. 74-376, 1975 Ill. ENV LEXIS 54 (1975), which states:

> When the new legislation did become effective in September 1973 it became apparent that the Illinois Legislature wished to avoid a dual permit system. The Statute said: "It is in the interest of the people of the State of Illinois for the State to authorize such NPDES program and secure Federal approval thereof, and thereby to avoid the existance [sic] of duplicative, overlapping or conflicting State and Federal statutory permit systems;" [EPA Section 11(a)(5)]. It was further provided: "No permit shall be required under this subsection and under Section 39(b) of this Act for any discharge for which a permit is not required under the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500) and Regulations pursuant thereto ...

To the extent that 35 Ill. Adm. Code 309.204 creates a "dual permit system" in contradiction to the intention of the legislature and to § 12(f) of the Act, 415 ILCS 5/12(f), it is unlawful. Given that no cause of action can therefore be stated under Counts I and II for violation of §§ 12(a), (b) and (c) of the Act, 415 ILCS 5/12(a), (b) and (c), the entirety of Counts I and II must be

[4] Emphasis added.

dismissed for failure to state a cause of action. Additional insufficiencies in Counts I and II are set forth below.

B. No Authority Exists Under § 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31, for the Attorney General to Bring an Action on Her Own Motion.

Counts I and II of the Complaint begin by alleging at paragraph 1 that:

> This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, *on her own motion* and at the request of the Illinois EPA, *pursuant to Section 31 of the Illinois Environmental Protection Act* ("Act"), 415 ILCS 5/31 (2010), against Respondent Atkinson Landfill Co. (Emphasis added.)

Thus, the STATE alleges that Counts I and II are "brought...by LISA MADIGAN...on her own motion pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010)..." However, there is no provision in § 31 of the Act authorizing the Attorney General to bring an action "on her own motion." Instead, § 31 of the Act is very specific in requiring that the Attorney General may only bring an action under § 31 of the Act where the Illinois Environmental Protection Agency (the "Agency") has followed all the provisions of §§ 31(a) and (b) of the Act. In particular, § 31(b) of the Act states, in pertinent part, as follows:

> For alleged violations that remain the subject of disagreement between the Agency and the person complained against following fulfillment of the requirements of subsection (a) of this Section... *and as a precondition to the Agency's referral or request to the Office of the Illinois Attorney General* or the State's Attorney of the county in which the alleged violation occurred *for legal representation regarding an alleged violation that may be addressed pursuant to subsection (c) or (d) of this Section or pursuant to Section 42 of this Act* [415 ILCS 5/42], the Agency shall issue and serve, by certified mail, upon the person complained against a written notice informing that person that the Agency intends to pursue legal action. (Emphasis added.)

Thus, as a "precondition" to the Agency's making a referral to the Attorney General under

§ 31(c) or (d) of the Act, 415 ILCS § 5/31(c) or (d)as well as to the bringing of actions under § 42 of the Act, the Agency must have complied with § 31(a) of the Act, 415 ILCS § 5/31(a). In the same vein, prior to bringing an action under § 31(c)(1) of the Act, 415 ILCS § 5/31(c)(1), the requirements of § 31(a) of the Act, 415 ILCS § 5/31(a), must be fulfilled, as § 31(c)(1) of the Act, 415 ILCS § 5/31(c)(1), states, in pertinent part, follows:

> For alleged violations which remain the subject of disagreement between the Agency and the person complained against *following... fulfillment of the requirements of subsections (a) and (b) of this Section*, the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violation occurred shall issue and serve upon the person complained against a written notice, together with a formal complaint... (Emphasis added.)

Thus, fulfillment of the requirements of subsections (a) and (b) of § 31 of the Act, 415 ILCS § 5/31(a) and (b), is a statutory condition precedent to the Attorney General bringing an action under § 31(c)(1) of the Act, 415 ILCS § 5/31(c)(1).

That government is required to comply with a statutory condition precedent prior to filing a complaint was the holding of *Skillet Fork River Outlet Union Drainage District v. Fogle ("Skillet Fork River")*, 382 Ill. 77 (1943). There, the Court interpreted a statute, Section 5-25 if the Illinois Drainage Code, 70 ILCS 605/5-25 (formerly Section 34a of the Levee Act). That statute states, in pertinent part:

> In case the owner or owners of any lands lying in any district,*** and which are assessed, fails or neglects to pay any assessment or assessments...when due, *and the same be not collected on or before the annual sale of lands for nonpayment of taxes*, the commissioners of such drainage district may file a petition or bill in the circuit court of the county *** for a foreclosure of such lien... (Emphasis added). 382 Ill. at 83.

The plaintiff drainage district filed a complaint to foreclose the lien of an assessment levied for the construction of a drainage system. Defendants, in, *inter alia*, a motion to dismiss[5] averred that a delinquent return to the county collector is a prerequisite to a foreclosure action under the statute. The Court, in upholding the trial court's dismissal of the complaint, agreed, holding:

> A condition precedent to instituting a foreclosure action is that delinquent assessments shall not have been collected "on or before the annual sale of lands for nonpayment of taxes." This provision exhibits a legislative intent that there must be recourse to the procedure incident to the annual sale of lands. Otherwise, it is meaningless. We are not warranted in attributing to the General Assembly an intent to place superfluous provisions in the statute... [T]he statutory command must be obeyed. This, plaintiffs have failed to do. 382 Ill. at 85.

Similarly, fulfillment of the requirements of subsections (a) and (b) of § 31 of the Act, 415 ILCS § 5/31(a) and (b), is a statutory condition precedent to the Attorney General bringing an action under § 31(c) of the Act, 415 ILCS § 5/31(c). Otherwise, § 31(c)(1) of the Act, 415 ILCS 31(c)(1), would be "superfluous" and "meaningless." Thus, like the plaintiff drainage district in *Skillet Fork River*, the Attorney General, in purporting to bring the complaint "on her own motion," has failed to comply with a statutory condition precedent to maintaining a complaint. Under *Skillet Fork River* this Board is required to dismiss Counts I and II due to that failure. This same formulaic allegation is repeated in Counts III-IV of the Complaint, which must be stricken upon the same basis.

C. The Allegations of Counts I And II are Vague And Ambiguous, and Thereby Fail to Provide Notice of a Specific Violation Charged and Notice of the Specific Conduct Constituting the Violation.

i. No Permit is Attached to the Complaint in Violation of § 2-606 of the Code of Civil Procedure, 735 ILCS 5/606.

Paragraphs 5 and 6 of Counts I and II allege, in pertinent part, that:

[5] This issue was also raised via amendment to affirmative defenses and counterclaim.

> 5. On April 3, 2008, the Illinois EPA issued Water Pollution Control Permit No. 2008-E0-0331 ("Permit") to Respondent. The Permit allowed Respondent to haul and dispose approximately 12,000 gallons per day (Daily Maximum Flow of 12,000 gpd) of landfill leachate to the head works of the Village of Atkinson Sewage Treatment Plant ("Village STP"). The Village STP is located at 19696 East 2200 Street, Atkinson, Henry County, Illinois and discharges its effluent to the Green River.
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> 6. On August 24, 2011, the Illinois EPA conducted a compliance inspection at the Village STP. Records from the Village SIP showed that during the months of March and April 2011, Respondent had disposed of leachate at the Village STP in excess of the 12,000 gallons per day limit allowed by the Permit. ...

Paragraph 6 of asserts that Permit No. 2008-E0-0331 contains a limitation of 12,000 gallons per day. 735 ILCS 5/606 requires that:

> If a claim or defense is founded upon a written instrument, a copy thereof, or of so much of the same as is relevant, must be attached to the pleading as an exhibit or recited therein, unless the pleader attaches to his or her pleading an affidavit stating facts showing that the instrument is not accessible to him or her. In pleading any written instrument a copy thereof may be attached to the pleading as an exhibit. In either case the exhibit constitutes a part of the pleading for all purposes.

Since the STATE's claim is "founded upon" Permit No. 2008-E0-0331, "a copy thereof...must be attached to the pleading as an exhibit or recited therein." Yet, the STATE failed to attach a copy of No. 2008-E0-0331. Thus, not only has the STATE run afoul of 735 ILCS 5/606, it is impossible to verify whether this allegation regarding Permit No. 2008-E0-0331 is accurate or complete, because that permit not attached to the Complaint.

ii. The Allegation in Paragraph 6 That Permit No. 2008-E0-0331 Contains a Limit of "12,000 Gallons Per Day" is Incorrect and Fails to Provide Notice of the Specific Violation.

Moreover, the allegation in paragraph 6 that Permit No. 2008-E0-0331 contains a limit of "12,000 gallons per day" is incorrect. As set forth in paragraph 5, Permit No. 2008-E0-0331 actually contains a limitation of "*approximately* 12,000 gallons per day" (emphasis added). The

word "approximate" is defined, in pertinent part, as "[u]sed in the sense of an estimate merely, meaning more or less, but about and near the amount, quantity, or distance specified." Black's Law Dictionary, 5th Ed. Thus, "approximately 12,000 gallons per day" is a mere estimate, and could mean more than 12,000 gallons per day. Accordingly, Permit No. 2008-E0-0331 actually does *not* bar discharges "in excess" of 12,000 gallons per day. In fact, many of the alleged exceedances were for amounts of 12,720 gallons. Does that amount exceed the purported limit of "approximately 12,000 gallons per day"? No wonder that the court in *Knight Soda Fountain Co. v. Walrus Mfg. Co.*, 258 F. 929, 930 (7th Cir. 1919) found the use of the word "approximately," albeit in a different context, to be "indefinite and vague."

Charges in an administrative proceeding need not be drawn with the same refinements as pleadings in a court of law, but the charges must be sufficiently clear and specific to allow preparation of a defense, and this section [§ 31 of the Act, 415 ILCS § 5/31] requires notice of a specific violation charged and notice of the specific conduct constituting the violation. *Lloyd A. Fry Roofing Co. v. Pollution Control Board,* 20 Ill. App. 3d 301, 305 (2nd Dist. 1974). The allegations in paragraphs 5 and 6 pertaining to "approximately 12,000 gallons per day" fail to meet this minimal standard.

iii. The Allegation in Paragraph 7 That Permit No. 2008-E0-0331 Requires the Discharge of Leachate at the "head works" of the Village STP Fails to Provide Notice of the Specific Violation.

Also failing to meet the standard in *Lloyd A. Fry Roofing Co* are the allegations in Paragraph 7 of Counts I and II, which states as follows:

> Respondent also disposed of leachate in a manhole upstream of the Village's STP instead of at the head works of the Village STP as required by the Permit.

Thus, paragraph 7 alleges that some leachate was discharged at a point other than at the facility "head works," and that such discharge was allegedly contrary to the provisions of Permit No. 2008-E0-0331.

The phrase "head works" is not defined either under the Act or in the Illinois Administrative Code. The STATE neither proffers a definition or avers that the term is defined elsewhere, such as in Permit No. 2008-E0-0331, itself. No definition of "head works" can be found at the American Heritage Dictionary of the English Language, Third Edition ("American Heritage"), and none can be found at Merriam-Webster.com. Both of those dictionaries have definitions, however, for "headwork," which in American Heritage Dictionary is defined as "Mental activity or work, thought" and at Merriam-Webster.com, which defines "headwork" as "mental labor; *especially* : clever thinking," a definition that has been in use since 1837. Given those definitions, "headworks" would be defined as "mental labors." Obviously, it does not take much mental labor to ascertain that the reference to "head works" in Permit No. 2008-E0-0331 as set forth in the allegations at paragraph 7 of Count I is ambiguous, at best. Where there is any ambiguity as to the meaning of the language used in a document it should be construed most strongly against the drafter under the doctrine of *contra proferentem*. *Harris v. American General Finance Corp.*, 54 Ill. App. 3d 835, 840 (3rd Dist. 1977) . Construing "headworks" against the drafter of Permit No. 2008-E0-0331, *i.e.*, the STATE, suggests that the permit really does not designate a definable point where ALC is required to dispose of any leachate thereunder. Given that ambiguity, there is nothing in Permit No. 2008-E0-0331 as set forth in paragraph 7 of Count I, prohibiting the alleged discharge into a manhole.

D. Since No Specific Violations of Pretreatment Standards Are Alleged Under 40 C.F.R. 403.5(B)(1)-(8) and 35 Ill. Adm. Code 307.1101(B)(1)-(13), No Cause of Action is Stated.

Paragraph 8 of Counts I and II alleges, as follows:

> The discharge of certain types of wastewater, including leachate generated by landfills, *may cause* serious harm to the Village STP by upsetting the treatment process, interfering with the normal operation of the STP, passing through the STP untreated, or causing conditions at the STP which may be harmful to STP workers. (Emphasis added.)

Thus, paragraph 8 of Counts I and II alleges that leachate "*may cause* serious harm to the Village STP by upsetting the treatment process, interfering with the normal operation of the STP, passing through the STP untreated or causing conditions at the STP which may be harmful to STP workers." No *actual* upset, interference, pass through, harm to workers or damage to the Village STP is alleged.

In fact, if actual upset, interference, pass through, harm or damage to the Village STP had occurred there would have been an ample legal basis to bring an action against ALC. Landfills that discharge trucked leachate into POTWs are subject to pretreatment standards for introduction of pollutants into treatment works.

The first part of the pretreatment standards addresses the control of pollutants that pass through or interfere with treatment processes in POTWs.[6] It applies to pollutants indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs, to POTWs that receive wastewater from sources subject to pretreatment standards and to any new or existing source subject to such pretreatment standards.[7] It establishes a general prohibition against pollutants that cause pass through or interference.[8] A pass through is defined as a discharge that exits the POTW into waters of the United States that alone or in conjunction with discharges from other sources cause a violation of the POTW's NPDES permit.[9] Interference is defined as a discharge that, alone or in conjunction with discharges from other sources, inhibits

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[6] 40 C.F.R. 403.1.
[7] 40 C.F.R. 403.1(b).
[8] 40 C.F.R. 403.5(a)(1); 35 Ill. Adm. Code 307.1101(a) and 310.201(a).
[9] 40 C.F.R. 403.3(p).

or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal, and therefore is a cause of a violation of any requirement of the POTW's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with various federal statutes.[10]

The second part of the pretreatment program establishes specific prohibitions against discharges into a POTW of pollutants that create a fire or explosion hazard, pollutants that will cause corrosive structural damage to the POTW, pollutants that will cause an obstruction to the flowing within the POTW, oxygen demanding pollutants at a flow rate or concentration that will cause interference, heat in amounts that will inhibit biological activity in the POTW, petroleum and other oils, pollutants which result in the presence of toxic gasses, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems, and any trucked or hauled pollutants, except at discharge points designated by the POTW.[11]

Yet, nowhere in the entirety of the Complaint are actual violations of the above-cited federal and state regulations constituting the pretreatment program *actually alleged*. All that is alleged is that leachate "*may cause* serious harm to the Village STP by upsetting the treatment process, interfering with the normal operation of the STP, passing through the STP untreated or causing conditions at the STP which may be harmful to STP workers."[12] That something "may cause" harm is not tantamount to actually causing harm. The STATE has not even attempted to allege either that *actual* harm occurred or that an *actual* violation of the pretreatment regulations occurred. As the Board cautioned the STATE in *EPA v. Rosenbalm*, PCB No. 71-299, 1973 Ill. ENV LEXIS 2 (January 16, 1973):

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[10] 40 C.F.R. 403.3(k).
[11] 40 C.F.R. 403.5(b)(1)-(8); 35 Ill. Adm. Code 307.1101(b)(1)-(13).

[12] Counts I and II, par. 8.

> ...*[W]e caution the Agency and its representatives to avoid unfair, omnibus pleadings which either intend to sweep within its purview prospective violations which may occur* subsequent to the filing of the complaint, or are so vague and indefinite as to fail to give the Respondent fair notice of the specific dates of alleged infractions of the law so as to enable him to properly prepare a defense. (Emphasis added.)

Thus, allegations about events that "may occur," according to the Board "fail to give the Respondent fair notice of the specific dates of alleged infractions of the law so as to enable him to properly prepare a defense." Note, in this regard, that there are affirmative defenses available to a party that has been charged with an *actual* violation under 35 Ill. Adm. Code 310.201; these are not available to ALC here.

As set forth above, charges in an administrative proceeding...must be sufficiently clear and specific to allow preparation of a defense, and this section requires notice of a specific violation charged and notice of the specific conduct constituting the violation. *Lloyd A. Fry Roofing Co. v. Pollution Control Board,* 20 Ill. App. 3d at 305. Here, neither the specific violation nor the conduct constituting the violation is set forth.

E. Counts I and II Fail to Sufficiently Allege That ALC Caused or Contributed to Water Pollution in Violation of §12(a), (b) and (c) of the Act, 415 ILCS 5/12(a), (b) and (c).

Paragraph 10 of Count I and II sets forth the statutory prohibition on water pollution at §12(a) of the Act, 415 ILCS 5/12(a), as follows:

> No person shall:
> (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

Thus, in order to violate §12(a) of the Act, 415 ILCS 5/12(a), one must "cause or threaten or allow the discharge of contaminants... so as to cause or tend to cause water pollution."

Paragraph 17 of Counts I and II quotes the statutory definition of "Water Pollution" at Section 3.545 of the Act, 415 ILCS 5/3.545 (2010), as follows:

> "WATER POLLUTION" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

Thus, in order for there to be "water pollution" there must be actual "*alteration* of the physical, thermal, chemical, biological or radioactive properties of any *waters of the State*, or such *discharge of any contaminant into any waters of the State* (emphasis added)." "Waters of the state" is undefined in the Act or regulations. However, as set forth above, POTWs are excluded from the definition of "waters of the United States".[13] The Village STP is a POTW. Thus, the primary statute under which the STATE asserts liability against ALC contains a key undefined term. At any rate, there is no indication in either the applicable statutory law or judicial decisions that "waters of the State" include POTWs.

Paragraph 18 of Count I alleges, as follows:

> Respondent, by disposing of leachate, a contaminant, at the Village STP in excess of the limits imposed by the Permit, which may cause serious harm to the Village STP by upsetting the treatment process, interfering with the normal operation of the STP, passing through the STP untreated, or causing conditions at the STP which may be harmful to STP workers, caused, threatened, or allowed water pollution, in violation of Section 12(a) of the Act, 415 ILCS 12(a) (2010).

Thus, paragraph 18 alleges that ALC, by allegedly disposing of leachate at the Village STP in excess of the purported limits imposed by Permit No. 2008-E0-0331 that "may cause serious harm to the Village STP" allegedly caused water pollution in violation of §12(a) of the Act, 415

[13] *See* CWA, § 212(2)(A), 33 U.S.C. § 1292(2)(A); 40 C.F.R. 403.3(q); 40 C.F.R. 122.3(c).

ILCS 5/12(a). Yet, as set forth above, in order to violate §12(a) of the Act, 415 ILCS 5/12(a), one must "cause or threaten or allow the discharge of contaminants... so as to cause or tend to cause water pollution." Here, there is no allegation either that ALC caused or threatened or allowed the discharge of contaminants so as to cause or threaten or allow water pollution in the waters of the state. All that is alleged is that ALC discharged leachate into a sewer manhole. There is no allegation that the discharge reached or even threatened to reach any water of the state. While the Count I, paragraphs 5 and 14 mention that the Village STP discharges effluent into the Green River, there is no allegation that the leachate that ALC discharged into the Village STP either entered or threatened to enter the Green River. Moreover, as set forth in Part I(A) of this Motion, no permit was required for the alleged discharges into the Village STP, in any event. Thus, the entirety of Count I is insufficient to state a cause of action under §12(a) of the Act, 415 ILCS 5/12(a). Accordingly, it must be stricken and dismissed.

Similarly, allegations in Count II that ALC violated §§ 12(b) and (c) of the Act, 415 ILCS 5/12(b) and (c), also fail to state a cause of action. Paragraph 17 of Count II quotes Sections 12(b) and (c) of the Act, 415 ILCS 5/12(b) and (c) (2010), as follows:

> No person shall:
>
> (b) Construct, install, or operate any equipment, facility, vessel, or aircraft capable of or contributing to water pollution, or designed to prevent water pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.
>
> (c) Increase the quantity or strength of any discharge of contaminants into the waters, or construct or install any sewer or sewage treatment facility or any new outlet for contaminants into the waters of this State, without a permit granted by the Agency.

Paragraphs 17-21 of Count II allege that the hauling and disposal of leachate from the ALC landfill to the Village STP violated these sections by "being capable of or contributing to water

pollution" through disposing of alleged contaminants in violation of Permit No. 2008-E0-0331. Yet, again, "water pollution" requires a discharge into "waters of the state" pursuant to Section 3.545 of the Act, 415 ILCS 5/3.545. Of course, Count II, like Count I, contains no allegation that the discharge reached or even threatened to reach any water of the state. Moreover, as set forth in Part I(A) of this Motion, no permit was required for the alleged discharges into the Village STP, in any event. Thus, the entirety of Count II is insufficient to state a cause of action under §12(b) and (c) of the Act, 415 ILCS 5/12(b) and (c). Accordingly, it must be stricken and dismissed.

II. COUNTS I AND II MUST BE DISMISSED UNDER § 2-619(a)(9) OF THE CODE OF CIVIL PROCEDURE, 735 ILCS 2-619(a)(9).

A. ALC'S Alleged Disposal of Leachate at the Village STP Was Authorized Under Special Conditions 2 And 3 of Permit No. 2008-E0-0331 and Pursuant to 35 Ill. Adm. Code 307.1101 and 40 CFR 403.5(8) as Discharges "at Discharge Points Designated by the POTW."

Counts I and II of the Complaint allege that ALC allegedly disposed of leachate at the Village of Atkinson sewage treatment plant (the "Village STP") in purported excess of the purported limits imposed by Permit No. 2008-E0-0331 and at a location purportedly other than that specified in Permit No. 2008-E0-0331 and thereby allegedly violated §§ 12(a), (b) and (c) of the Act, 415 ILCS 5/12(a), (b) and (c). Yet, ALC's alleged disposal of leachate at the Village STP was specifically authorized under Permit No. 2008-E0-0331 and under both state and federal law.

It is well settled that public documents that are included in the records of other courts and administrative tribunals may be the subject of judicial notice. *N B D Highland Park Bank, N.A. v. Wien*, 251 Ill. App. 3d 512, 520-521 (2nd Dist. 1993). Accordingly, this Board may take judicial notice of Permit No. 2008-E0-0331, a copy of which is attached hereto as Exhibit "A". It is true that Permit No. 2008-E0-0331 purports to authorize "[t]he hauling of approximately

12,000 gpd (DMF of 12,000 gpd) of landfill leachate to the headworks of the Village of Atkinson STP." Therefore, Permit No. 2008-E0-0331 does seem to purport to dictate both the amount and location of discharges of leachate by ALC thereunder. However, the Permit also states, as follows:

> SPECIAL CONDITION 2: The issuance of this permit does not relieve the permittee of complying with 35 Ill. Adm. Code, Part 307 and/or the General Pretreatment Regulations (40 CFR 403) and any guidelines developed pursuant to Section 301, 306, or 307 of the Federal Clean Water Act of 1977.
>
> SPECIAL CONDITION 3: The issuance of this permit does not relieve the permittee of the responsibility of complying with any limitations and provisions imposed by the City of Atkinson.

Thus, Special Condition 2 provides that ALC must comply with, *inter alia*, 35 Ill. Adm. Code Part 307 and 40 CFR 403, as well as the CWA. In this regard, 35 Ill. Adm. Code 307.1101 provides, as follows:

> No person may introduce the following types of pollutants into a POTW:
> ***
> (13) *Any* trucked or hauled pollutants, *except at discharge points designated by the POTW.* (Emphasis added.)

Likewise, 40 CFR 403.5 provides, as follows:

> [T]he following pollutants shall not be introduced into a POTW:
> ***
> (8) *Any* trucked or hauled pollutants, *except at discharge points designated by the POTW.* (Emphasis added.)

Thus, a POTW, in this instance the Atkinson STP, has the authority under both 35 Ill. Adm. Code Part 307 and 40 CFR 403 to designate discharge points where "[a]ny trucked or hauled pollutants" may be discharged. In addition, 35 Ill. Adm. Code 307.1101(13) and 40 CFR 403.5(8), in referring to the word "*any*" trucked or hauled pollutants, also determines the *amount*

of the discharge.[14] Permit No. 2008-E0-0331, at Special Condition 2, specifically states that ALC must comply with those provisions.

In addition, Permit No. 2008-E0-0331 requires that ALC must "comply... with any limitations and provisions imposed by the City of Atkinson [sic]." Thus, ALC was required to comply with any limitations or provisions imposed by the Atkinson STP with respect to the amount and location of leachate discharges into the Atkinson STP.

ALC did, in fact, comply with both 35 Ill. Adm. Code Part 307 and 40 CFR 403, *i.e.*, specifically 35 Ill. Adm. Code 307.1101(13) and 40 CFR 403.5(8), and the limitations and provisions imposed by the Village STP with regard to the discharge of leachate. Attached hereto as Exhibit "B" is the affidavit of Gary Hull, a truck driver for ALC, who testifies that Bob Floming, Public Works Supervisor for the Village of Atkinson, specifically designated the discharge point for the ALC leachate. In that regard, Bob Floming instructed Gary Hull to dispose of the leachate at the sewer access at the abandoned gas station located on the southwest corner of the intersection of State Street (County Road 5) and Commercial Drive in the Village of Atkinson. Therefore, the discharge that is the subject of Counts I and II of the Complaint was specifically authorized under Special Condition 2 of Permit No. 2008-E0-0331 because it complied with the provisions of 35 Ill. Adm. Code Part 307 and 40 CFR 403 and with Special Condition 3 of Permit No. 2008-E0-0331 in that it complied with the limitations and provisions imposed by the Village of Atkinson. Further, the discharge that is the subject of Counts I and II of the Complaint complied with the provisions of 35 Ill. Adm. Code 307.1101(13) and 40 CFR 403.5(8) because it was discharged at points designated by the POTW. Additionally, since paragraph 6 of Counts I and II allege that 16,960 gallons were discharged into the Village STP

[14] The word "any" is defined in pertinent part as: "Some; one out of many; an indefinite number." Black's Law Dictionary, 4th Ed.

on March 16, 2011, one must conclude that the Village of Atkinson thereby also designated the *amount* of the discharge pursuant to the terms of Special Conditions 2 and 3 of Permit No. 2008-E0-0331 and 35 Ill. Adm. Code 307.1101(13) and 40 CFR 403.5(8). Accordingly, there was no violation of Permit No. 2008-E0-0331 or of the Act.

III. COUNTS III-IV RELATING TO DISCHARGES INTO THE GALVA WWTF ARE SUBSTANTIALLY INSUFFICIENT IN LAW AND MUST BE DISMISSED PURSUANT TO § 2-615 OF THE CODE OF CIVIL PROCEDURE, 735 ILCS 5/2-615.

A. Counts III and IV Fail to Sufficiently Allege That ALC Caused or Contributed to Water Pollution in Violation of § 12(a), (b) and (c) of the Act, 415 ILCS 5/12(a), (b) and (c).

Paragraph 10 of Counts III and IV sets forth the statutory prohibition on water pollution at § 12(a) of the Act, 415 ILCS 5/12(a). As set forth in detail in Part I(E) of this Motion to Dismiss, in order to violate §12(a) of the Act, 415 ILCS 5/12(a), one must "cause or threaten or allow the discharge of contaminants... so as to cause or tend to cause water pollution."

Paragraph 17 of Counts I and II, incorporated into Counts III and IV, quotes the statutory definition of "Water Pollution" at Section 3.545 of the Act, 415 ILCS 5/3.545 (2010). Yet, as set forth in Part I(E) of this Motion, in order for there to be "water pollution" there must be actual "*alteration* of the physical, thermal, chemical, biological or radioactive properties of any *waters of the State*, or such *discharge of any contaminant into any waters of the State* (emphasis added)." The Galva WWTF is a POTW. As further set forth in Part I(E) of this Motion to Dismiss, there is no indication in either the applicable statutory law or judicial decisions that "waters of the State" include POTWs.

Paragraph 18 of Count III alleges, as follows:

> Respondent, by disposing of leachate, a contaminant, at the Galva WWTF in excess of the limits imposed by the Permit, which may cause serious harm to the WWTF by upsetting the treatment process, interfering with the normal operation of the WWTF, passing through the WWTF untreated, or causing conditions at the

> WWTF which may be harmful to WWTF workers, caused, threatened, or allowed water pollution, in violation of Section 12(a) of the Act, 415 ILCS 12(a) (2010).

Thus, paragraph 18 alleges that ALC, by allegedly disposing of leachate at the Galva WWTF that "may cause serious harm to the WWTF" allegedly caused water pollution in violation of §12(a) of the Act, 415 ILCS 5/12(a). Yet, as set forth above, in order to violate §12(a) of the Act, 415 ILCS 5/12(a), one must "cause or threaten or allow the discharge of contaminants... so as to cause or tend to cause water pollution." Here, there is no allegation either that ALC caused or threatened or allowed the discharge of contaminants so as to cause or threaten or allow water pollution in the waters of the state. All that is alleged is that ALC discharged leachate into the Galva WWTF. There is no allegation that the discharge reached or even threatened to reach any water of the state. While Count III, paragraph 16, mentions that the Galva WWTF discharges effluent into the Edwards River, there is no allegation that the leachate that ALC discharged into the Galva WWTF either entered or threatened to enter the Edwards River. Moreover, as set forth in Part IV(A) of this Motion, no permit was required for the alleged discharges into the Galva WWTF, in any event. Thus, the entirety of Counts III and IV are insufficient to state a cause of action under §12(a) of the Act, 415 ILCS 5/12(a). Accordingly, they must be stricken and dismissed.

B. Since No Specific Violations of Pretreatment Standards Are Alleged Under 40 C.F.R. 403.5(B)(1)-(8) and 35 Ill. Adm. Code 307.1101(B)(1)-(13), No Cause of Action is Stated.

Paragraph 14 of Counts III and IV alleges, as follows:

> The discharge of certain types of wastewater, including leachate generated by landfills, *may cause* serious harm to the Galva WWTF by upsetting the treatment process, interfering with the normal operation of the WWTF, passing through the WWTF untreated, or causing conditions at the WWTF which may be harmful to WWTF workers. (Emphasis added.)

Thus, paragraph 14 of Counts III and IV alleges that leachate "*may cause* serious harm to the Galva WWTF by upsetting the treatment process, interfering with the normal operation of the STP, passing through the WWTF untreated or causing conditions at the WWTF which may be harmful to WWTF workers." No actual upset, interference, pass through, harm to workers or damage to the Galva WWTP is alleged.

If actual upset, interference, pass through, harm or damage to the Galva WWTF had occurred there would have been an ample legal basis to bring an action against ALC. The regulations setting forth the applicable pretreatment standards are set forth in Part I(D) of this Motion to Dismiss. Yet, nowhere in the entirety of the Complaint are actual violations of those federal and state regulations constituting the pretreatment program actually alleged. All that is alleged is that leachate "*may cause* serious harm to the Galva WWTF by upsetting the treatment process, interfering with the normal operation of the WWTF, passing through the WWTF untreated or causing conditions at the WWTF which may be harmful to WWTF workers."[15] That something "may cause" harm is not tantamount to actually causing harm. Allegations about events that "may occur," "fail to give the Respondent fair notice of the specific dates of alleged infractions of the law so as to enable him to properly prepare a defense." *EPA v. Rosenbalm,* PCB No. 71-299, 1973 Ill. ENV LEXIS 2 (January 16, 1973), *supra.* The STATE has not even attempted to allege either that *actual* harm occurred or that an *actual* violation of the pretreatment regulations occurred.

C. Counts III and IV Fail to Allege That ALC Has a Legal Responsibility to Ensure That the City Of Galva Has the Capacity to Treat ALC's Leachate.

Counts III and IV further allege that:

> ...[T]he City of Galva had not certified or demonstrated to the EPA that it had adequate capacity to accept and treat the quantities

[15] Counts I and II, par. 8.

of leachate Respondent sent it for treatment..[16]

Thus, the City of Galva allegedly had not demonstrated it had adequate capacity to accept and treat ALC's leachate. Yet, nowhere does the Complaint allege that ALC had a legal responsibility to ensure that the City of Galva had demonstrated such capacity. Thus, no cause of action is stated against ALC regarding the City of Galva's treatment capacity.

D. Count IV Fails to State a Cause of Action and Must Be Dismissed Pursuant to § 2-615 of the Code of Civil Procedure, 735 ILCS 5/2-615, Because No Permit Was Required for the Alleged Discharges.

Count IV of the Complaint alleges that ALC allegedly disposed of leachate at the Galva WWTF without a permit and thereby allegedly violated §§ 12(b) and (c) of the Act, 415 ILCS 5/12(b) and (c). Counts IV fails to allege a violation of §§ 12 (b) and (c) of the Act, 415 ILCS 5/12(a), (b) and (c), because *no permit was required* for that alleged disposal of leachate. As set forth in Part I(A) of this Motion to Dismiss, §12(f) of the Act, 415 ILCS 5/12(f) provides that "No permit shall be required... for any discharge for which a [NPDES] permit is *not required*" under the CWA. Under the CWA, an NPDES permit, *is* required under for any discharge of a pollutant from a point source to waters of the United States.[17] However, an NPDES permit is *not* required discharges directly into POTW, which is excluded from the definition of "waters of the United States".[18] Accordingly, no permit is required for a discharge into a POTW under §12(f) of the Act, 415 ILCS 5/12(f).

The Galva WWTF is a POTW. Thus, no permit was required for any discharge into the Galva WWTF. Given that no permit was required for any discharge into the Galva WWTF, there could not have been any permit violation for any discharge into the Galva WWTF.

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[16] Complaint, Counts III-IV, par. 17.
[17] CWA, §402, 33 U.S.C. §1342.
[18] CWA, § 212(2)(A), 33 U.S.C. § 1292(2)(A); 40 C.F.R. 403.3(q); 40 C.F.R. 122.3(c); D.K. McCall, III, *Clean Water Act*, in Environmental Law Handbook (T. Sullivan ed. 2011) ("McCall") at 323-324.

Despite the requirements of §12(f) of the Act, 415 ILCS 5/12(f), the Complaint alleges in Count IV, paragraphs 19-23, that a permit *is required* for discharges into a treatment works pursuant to 35 Ill. Adm. Code 309.204(a). That regulation states that "an operating permit issued by the Agency" is required for the "operation of any...wastewater source." Yet, 35 Ill. Adm. Code 309.204 directly contradicts §12(f) of the Act, 415 ILCS 5/12(f). Specifically, 35 Ill. Adm. Code 309.204(b)(1) provides that, "No operating permit is required under this Section for any discharge...[f]or which an NPDES permit is required." So, § 12(f) of the Act, 415 ILCS 5/12(f), provides that, "No permit shall be required... for any discharge for which a [NPDES] permit is *not required,*" while 35 Ill. Adm. Code 309.204(b)(1) provides that, "No operating permit is required...for any discharge...[f]or which an NPDES permit *is required*![19]

As set forth in Part I(A) of this Motion to Dismiss, this contradiction between the statute and the regulation is exactly what the Illinois legislature was trying to avoid when it adopted § 12(f) of the Act, 415 ILCS 5/12(f). The intention of the General Assembly was set forth in *EPA v. Culligan DuPage Soft Water Service*, PCB NO. 74-376, 1975 Ill. ENV LEXIS 54 (1975), *supra,* which stated that " the Illinois Legislature wished to avoid a dual permit system." To the extent that 35 Ill. Adm. Code 309.204 creates a "dual permit system" in contradiction to the intention of the legislature and to § 12(f) of the Act, 415 ILCS 5/12(f), it is unlawful. Given that no cause of action can therefore be stated under Count IV for violation of §§ 12(b) and (c) of the Act, 415 ILCS 5/12(b) and (c), the entirety of Count IV must be dismissed for failure to state a cause of action.

IV. COUNTS III AND IV MUST BE DISMISSED UNDER § 2-619(a)(9) OF THE CODE OF CIVIL PROCEDURE, 735 ILCS 2-619(a)(9).

A. ALC'S Alleged Disposal of Leachate at the Galva WWTF Was Authorized Pursuant To 35 Ill. Adm. Code 307.1101(13) And 40 CFR 403.5(8) as Discharges "at Discharge Points

[19] Emphasis added.

Designated By the POTW."

Count IV of the Complaint alleges that ALC allegedly disposed of leachate at the Galva WWTF without a permit and thereby allegedly violated §§ 12(b) and (c) of the Act, 415 ILCS 5/12(b) and (c). Yet, ALC's alleged disposal of leachate at the Galva WWTF was specifically authorized under both state and federal law.

As set forth in Part II(A) of this Motion to Dismiss, 35 Ill. Adm. Code 307.1101 provides, as follows:

> No person may introduce the following types of pollutants into a POTW:
> ***
> (13) *Any* trucked or hauled pollutants, *except at discharge points designated by the POTW.* (Emphasis added.)

Likewise, 40 CFR 403.5 provides, as follows:

> [T]he following pollutants shall not be introduced into a POTW:
> ***
> (8) *Any* trucked or hauled pollutants, *except at discharge points designated by the POTW.* (Emphasis added.)

Thus, a POTW, in this instance the Galva WWTF, has the authority under both 35 Ill. Adm. Code 35 Ill. Adm. Code 307.1101(13) and 40 CFR 403.5(8) to designate discharge points where "[a]ny trucked or hauled pollutants" may be discharged.

ALC did, in fact, comply with both 35 Ill. Adm. Code 307.1101(13) and 40 CFR 403.5(8) with regard to the discharge of leachate. Attached hereto as Exhibit "C" is the Affidavit of Erik Vardijan, manager and tanker truck driver for ALC, confirming such compliance. There, Erik Vardijan states that on May 4, 2011 Greg Thompson, Water and Sewer Superintendent, City of Galva, designated a discharge point to discharge all leachate from ALC into the sewers of the Galva WWTF. That discharge point was at the main sewer interceptor to the North Treatment Plant. All of leachate from ALC that was subsequently discharged into the Galva WWTF was

discharged at that same designated discharge point. Therefore, the discharge that is the subject of Count IV of the Complaint complied with the provisions of 35 Ill. Adm. Code 307.1101(13) and 40 CFR 403.5(8) because it was discharged at points designated by the POTW. Accordingly, there was no violation of the Act.

V. CONCLUSION.

In Summary, Counts I-II relating to alleged discharges into the Village STP are substantially insufficient in law and must be dismissed pursuant to § 2-615 of the Code Of Civil Procedure, 735 ILCS 5/2-615. First of all, no permit was required for the alleged discharges that purportedly violated Permit No. 2008-E0-0331. Secondly, no authority exists under § 31 of the Act, 415 ILCS 5/31, for the Attorney General to bring an action on her own motion. Thirdly, the allegations of Counts I And II are vague and ambiguous, and thereby fail to provide notice of a specific violation charged and notice of the specific conduct constituting the violation. Fourthly, since no specific violations of pretreatment standards are alleged under 40 C.F.R. 403.5(B)(1)-(8) and 35 Ill. Adm. Code 307.1101(B)(1)-(13), no cause of action is stated. Fifthly, Counts I And II fail to sufficiently allege that ALC caused or contributed to water pollution in violation of §12(a), (b) and (c) of the Act, 415 ILCS 5/12(a), (b) and (c).

Additionally, Counts I And II must be dismissed under § 2-619(a)(9) of the Code of Civil Procedure, 735 ILCS 2-619(a)(9). In particular, ALC's alleged disposal of leachate at the Village STP was authorized under Special Conditions 2 and 3 of Permit No. 2008-E0-0331 and pursuant to 35 Ill. Adm. Code 307.1101 and 40 CFR 403.5(8) as discharges "at discharge points designated by the POTW."

Furthermore, Counts III-IV relating to discharges into the Galva WWTF are substantially insufficient in law and must be dismissed pursuant to § 2-615 of the Code Of Civil Procedure,

735 ILCS 5/2-615. First of all, Counts III and IV fail to allege that ALC has a legal responsibility to ensure that the City Of Galva has the capacity to treat ALC's leachate. Secondly, Count IV fails to state a cause of action and must be dismissed pursuant to § 2-615 of the Code of Civil Procedure, 735 ILCS 5/2-615, because no permit was required for the alleged discharges. Thirdly, Count IV fails to state a cause of action and must be dismissed pursuant to § 2-615 of the Code of Civil Procedure, 735 ILCS 5/2-615, because no permit was required for the alleged discharges.

Additionally, Counts III And IV must be dismissed under § 2-619(a)(9) of the Code Of Civil Procedure, 735 ILCS 2-619(a)(9). In particular, ALC's alleged disposal of leachate at the Galva WWTF was authorized pursuant to 35 Ill. Adm. Code 307.1101 and 40 CFR 403.5 as discharges "at discharge points designated by the POTW."

WHEREFORE, ALC moves that the Complaint be stricken and dismissed.

Respondent, ATKINSON LANDFILL CO.,

By: _____
its attorney

KENNETH ANSPACH, ESQ.
ANSPACH LAW OFFICE
111 West Washington Street
Suite 1625
Chicago, Illinois 60602
(312) 407-7888
Attorney No. 55305

THIS FILING IS SUBMITTED ON RECYCLED PAPER.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
WATER POLLUTION CONTROL PERMIT

SCREENED

LOG NUMBERS: 0331-08

PERMIT NO.: 2008-EO-0331

FINAL PLANS, SPECIFICATIONS, APPLICATION AND SUPPORTING DOCUMENTS
PREPARED BY: Atkinson Landfill Company

DATE ISSUED: April 3, 2008

RELEASABLE

SUBJECT: ATKINSON LANDFILL COMPANY - Hauling of Landfill Leachate - Tributary to the Village of Atkinson STP

PERMITTEE TO OWN AND OPERATE

Atkinson Landfill Company
221 North Washtenaw
Chicago, IL 60612

Permit is hereby granted to the above designated permittee(s) to construct and/or operate water pollution control facilities described as follows:

The hauling of approximately 12,000 gpd (DMF of 12,000 gpd) of landfill leachate to the headworks of the Village of Atkinson STP.

This operating permit expires on March 31, 2013.

This Permit is issued subject to the following Special Condition(s). If such Special Condition(s) require(s) additional or revised facilities, satisfactory engineering plan documents must be submitted to this Agency for review and approval for issuance of a Supplemental Permit.

SPECIAL CONDITION 1: This Permit is issued with the expressed understanding that there shall be no surface discharge from these facilities. If such discharge occurs, additional or alternate facilities shall be provided. The construction of such additional or alternate facilities may not be started until a Permit for the construction is issued by this Agency.

SPECIAL CONDITION 2: The issuance of this permit does not relieve the permittee of the responsibility of complying with 35 Ill. Adm. Code, Part 307 and/or the General Pretreatment Regulations (40 CFR 403) and any guidelines developed pursuant to Section 301, 306, or 307 of the Federal Clean Water Act of 1977.

SPECIAL CONDITION 3: The issuance of this permit does not relieve the permittee of the responsibility of complying with any limitations and provisions imposed by the City of Atkinson.

THE STANDARD CONDITIONS OF ISSUANCE INDICATED ON THE REVERSE SIDE MUST BE COMPLIED WITH IN FULL. READ ALL CONDITIONS CAREFULLY.

SAK:LRL:033108

DIVISION OF WATER POLLUTION CONTROL

cc: EPA - Peoria FOS
Atkinson Landfill Company
Village of Atkinson Sewer Treatment Facility
Records - Municipal
Records - Industrial
Binds

Alan Keller, P.E.
Manager, Permit Section

IEPA-DIVISION OF RECORDS MANAGEMENT
RELEASABLE

JAN 11 2013

REVIEWER JZJ

EXHIBIT "A"

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
WATER POLLUTION CONTROL PERMIT

SCREENED

LOG NUMBERS: 0331-08 **PERMIT NO.:** 2008-EO-0331

FINAL PLANS, SPECIFICATIONS, APPLICATION AND SUPPORTING DOCUMENTS **DATE ISSUED:** April 3, 2008
PREPARED BY: Atkinson Landfill Company

SUBJECT: ATKINSON LANDFILL COMPANY - Hauling of Landfill Leachate - Tributary to the Village of Atkinson STP

SPECIAL CONDITION 4: This permit is being issued with the expressed understanding that the transportation of wastewater to the Village of Atkinson Sewer Treatment Facility for treatment will be done in accordance with the following IEPA Bureau of Land requirements:

These regulations as identified in 35 Ill. Adm. Code 809, state that the generator may not give the waste to a hauler unless the hauler has obtained an Illinois special waste haulers license; the hauler may not accept the waste unless it is accompanied by the required manifest; and the receiving facility can not accept the waste unless it is delivered by a licensed special waste hauler or exempt hauler, accompanied by the required manifest and the receiving facility has obtained the required permits to receive the waste.

The authorization number is no longer issued by this Agency. Therefore, you will no longer be required to identify the authorization number on the manifest when shipping waste as authorized by this permit.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13-28
	)	
ATKINSON LANDFILL CO.,	)	
	)	
	)	
Respondent.	)	

AFFIDAVIT OF GARY HULL

Gary Hull, being first duly sworn, deposes and says that:

1. I have been employed by Atkinson Landfill Co. as a truck driver.

2. On or around March 16, 2011 I drove a tanker truck containing a load of leachate (the "ALC Leachate") from the Atkinson Landfill to the Village of Atkinson Sewage Treatment Plant (the "Atkinson STP") where I met village employee, Bob Floming, who told me that the Atkinson STP had too much water due to heavy rains from the past several days.

3. At that time and place, Mr. Floming told me to then go to the abandoned gas station located on the southwest corner of the intersection of State Street (or County Road 5) and Commercial Drive and discharge the ALC Leachate into the sewer access there.

4. I called Diana Vardijan, a manager at Atkinson Landfill, and told her what Mr. Floming had directed me to do. She told me to proceed with the Village representative's instructions.

5. I proceed to the designated location as per Mr. Floming's instructions and discharged the ALC Leachate into the sewer system.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the under signed certifies that the statements set forth in this affidavit are true and correct to the best of his knowledge.

Gary Hull

Gary Hull

EXHIBIT "B"

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13-28
	)	
ATKINSON LANDFILL CO.,	)	
	)	
Respondent.	)	

AFFIDAVIT OF ERIK VARDIJAN

Erik Vardijan, being first duly sworn, deposes and says that:

1. I have been employed by Atkinson Landfill Co. since 2001 as a truck driver and manager.

2. On May 4, 2011 I drove a tanker truck containing a load of leachate (the "ALC Leachate") from the Atkinson Landfill to the City of Galva wastewater treatment facility ("Galva WWTF"). This load was the first to be delivered from the Atkinson Landfill to the Galva WWTF.

3. At that time and place Greg Thompson, Water and Sewer Superintendent, City of Galva, designated a discharge point for me to discharge the ALC Leachate into sewers of the Galva WWTF. That discharge point was at the main sewer interceptor to the North Treatment Plant (the "Plant"), about 1000 feet from the Plant.

4. All subsequent loads of ALC Leachate discharged by either me or other tanker truck drivers employed by ALC, were discharged into the sewers of the Galva WWTF at the same designated discharge point.

EXHIBIT "C"

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this affidavit are true and correct to the best of his knowledge.

Erik Vardijan

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalties of perjury as provided by law pursuant to 735 ILCS 5/1-109, that the attached Motion to Strike and Dismiss and Supporting Memorandum was __ personally delivered, _X_ placed in the U. S. Mail, with first class postage prepaid, ___ sent via facsimile and directed to all parties of record at the address(es) set forth below on or before 5:00 p.m. on the 28th day of January, 2013.

Elizabeth Wallace, Chief
Zemeheret Bereket-Ab
Assistant Attorneys General
Environmental Bureau
69 West Washington Street
Suite 1800
Chicago Illinois 60602

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