

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

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JAN 28 2013

STATE OF ILLINOIS
Pollution Control Board



ORIGINAL

MOTION FOR JOINDER

Respondent, ATKINSON LANDFILL CO. ("ALC"), by its attorney, Kenneth Anspach, pursuant to § 2-614(a) of the Code of Civil Procedure, 735 ILCS 2-614(a), and §§ 101.100, 101.403, and 101.500 of the General Rules of the Pollution Control Board, 35 Ill. Adm. Code 101.100, 101.403, and 101.500, hereby moves the Pollution Control Board (the "Board") to join as defendants herein the Village of Atkinson and the City of Galva, and in support thereof states as follows:

1. The instant action concerns alleged violations arising from the alleged disposal of leachate by ALC at the Village of Atkinson sewage treatment plant (the "Village STP") and the City of Galva wastewater treatment facility (the "Galva WWTF").

2. 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 that the Illinois Environmental Protection Agency (the "Agency") has issued notices of violation pursuant to § 31(a) of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/31(a) to the Village of Atkinson and the City of Galva arising out of the same set of operative facts as in the present cause.

3. ALC has been informed by the complainant, PEOPLE OF THE STATE OF ILLINOIS (the “STATE”), and therefore believes, that pre-enforcement meetings have been held between representatives of the Agency, the STATE and the Village of Atkinson and the City of Galva in regards to these notices of violation.

4. It would appear that any disposition of the enforcement proceedings against ALC should be consistent with that of the Village of Atkinson and the City of Galva.

5. 35 Ill. Adm. Code 101.403(a) states:

§ 101.403 Joinder of Parties

a) The Board, on its own motion or the motion of any party, may add a person as a party to any adjudicatory proceeding if:

1) A complete determination of a controversy cannot be had without the presence of the person who is not already a party to the proceeding;

2) The person who is not already a party to the proceeding has an interest that the Board's order may affect; or

3) It may be necessary for the Board to impose a condition on the person who is not already a party to the proceeding.

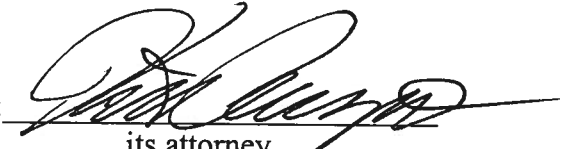
6. Here, the presence of the Village of Atkinson and the City of Galva would certainly result in a “complete determination of [the] controversy” pursuant to 35 Ill. Adm. Code 101.403(a)(1).

7. Both the Village of Atkinson and the City of Galva have “an interest in the Board’s order” pursuant to 35 Ill. Adm. Code 101.403(a)(2) because, upon information and belief, both the Village STP and the Galva WWTF have permits to accept leachate from ALC.

8. Certainly, if any condition were to arise out of the instant cause, it must apply equally to the Village of Atkinson and the City of Galva pursuant to 35 Ill. Adm. Code 101.403(a)(3).

WHEREFORE, upon the above and foregoing, ALC hereby moves the Board to join as defendants herein the Village of Atkinson and the City of Galva.

Respondent, ATKINSON LANDFILL CO.,

By: 
its attorney

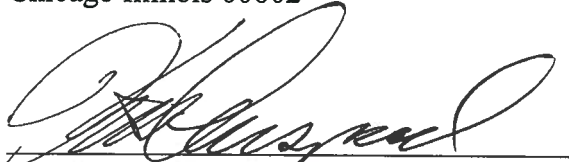
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THIS FILING IS SUBMITTED ON RECYCLED PAPER.

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 for Joinder 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.

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