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
PEOPLE OF THE STATE OF ILLINOIS,	)	(Enforcement - Land)
	)	
Intervenor,	)	
	)	
v.	)	
	)	
CLINTON LANDFILL, INC., an Illinois corporation,	)	
	)	
Respondent.	)	

NOTICE OF ELECTRONIC FILING

TO: All Parties of Record

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

1. This Notice of Electronic Filing

2. Clinton Landfill, Inc.'s Response in Opposition to Motion Reconsider

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

Respectfully submitted,

CLINTON LANDFILL, INC.
Respondent

By:_____
One of its attorneys

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PEOPLE OF THE STATE OF ILLINOIS,	)
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v.	)
	) (Enforcement - Land)
CLINTON LANDFILL, INC., an Illinois corporation,	)
	)
Respondent.	)

RESPONSE IN OPPOSITION TO MOTION TO RECONSIDER

NOW COMES the Respondent, Clinton Landfill, Inc. ("CLI"), by and through its undersigned attorneys, and as and for its Response in Opposition to the Motion to Reconsider filed on October 25, 2013, 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"), and by the Illinois Attorney General's office, purporting to represent the People of the State of Illinois (the "Intervenor"), states as follows:

I. Introduction

The dismissal of this case on the grounds of frivolousness pursuant to Section 31 of the Illinois Environmental Protection Act, 415 ILCS §5/1 *et seq.* (the "Act"), in the Opinion and Order entered on September 19, 2013 (the "Order"), by the Pollution Control Board (the "Board") was thoroughly reasoned and based on substantial briefing by the Complainants, CLI, Intervenor, and two friends of the court. In their Motion to Reconsider that Opinion and Order filed on October 25, 2013, the movants do not introduce new or different facts or law. Rather, they simply argue that the Board's ultimate decision was wrong, based on the very facts and law already analyzed by the Board. CLI submits that there is no plausible reason for the Board to reconsider its rulings in this case. This being said, if the Board does elect to reconsider its Order, CLI respectfully requests that the Board also reconsider its findings that the Board has jurisdiction over this case and that the Complainants had standing to bring this case (which are not brought up in the Motion to Reconsider).

II. Factual and Procedural Background

On September 12, 2002, the DeWitt County Board unanimously passed and approved the "Resolution Conditionally Approving the Application for Local Siting Approval of a Pollution Control Facility Filed by Clinton Landfill, Inc.," along with the Findings of Fact and list of conditions appended thereto, granting siting authorization to CLI for Clinton Landfill No. 3. The DeWitt County Board certified its siting approval to the Illinois Environmental Protection

Agency (the "Agency") on October 17, 2002. A copy of the Certification of Siting Approval (LPC-PA8), which includes the DeWitt County Board's Resolution, is attached to the Complaint filed in this case as Exhibit B (collectively, the "Conditional Siting Resolution"), and is attached hereto as Exhibit 1 for the Board's convenience. The Complainants did not appeal the grant of siting authority by the DeWitt County Board.

The Agency initially issued a permit for Clinton Landfill No. 3 on March 2, 2007. (Complaint, ¶35; Exhibit A thereto). The Agency subsequently modified that initial permit to permit the development, construction, and operation of the Chemical Waste Unit at Clinton Landfill No. 3. (Complaint, ¶¶48-52; Exhibit D thereto). The Agency did not require that CLI submit proof of "additional" siting authority from the DeWitt County Board prior to modifying the permit relative to the Chemical Waste Unit. Therefore, the Agency clearly did not consider the Chemical Waste Unit to be a "new pollution control facility" (as the Agency expressly stated in its letter dated June, 2011, attached as Exhibit A to CLI's Motion to Dismiss, and attached hereto as Exhibit 2 for the Board's convenience). The modified permit was subsequently renewed with additional modifications (Complaint, ¶58; Exhibit E thereto). The permit, as issued, modified, and renewed by the Agency, is referred to herein as the "Permit."

While CLI was under no legal obligation to do so, CLI actually sought and received unanimous approval of the Chemical Waste Unit from the DeWitt County Board before pursuing permitting of same with the Agency. (*See* Section 2 of the First Amendment to Host County Agreement dated August 24, 2007, attached to CLI's Reply to Intervenor's Response to CLI's Motion to Dismiss, and hereto for the Board's convenience, as Exhibit 3, amending Paragraph 33 of the Host County Agreement, which states: "The County supports and approves the permitting, development, construction and operation of the Chemical Waste Landfill by CLI").

The Complainants filed this case on November 19, 2012. CLI filed its Motion to Dismiss the case on December 5, 2012. The Complainants filed their Response to Motion to Dismiss on December 24, 2012, and on January 7, 2013, CLI filed its Motion for Leave to File Reply, with its Reply in Support of Motion to Dismiss Responding to Complainants' Response attached. In the interim, on December 21, 2012, Intervenor sought leave to join this case, which leave was granted on February 7, 2013 (CLI having not objected to same). Intervenor filed its Response to Respondent's Motion to Dismiss on February 21, 2013, and on March 6, 2013, CLI filed its Motion for Leave to File Reply to Intervenor's Response, with its Reply attached. On March 9, 2013, Intervenor objected to CLI's Motion for Leave to File Reply. Also in the interim, the National Solid Wastes Management Association (on February 28, 2013), and the Village of Summit, Illinois (on March 5, 2013) sought leave to file *amicus curiae* briefs. On September 19, 2013, the Board granted CLI's motions for leave to file replies to the Complainants' and Intervenor's Responses to CLI's Motion to Dismiss, and granted the motions for leave to file *amicus curiae* briefs filed by the National Solid Wastes Management Association and the Village of Summit, Illinois, which decisions are not challenged in the Motion to Reconsider.

On September 19, 2013, having had over six months to review the plethora of filings in the case (described above), the Board entered its Opinion and Order granting CLI's Motion to Dismiss, based on its finding that "counts I, II, III and IV are frivolous because each count both 'fails to state a cause of action upon which the Board can grant relief' and asks for 'relief that the Board does not have the authority to grant.'" (Order, pgs. 31-32). Notably, the Board also found against CLI on certain of the arguments raised in its Motion to Dismiss: "The Board finds that, under Section 31(d)(1) of the Act, the Board has jurisdiction over the violations of the Act

alleged in the complaint. Also under Section 31(d)(1) of the Act, the Board finds that complainants have standing to bring this enforcement action." (Order, pg. 31).

III. The Board's frivolousness findings were correct and consistent with all applicable precedent.

A. Frivolousness of Allegations of Violations of Sections 39(a) and 39(c) of the Act.

In Count I of the Complaint, the Complainants claimed that "[b]y violating or threatening to violate Sections 39(a), 39(c), and 39.2 of the Act, CLI thereby, also violated or threatens to violate Section 21(e) of the Act." (Comp., Count I, ¶113). This allegation is also the basis of Count II of the Complaint (Comp., Count II, ¶120), and Count III of the Complaint (Comp., Count III, ¶120). Thus, the Sections of the Act that the Complainants alleged CLI is violating are Sections 39(a), 39(c), and 39.2. The Board found that these Sections ultimately impose obligations directly on the Agency and on local siting authorities, and not on applicants for permits from the Agency and applicants for local siting authorization. (Order, pgs. 23-26). Therefore, the Board found that CLI could not violate these Sections of the Act, because these Sections of the Act do not ultimately impose requirements on CLI. (Id.)

Section 39(a) of the Act provides that "[w]hen the Board has by regulation required a permit for the construction, installation, or operation of any type of facility, equipment, vehicle, vessel, or aircraft, the applicant shall apply to the Agency for such permit and ***it shall be the duty of the Agency to issue such a permit upon proof by the applicant that the facility, equipment, vehicle, vessel, or aircraft will not cause a violation of this Act or of regulations hereunder***…." 415 ILCS §5/39(a) (emphasis added). Section 39(a) creates an obligation on the part of the Agency to make the specified determination, and once the determination is made, to issue a permit as required. Therefore, the Board found that "Section 39(a) does not impose an

obligation on CLI to obtain local siting authority; rather it imposes on the Agency the obligation to determine whether issuing a permit to CLI will violate the Act." (Order, pgs. 23-24). This determination of the Agency is not subject to review by the Board. As the Board held in this case, "it is well-established that the Board lacks jurisdiction to consider allegations that a landfill permit determination by the Agency violates the Act." (Order, pg. 21). Notably, this legal conclusion is not a subject of the Motion to Reconsider. Thus, as to the allegations of violations of Section 39(a) of the Act, the Complaint both failed to state a cause of action and asked for relief that the Board did not have the authority to grant.

Similarly, Section 39(c) of the Act provides that "no permit for the development or construction of a new pollution control facility ***may be granted by the Agency*** unless the applicant submits proof to the Agency that the location of the facility has been approved by the County Board of the county if in an unincorporated area … in which the facility is to be located in accordance with Section 39.2 of this Act." 415 ILCS §5/39(c) (emphasis added). Therefore, based on the plain and obvious meaning of the Act, the Board found that the section imposes an obligation on "the Agency to decide, before issuing a permit, whether the facility is a 'new pollution control facility' so as to require proof of local siting from the applicant." (Order, pg. 25). While Section 39(c) requires permit applicants to submit proof of local siting to the Agency, Section 39(c) makes the Agency responsible for determining whether that proof is sufficient. (As is discussed above, the Agency in this case actually did determine that the Chemical Waste Unit was not a "new pollution control facility" in issuing the Permit; *see* Ex. 2 hereto). For the Board to second-guess the sufficiency of the proof submitted by the applicant, the Board would be usurping the role of the Agency pursuant to Section 39(c) of the Act. Courts considering this issue have reached this very conclusion:

> 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 causes of the general class of cases to which this case belongs.

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). Therefore, as to the allegations of violations of Section 39(c) of the Act, the Complaint both failed to state a cause of action and asked for relief that the Board did not have the authority to grant.

Both subsections (a) and (c) of Section 39 of the Act relate to the Agency's permitting responsibilities. There is no dispute in this case that CLI is operating the Chemical Waste Unit pursuant to and in accordance with the Permit issued to CLI by the Agency. (*See* Complaint, ¶35, ¶¶48-52, ¶58, Exhibits A, D, and E). Therefore, it is apparent that the Agency did determine that CLI submitted "proof … that the facility, equipment, vehicle, vessel, or aircraft will not cause a violation of this Act or of regulations hereunder…" as required by Section 39(a) of the Act, and the Agency did determine that CLI submitted adequate "proof to the Agency that the location of the facility has been approved by the County Board of the county if in an unincorporated area … in which the facility is to be located in accordance with Section 39.2 of this Act" as required by Section 39(c) of the Act (the latter conclusion having been further affirmed by the Agency in its June, 2011 letter attached hereto as Exhibit 2).

The Board's findings that allegations in the Complaint that CLI violated Sections 39(a) and 39(c) of the Act were frivolous were correct as a matter of law and should not be

reconsidered. Furthermore, as a matter of fact, the Agency's determinations are unreviewable by the Board under these circumstances (and were also correct).

B. Frivolousness of Allegations of Violations of Section 39.2 of the Act.

Section 39.2 of the Act creates the procedures for local siting authorization for new pollution control facilities: "The county board of the county … shall approve or disapprove the request for local siting approval for each pollution control facility which is subject to such review…." 415 ILCS §5/39.2(a). While Section 39.2 of the Act requires submissions by applicants to siting authorities, the onus is squarely placed on the siting authorities themselves to approve or disapprove those submissions. As the Board held, "…Section 39.2 is directed at the responsibilities of the local siting authority…." (Order, pg. 26). Furthermore, Section 39.2(g) provides that "[t]he siting approval procedures, criteria and appeal procedures provided for in this Act for new pollution control facilities shall be the ***exclusive siting procedures and rules and appeal procedures*** for facilities subject to such procedures…." 415 ILCS §5/39.2(g) (emphasis added). Those appeal procedures are specifically identified in Section 40.1 of the Act. 415 ILCS §5/40.1. Based on the foregoing, it has long been held that violations of Section 39.2 are not properly the subject of enforcement proceedings, rather, violations of Section 39.2 must be appealed through the review procedures set forth in Section 40.1 of the Act. *See* Order, pg. 26; Anielle Lipe and Nykole Gillette v. Village of Richton Park, PCB 12-44, slip op. at 6 (Nov. 17, 2011); Terri D. Gregory v. Regional Ready Mix, LLC, PCB 10-106, slip op. at 2 (Aug. 19. 2010); Nelson v. Kane County Board, PCB 95-56, slip op. at 2 (May 18, 1995).

In any case, CLI actually did receive siting for Clinton Landfill No. 3 from the DeWitt County Board. (*See* Conditional Siting Resolution, attached hereto as Exhibit 1). Moreover, while CLI was not required by law to do so, CLI requested and received the blessing of the

DeWitt County Board before proceeding with permitting of the Chemical Waste Unit. (*See* First Amendment to Host County Agreement, attached hereto as Exhibit 3). Finally, the Agency determined that the Chemical Waste Unit was not a "new pollution control facility" requiring additional siting when it modified the Permit to permit the development, construction, and operation of the Chemical Waste Unit. (*See* Complaint, ¶¶48-52, and Exhibit D thereto; 415 ILCS §5/39(c); Exhibit 2 hereto).

The Board's findings that allegations in the Complaint that CLI violated Section 39.2 of the Act were frivolous were correct as a matter of law and should not be reconsidered. Furthermore, as a matter of fact, CLI actually had local siting approval for the Chemical Waste Unit, a conclusion with which the DeWitt County Board and the Agency both concurred.

C. The Movants Do Not Dispute the Board's Findings that the Allegations of Violations of Sections 39(d) and 21(f) of the Act, and 35 Ill. Admin. Code 703.121(a) and (b), are Frivolous.

In Count IV of the Complaint, the Complainants took a different tack from Counts I through III, and claimed instead that "[b]y violating or threatening to violate Sections 39(a), 39(c), 39(d) and 39.2 of the Act, and 35 Ill. Admin. Code 703.121(a) and (b), CLI thereby, also violated or threatens to violate Section 21(f) of the Act." (Comp., Count IV, ¶135). Thus, in addition to the Sections of the Act concerned in Counts I through III, which are discussed above, in Count IV, the Complainants also alleged violations of Sections 39(d) and 21(f) of the Act and of 35 Ill. Admin. Code 703.121(a) and (b).

The Board correctly held that Section 39(d) of the Act is not capable of being violated by CLI, because it places responsibilities on the Agency rather than on permit applicants, much like Sections 39(a) and (c), discussed above. (*See* Order, pg. 28). As for the remaining alleged violations, the Board correctly held that the Complaint did not sufficiently allege that any waste

being disposed of is hazardous, and therefore, the allegations of violations of Section 21(f) of the Act and 35 Ill. Admin. Code 703.121(a) and (b) were frivolous. (Order, pgs. 28-30).

The movants do not challenge the Board's determinations of frivolousness as to the allegations in Count IV of violations of Sections 39(d) and 21(f) of the Act,and 35 Ill. Admin. Code 703.121(a) and (b) in the Motion to Reconsider.

IV. There is no basis for the Board to reconsider its Order.

Pursuant to the Board's regulations, "[i]n ruling upon a motion for reconsideration, the Board will consider factors including new evidence, or a change in the law, to conclude that the Board's decision was in error…." 35 Ill. Adm. Code §101.902. In the instant Motion to Reconsider, the movants have not pointed to any new evidence or to any change in the law supporting reconsideration. While the movants are correct that errors in a decision-maker's application of the law can form the basis of a proper motion for reconsideration, "[a] motion to reconsider is not an opportunity to simply reargue the case and present the same arguments and authority already considered." People v. Teran, 376 Ill. App. 3d 1, 5, 876 N.E.2d 734, 737 (2nd Dist. 2007), *appeal denied*, 226 Ill. 2d 629, 882 N.E.2d 82 (2008), *citing* Chesrow v. Du Page Auto Brokers, Inc., 200 Ill. App. 3d 72, 78, 557 N.E.2d 1301, 1304-05 (2nd Dist. 1990). The movants have pointed to no sound basis for the Board to reconsider its lengthy and well-reasoned Order.

In Section III of the Motion to Reconsider (pgs. 8-14), the movants list purported "errors in [the Board's] application of existing law and allegations overlooked by Board Order." To that end, the movants attempt to parse the following finding of the Board:

> Because Section 39.2 is directed at the responsibilities of the local siting authority, the Board has previously held that Section 39.2 is not "properly the subject of an enforcement action." [Anielle]

> Lipe[and Nykole Gillette v. Village of Richton Park], PCB 12-44, slip op. at 5-6 [(Nov. 17, 2011)]; [Terri D.]Gregory[v. Regional Ready Mix, LLC], PCB 10-106, slip op. at 2 [(Aug. 19. 2010)]; Nelson v. Kane County Board, PCB 95-56, slip op. at 2 (May 18, 1995). Further, complainants make no allegation that the DeWitt County Board failed to make this determination under Section 39.2 and the county board is not named as a respondent.

(Order, pg. 26). The movants break their argument regarding the above finding into three subsections, the gist of which are, (A) that Section 39.2 is not only "directed at the responsibilities of the local siting authority" because it imposes duties on the applicant for siting a new pollution control facility (Motion, ¶¶9-15), (B) that the Board's decisions in past cases are distinguishable (Motion, ¶¶16-20), and (C) that the allegation that the DeWitt County Board failed to make a determination under Section 39.2 appears throughout the Complaint (Motion ¶¶21-23).

To be frank, the above finding of the Board was hardly novel. As the Board stated, it is well established that Section 39.2 is not properly the subject of an enforcement action (as is discussed in Section III, above). *See* Lipe, PCB 12-44, slip op. at 6; Gregory, PCB 10-106, slip op. at 2; Nelson, PCB 95-56, slip op. at 2. The movants argue that there is no local siting authority decision to review in this case, and therefore, that they should be permitted to pursue enforcement of Section 39.2. This argument is misplaced for a multitude of reasons, including, for example, the fact that there was a local siting authority decision in this case (*see* the Conditional Siting Resolution attached hereto as Exhibit 1), the fact that the Agency determined that no additional siting was required (*see* Complaint, ¶¶48-52, and Exhibit D thereto; 415 ILCS §5/39(c); Exhibit 2 hereto), and the fact that on its face Section 39.2 imposes responsibilities on local siting authorities and not on applicants for local siting (*see* 415 ILCS §5/39.2). The

movants have articulated no good reason why this case requires a change to the existing law holding that Section 39.2 is not properly the subject of enforcement proceedings.

The Board properly distinguished the instant case from cases in which a challenger alleges that a siting authority failed to comply with its responsibilities in Section 39.2 through a Section 40.1 appeal, noting that "complainants make no allegation that the DeWitt County Board failed to make this determination [*i.e.*, the siting criteria analyses] under Section 39.2…." (Order, pg. 26). The movants argue that they ***did*** make this allegation in their Complaint, because they alleged that the DeWitt County Board was never ***asked*** to perform its responsibilities under Section 39.2. (Motion, ¶¶21-23). Clearly, this is not what the Board is saying at all. It is undeniable that the Complaint includes no allegations that the DeWitt County Board performed its siting functions improperly; even the movants could not deny this. The Complainants' allegation that the DeWitt County Board was not asked to perform its siting functions is an entirely different allegation. This appears to be an example of willful misunderstanding of the Board's decision.

In Section IV of the Motion to Reconsider (pgs. 14-15), the movants correctly state that "County Board is not named as a respondent." They go on to assert that they should have been permitted to join the DeWitt County Board as a co-respondent with CLI in this case, based on the Board's finding that Section 39.2 of the Act could not be violated by an applicant. Of course, the inclusion of the DeWitt County Board would not cure the problem that Section 39.2 is not properly the subject of an enforcement action (as well as the other problems identified herein). Furthermore, if the movants did try to join the DeWitt County Board as a co-respondent on the basis that it failed to fulfill its siting responsibilities under Section 39.2 of the Act, that claim would be over a decade late, since CLI's siting application was approved on September 12, 2002.

(*See* Conditional Siting Resolution, attached hereto as Exhibit 1). That was the "[d]ecision[] of the county board … in writing, specifying the reasons for the decision" that is the required result of the statutory siting procedure pursuant to Section 39.2(a), which is subject to appeal for 35 days after its enactment pursuant to 415 ILCS §5/40.1(b). The Conditional Siting Resolution has been final and unappealable for over eleven years. The joinder of the DeWitt County Board as a co-respondent would be futile, as any claim against the DeWitt County Board regarding its siting performance is grossly untimely.

In Section V of the Motion to Reconsider (pgs. 15-18), the movants argue that the Board should have analyzed whether the Chemical Waste Unit constitutes a "new pollution control facility" and should have found that it is, in fact, a "new pollution control facility." This argument is absolutely contrary to the established case law in this area. As the Board held,

> Section 39(c) directs the Agency not to issue a permit for developing a new pollution control facility unless the applicant submits proof of local siting approval. See 415 ILCS 5/39(c). Thus, Section 39(c) requires the Agency to decide, before issuing a permit, whether the facility is a "new pollution control facility" so as to require proof of local siting from the applicant. See City of Waukegan, 339 Ill.App.3d at 645. Complainants make no allegation that the Agency failed to make this determination under Section 39(c) and the Board could not entertain any such allegation. See Landfill, Inc., 74 Ill. 2d at 559, 387 N.E.2d at 265.

(Order, pg. 25). The movants attempt to side-step this clear precedent by arguing that they are somehow proceeding under Section 39.2 of the Act rather than Section 39(c) of the Act. The movants conveniently ignore the fact that if the Board were to determine that the Chemical Waste Unit is a "new pollution control facility," then the ***direct*** effect of the Board's decision would be to invalidate the Agency's Permit. In any case, as the movants acknowledge, even if this were a "Section 39.2" argument, the Board also held that Section 39.2 is not properly the

subject of an enforcement action. (Order, pg. 26). The Board would need to reverse its findings regarding both Section 39(c) and Section 39.2 (and thereby demolish a well-established and consistent body of precedent) in order to find in favor of the movants on this argument.

In Section VI of the Motion to Reconsider (pgs. 18-21), in a last ditch attempt to persuade the Board to overrule itself, established precedent, and the Agency, the movants essentially argue that while the Board itself cannot modify the Agency's Permit, the Board is nevertheless required to enter an advisory order regarding the propriety of the Agency's issuance of the Permit, in the hopes that the Agency will elect to modify the Permit "in consideration" of the Board's decision. This argument lays bare the essential nature of this case: the movants want to appeal the Agency's issuance of the Permit, which was based on the Agency's determination that the Chemical Waste Unit is not a "new pollution control facility" requiring additional siting under the Act. This argument also highlights the essential problem with this case: the movants ***cannot*** appeal the Agency's issuance of the Permit, or the Agency's determination that the Chemical Waste Unit is not a "new pollution control facility" requiring additional siting under the Act. Nothing in this argument provides a basis for reconsideration of the Board's Order.

Based on the foregoing, there is no reason for the Board to reconsider its Order entered in this case on September 19, 2013.

V. If the Board does reconsider its Order, the Board should find that the Board lacks jurisdiction over this case, and that the Complainants lacked standing to file this case.

If, however, the Board ***does*** elect to reconsider its September 19, 2013 Opinion and Order, over the opposition of CLI for the above-stated reasons, CLI respectfully requests that the Board reconsider the findings in the Opinion and Order that "favored" the movants' positions, as well as the Board's findings that the Complaint was frivolous. In particular, CLI requests that

the Board reconsider its finding that the Board has jurisdiction over this case, and its finding that the Complainants had standing to bring this case.

On the issue of jurisdiction, the Board held that "it is well-established that the Board lacks jurisdiction to consider allegations that a landfill permit determination by the Agency violates the Act." (Order, pg. 21). However, the Board also held as follows:

> Viewing the complaint as pled and in the light most favorable to complainants, the complaint alleges violations of the Act by CLI. As complainants and the People note, the complaint is a direct action against CLI alleging that CLI had "an independent obligation under the Act to obtain local siting authority." Resp. at 8; see also People Resp. at 6 ("Complainants are therefore challenging [CLI's] compliance with the statutory requirements established by the legislature"). Accordingly, under Section 31(d)(1) of the Act, the Board has jurisdiction over the violations of the Act alleged in the complaint. Landfill, Inc. and its progeny do not apply to divest the Board of jurisdiction to hear a complaint against CLI alleging violations of the Act.

(Id.)

Similarly, on the issue of standing, the Board held that "only CLI as the permit applicant could appeal its permit – complainants have no standing to appeal the permit that the Agency issued to CLI." (Order, pg. 23). The Board went on to state as follows:

> However, as explained above, Section 31(d)(1) of the Act allows any person to bring a complaint before the Board to enforce Illinois environmental requirements. *See* 415 ILCS 5/31(d)(1). Complainants allege violations of the Act by CLI, and do not appeal the issuance of the permit. Further, complainants are individual residents of Illinois, Illinois municipalities, Illinois counties, and an Illinois regional water authority. These entities are persons within the meaning of Section 31(d)(1) of the Act. *See* 415 ILCS 5/3.315; 415 ILCS 5/31(d)(1). Accordingly, under Section 31(d)(1) of the Act, the Board finds that complainants have standing to bring this enforcement action.

(Id.)

Respectfully, CLI asserts that both of these conclusions allow the Complainants and Intervenor to elevate form over substance. While the case was filed as an "enforcement" action, purporting to state "direct" causes of action against CLI, all the dressing-up of this case in the Complaint was a sham. As the Board found, the Complaint does ***not*** state a proper "enforcement" action, and the Complaint does ***not*** state "direct" causes of action against CLI. **The Complainants and the Intervenor know this, and they knew it before the case was filed.** The Complaint is a not-very-thinly-veiled attempt to obtain an illegal review of the Agency's Permit. CLI urges the Board to discourage the tactics of obfuscation and gamesmanship advanced by the Complainants and the Intervenor in this case.

"[I]t is well-established that the Board lacks jurisdiction to consider allegations that a landfill permit determination by the Agency violates the Act." (Order, pg. 21). "[O]nly CLI as the permit applicant could appeal its permit – complainants have no standing to appeal the permit that the Agency issued to CLI." (Order, pg. 22). CLI respectfully requests that the Board allow these holdings, which are entirely consistent with all applicable law, to determine the outcome of this case. CLI requests that if the Board reconsiders its Order, that the Board find that it lacks jurisdiction over this case, and that the Complainants lacked standing to file this case.

WHEREFORE, CLI requests that the Pollution Control Board deny the Motion to Reconsider, or alternatively, reconsider its September 19, 2013 Opinion and Order and find that the Board lacked jurisdiction to consider this case, and that the Complainants and Intervenor lacked standing to bring this case, 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

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Facsimile: (309) 637-8514

913-0932

EXHIBIT 1:

DEWITT COUNTY BOARD'S 2002 CONDITIONAL SITING RESOLUTION

(attached as Exhibit B to the Complaint)

08/21/2008 13:59 2175243291 IEPA PERMIT PAGE 02/14

2

State of Illinois
ENVIRONMENTAL PROTECTION AGENCY

Mary A. Gade, Director 2200 Churchill Road, Springfield, IL 62794-9276

CERTIFICATION OF SITING APPROVAL (LPC-PA8)

Name of Applicant: Clinton Landfill, Inc

Address of Applicant: 4700 North Sterling Avenue, Peoria, Illinois 61612-9071

Name of Site: Clinton Landfill No. 3

Site Information: Nearest City: Clinton County: DeWitt

1. On September 12, 2002 the County Board (governing body of county or municipality) of DeWitt County (county or municipality) approved the site location suitability of Clinton Landfill No. 3 (name of site) as a new pollution control facility in accordance with Section 39.2 of the Illinois Environmental Protection Act, Ill. Rev. Stat., ch. 111 ½, Section 1039.2.

2. The facility was approved for the following activities:

waste storage (X), landfill (X), waste disposal (X), waste transfer station ( ),

waste treatment (X), waste incinerator ( ).

3. Attached to this certification is a true and correct statement of the legal description of the site as it was approved by the aforementioned local governing body.

4. Attached to this certification is a true and accurate statement of conditions, if any, under which the approval was provided. (Note: These conditions are provided for information only to the IEPA. The IEPA is not obligated to monitor or enforce local conditions.)

5. The undersigned has been authorized by the County Board (governing body of county or municipality) of DeWitt County (county or municipality) to execute this certification on behalf of DeWitt County (county or municipality).

NAME: [signature]

TITLE: COUNTY BOARD CHAIRMAN

SUBSCRIBED AND SWORN TO BEFORE ME
this 17 day of Oct, 2002

Jayne A. Usher
Notary Public

"OFFICIAL SEAL"
JAYNE A. USHER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 01/19/03

L 532 1429
PC 218 Rev. Apr-96

Printed on Recycled Paper

Exhibit B - Citizens' Complaint

LEGAL DESCRIPTION OF SITE
(Clinton Landfill No. 3)

The approximately 269 acre site is located approximately 2 miles south of Clinton, Illinois east of U.S. Highway 51, in Texas Township, DeWitt County, Illinois. The site is legally described as follows:

Part of the Northeast Quarter and the Southeast Quarter of Section 10, Township Nineteen (19) North, Range Two (2) East; the Northwest Quarter and the Southwest Quarter of Section 11, Township Nineteen (19) North, Range Two (2) East; and the Northwest Quarter of the Northeast Quarter and the North Half of the Northwest Quarter of Section 14, Township Nineteen (19) North, Range Two (2) East, all situated in Dewitt County, Illinois and more particularly described as follows;

Commencing at the Southwest corner of the Northeast Quarter of said Section 10; thence N.88°36'34"E., 345.56 feet along the South line of the Northeast Quarter of said Section 10 to the Point of Beginning; thence N.0°00'05"W., 63.49 feet to the Northerly Right of Way line of a township road; thence S.89°59'55"W., 60.00 feet along the said Northerly Right of Way line; thence S.17°16'48" W., 47.13 feet along the said Northerly Right of Way line; thence N.87°43'00"W., 124.87 feet along said Northerly Right of way to the Easterly Right of Way line of F.A. Route 412 (US Route 51); thence N.0°19'42"E., 82.61 feet along said Easterly Right of Way line; thence N.5°22'57"W., 100.50 feet along said Easterly Right of Way line; thence N.0°19'42"E., 88.93 feet along said Easterly Right of Way line; thence N.88°36'34"E., 2530.01 feet to the East line of the Northeast Quarter of said Section 10; thence N.88°25'40"E., 204.15 feet to the East Right of Way line of the now abandoned Illinois Central Gulf Railroad; thence S.0°20'22"E., 300.05 feet along the said East Right of Way to the North line of the Southwest Quarter of said Section 11; thence N.88°25'40"E., 2444.08 feet along the North line of the Southwest Quarter of said Section 11 to the iron pin at the Northeast corner of the Southwest Quarter of said Section 11; thence S.0°11'27"W., 1319.68 feet along the East line of the Northeast Quarter of the Southwest Quarter of said Section 11 to the iron pin at the Southeast corner of the Northeast Quarter of the Southwest Quarter of said Section 11; thence S.0°20'57"W., 1336.42 feet along the East line of the Southeast Quarter of the Southwest Quarter of said Section 11 to the iron pin at the Southeast Corner of the Southwest Quarter of said Section 11; thence S.0°29'23"W., 196.82 feet along the West line of the Northwest Quarter of the Northeast Quarter of said Section 14; thence S.37°48'15"E., 884.21 feet; thence South, 427.15 feet to the South line of the Northwest

Quarter of the Northeast Quarter of said Section 14; thence S.88°41'09"W., 549.84 feet along the South line of the Northwest Quarter of the Northeast Quarter of said Section 14 to the iron pin at the Southwest Corner of the Northwest Quarter of the Northeast Quarter of said Section 14; thence S.88°34'49"W., 1167.00 feet along the South line of the North Half of the Northwest Quarter of said Section 14; thence N.65°24'32"W., 1454.56 feet; thence West, 143.42 feet; thence N.0°20'22"W., 298.81 feet; thence N.0°20'22"W., 2805.20 feet; thence N.45°45'22"W., 222.93 feet; thence S.88°23'08"W., 950.46 feet; thence S.12°26'12"W., 316.59 feet; thence N.76°33'13"W., 1149.56 feet; thence N.0°00'05"W., 96.51 feet to the Point of Beginning and containing 268.804 acres more or less.

102-1663

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RESOLUTION NO.____

A RESOLUTION CONDITIONALLY APPROVING THE APPLICATION FOR LOCAL SITING APPROVAL OF A POLLUTION CONTROL FACILITY FILED BY CLINTON LANDFILL, INC.

WHEREAS, CLINTON LANDFILL, INC. filed an application for siting approval of a pollution control facility within DeWitt County for the expansion of its municipal solid waste landfill, pursuant to Section 39.2 of the Illinois Environmental Protection Act (415 ILCS 5/39.2)(ACT); and

WHEREAS, Chapter 153 of the County's Code of Ordinances establishes a procedure for review of pollution control facility site requests in DeWitt County, Illinois; and

WHEREAS, the County Pollution Control Site Hearing Committee held public hearings on July 11th and July 15th, 2002, pursuant to the Act and the County's Siting Ordinance; and

WHEREAS, a quorum of the County Pollution Control Site Hearing Committee attended all hearings; and

WHEREAS, the County Pollution Control Site Hearing Committee has made its recommendations for conditional siting approval to the County Board, which includes the determination that all applicable requirements of Section 39.2 and the County's Siting Ordinance have been met based upon the siting application, notifications, hearings, public comment and the record.

NOW, THEREFORE BE IT RESOLVED that the Findings of Fact and Recommendation of the County Pollution Control Site Hearing Committee, attached hereto as Exhibit A, are adopted by the County Board with amendments to Conditions 1 and 17; and

BE IT FURTHER RESOLVED, that the DeWitt County Board has jurisdiction and hereby determines that Clinton Landfill, Inc. has satisfied the applicable criteria, subject to the conditions in the attached Findings of Fact and Recommendation; and

BE IT FURTHER RESOLVED, that DeWitt County Board conditionally approves the request of Clinton Landfill, Inc. for site approval for the proposed expansion, provided that the conditions are not inconsistent with regulations of the Pollution Control Board or the terms of any development or operating permits approved by the Illinois Environmental Protection Agency.

FILED

SEP 23 2002

Jayne Ellsbury

County Clerk, DeWitt County

Exhibit B - Citizens' Complaint

Resolution No. _____

PASSED and APPROVED this 12th day of September, 2002.

CHAIRMAN OF THE
DEWITT COUNTY BOARD

ATTEST:

COUNTY CLERK OF THE
DEWITT COUNTY BOARD

Exhibit B - Citizens' Complaint

FINDINGS OF FACT AND RECOMMENDATION OF THE POLLUTION CONTROL SITE HEARING COMMITTEE TO THE DEWITT COUNTY BOARD TO CONDITIONALLY APPROVE THE SITING APPLICATION OF CLINTON LANDFILL, INC.

Clinton Landfill, Inc. filed an Application for Local Siting Approval of a Pollution Control Facility with the DeWitt County ("the County") Clerk on April 11, 2002, requesting approval to expand its existing municipal solid waste landfill located within the County. The County's review is governed by Section 39.2 of the Illinois Environmental Protection Act ("Act"), which requires that the County Board determine whether the applicant has submitted sufficient detail to demonstrate that the proposed facility meets the Act's criteria. The County's review is also governed by Chapter 153 of the DeWitt County Code of Ordinances regarding Pollution Control Facilities ("Siting Ordinance"), which establishes, among other requirements, that the public hearing required by Section 39.2 of the Act be conducted by the County Pollution Control Site Hearing Committee ("Committee") and that this Committee establish for the County Board findings of fact and a recommendation.

Following the issuance of the pre-filing notices by Clinton Landfill, Inc. and notices of hearing consistent with Section 39.2 of the Act and the County's Siting Ordinance, public hearings were held before this Committee on July 11, 2002, and July 15, 2002, in the County Board room of the County Courthouse. A quorum of the Committee attended these hearings. Based on the record in this siting proceeding maintained by the County Clerk, including, but not limited to, the Application, the exhibits, the testimony presented, the transcript of the public hearing and public comments (both written and oral), this Committee finds that the County has jurisdiction. This Committee further finds that the applicant, Clinton Landfill, Inc., has satisfactorily demonstrated compliance with the criteria set forth in Section 39.2 of the Act and

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EXHIBIT
A

Exhibit A - Citizens' Complaint

the Siting Ordinance, subject to the conditions set forth below. This Committee further finds that the conditions set forth are reasonable and necessary and are supported by the record. Therefore, this Committee recommends that the County Board approve the Application of Clinton Landfill, Inc. subject to the conditions set forth below, through the adoption of the draft Resolution attached to this Committee's Findings and Recommendation.

Criterion No.1: the facility is necessary to accommodate the waste needs of the area it is intended to serve.

This Committee finds that Clinton Landfill, Inc. has met this Criterion, including through the needs report in Section 1 of the Application and testimony of Sheryl Smith of Environmental Marketing & Management, L.L.C. Ms. Smith's analysis was based on receipt of an average of 1400 tons per day of total waste. Therefore, the following condition is necessary.

Condition No.1: Clinton Landfill, Inc. shall not exceed an average of 3000 tons per day in any calendar year without written permission of the County Board.

Criterion No.2: the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected.

This Committee finds that Clinton Landfill, Inc. has met this Criterion, including through the report in Section 2 of the Application and testimony of Ron L. Edwards and George Armstrong, subject to the following conditions. Based on the record, which demonstrated that the proposed facility design is based on certain factors, the following conditions are necessary.

Condition No. 1 above as to "need", Condition No. 9 as to minimizing incompatibility, and General Conditions No. 12 and13 below are also necessary based on the information in the record supporting Criterion No. 2 regarding facility design, construction and operation.

Condition No. 2: Clinton Landfill, Inc. shall only accept liquid waste for "solidification" consistent with the procedures identified in the siting application and as approved by the Illinois Environmental Protection Agency ("Illinois EPA").

Condition No. 3: Clinton Landfill, Inc. shall limit the final waste contours as shown on Figure S-FG4 dated July 16, 2002, filed by the applicant in the post-hearing comment period. Additionally, Clinton Landfill, Inc. shall not exceed the final grade contours as shown on Figure S-FG1 dated April 11, 2002, without permission of the County Board.

Condition No. 4: Clinton Landfill, Inc. shall retain all three sediment basins shown on Figure S-FG1, unless written approval from the County Board is provided to remove these structures.

Condition No. 5: Clinton Landfill, Inc. shall develop a stormwater management and stormwater pollution prevention plan for any and all soil stockpiles, both on and off-site, and shall submit each plan to the County Board for review and comment before developing the stockpile.

Condition No. 6: Clinton Landfill, Inc. shall develop a groundwater monitoring program as approved by the Illinois EPA in general accordance with the minimum standards identified in the application. Additionally, a minimum of one permanent down gradient well shall be installed prior to operations in Cell 1.

Condition No. 7: Clinton Landfill, Inc. shall conduct leachate recirculation in accordance with the procedures identified in the siting application and as approved by the Illinois

EPA. Additionally, Clinton Landfill, Inc. shall keep a daily log of the quantity of leachate collected, the method of disposal, and the general location of where leachate is re-circulated. Annually, Clinton Landfill, Inc. shall provide the County Board with a written summary of the leachate management system, unless the County Board in writing excuses Clinton Landfill, Inc. from this annual written summary requirement.

Criterion No. 3: the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property.

This Committee finds that Clinton Landfill, Inc. has met this Criterion, including through the reports in Section 3 and testimony of Peter Poletti, principal with Poletti and Associates, Inc., and Christopher Lannert, principal with The Lannert Group, Inc., subject to the requirement for screening consistent with the report, the testimony of Mr. Lannert and the waste management regulations of the State of Illinois.

Condition No. 8: Clinton Landfill, Inc. shall construct a visual barrier eight feet tall along Township Road 1050 East (Ethal Road), prior to adjacent waste placement operation expansion.

Condition No. 9: Clinton Landfill, Inc. shall not relocate the proposed location of the leachate storage tanks without providing screening from all adjacent property owners and shall secure written approval from the County Board before relocating the proposed location of the leachate storage tanks.

Criterion No. 4: (A) for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year floodplain or the site is flood-proofed; (B) for a facility that is a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100-year floodplain, or

if the facility is a facility described in subsection (b)(3) of Section 22.19a, the site is flood-proofed.

This Committee finds that Clinton Landfill, Inc. has demonstrated that the proposed expansion is located outside the boundary of the 100-year flood plan through the report and testimony of George Armstrong.

Criterion No. 5: the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents.

This Committee finds that Clinton Landfill, Inc. has demonstrated compliance with this Criterion, including through the report at Section 5 of the Application and the testimony of Ron L. Edwards and George Armstrong.

Criterion No. 6: the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows.

This Committee finds that the report of Crawford, Bunte, Brammier at Section 6 of the Application and the testimony of Lee Cannon was adequate to meet this Criterion, subject to the condition that Clinton Landfill, Inc. shall incorporate in its operational plan the recommendation of the applicant's expert regarding minimizing impact of traffic during the transport of site soils and shall plan to address the potential for increased litter on Route 51 from the additional transfer trailers expected with the increased volume of waste.

Condition No. 10: Clinton Landfill, Inc. shall suspend off-site hauling during construction of the cells when granular material would also be transported unless otherwise authorized in writing by the County Board. In the alternative, Clinton Landfill, Inc. shall employ

back hauling, whereby the vehicles bringing in the granular material for cell construction haul out site soils.

Condition No. 11: Clinton Landfill, Inc. shall periodically employ sufficient personnel so as to collect litter daily along Route 51 for a distance of one mile North and South of the landfill's entrance when requested by the County Board.

Criterion No. 7: if the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release.

This Committee finds that Clinton Landfill, Inc. has demonstrated in Section 7 of the Application and in the testimony of Ron L. Edwards that this Criterion does not apply.

Criterion No. 8: if the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan.

This Committee finds the Clinton Landfill, Inc. has met this Criterion through the report at Section 8 of the Application and testimony of Sheryl Smith of Environmental Marketing & Management, L.L.C.

Criterion No. 9: if the facility will be located within a regulated recharge area, any applicable requirements specified by the Board for such areas have been met.

This Committee finds that Clinton Landfill, Inc. has demonstrated that this Criterion does not apply through the report at Section 9 of the Application and in the testimony of Ron L. Edwards.

Additional consideration: This committee has also considered the previous operating experience and past record or admissions of the applicant (and any subsidiary or parent corporation) in the field of solid waste management when considering criteria 2 and 5 above, consistent with Section 39.2 of the Act and the Siting Ordinance.

General Conditions:

Condition No. 12: . . Siting approval is for a new landfill unit consisting of approximately 157.5 acres, with a gross airspace capacity of approximately 32,800,000 cubic yards. This siting approval does not approve any changes to existing permitted and developed pollution control facilities near the expansion.

Condition No. 13: Clinton Landfill, Inc. shall comply with all terms of the Host County Agreement previously executed by Clinton Landfill, Inc and the County on April 20, 2001, and as may be amended from time to time. All terms of the Agreement are enforceable as conditions of this siting approval, in addition to being enforceable under contract law.

Condition No. 14: All special conditions of the County Board's Siting Approval shall be contained in the application for permit filed with the Illinois EPA.

Condition No. 15: - - If any approval or condition by this Committee or of the County Board conflicts with any requirement imposed by the Illinois EPA that has been imposed by the Illinois EPA independently of any request by Clinton Landfill, Inc. for such requirements, the decision of the Illinois EPA shall supercede the County's approval or its condition.

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Condition No. 16: Clinton Landfill, Inc. shall notify the County Board within 10 days of filing the initial permit application for the landfill expansion with the Illinois EPA, and within 10 days of all subsequent submittals filed with the Illinois EPA for the landfill expansion.

Condition No. 17: Within Constitutional limitations and upon reasonable request by the County, Clinton Landfill, Inc. shall provide the County reasonable access to the landfill expansion approved pursuant to this siting proceeding and all records related to the operation of the landfill expansion so as to inspect for compliance with the terms of the siting application and with the special conditions of the County Board's siting approval.

EXHIBIT 2:

AGENCY'S LETTER DATED JUNE, 2011

(attached as Exhibit A to CLI's Motion to Dismiss)

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2029
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

217/782-3397

June , 2011

Mr. Bill Spencer, Vice-President
Mr. David E. Holt, Secretary
WATCH Clinton Landfill
P.O. Box 104
Clinton, IL 61727-0104

Re: 0390055036 – DeWitt County
Clinton Landfill 3

Dear Mr. Spencer and Mr. Holt:

This letter is in response to Mr. Holt's letter on behalf of WATCH Clinton Landfill ("WATCH") to Doug Clay, Manager of the Illinois Environmental Protection Agency's Bureau of Land, Division of Land Pollution Control. The letter was sent via e-mail dated May 16, 2011. The letter concerns Clinton Landfill 3 ("Landfill"), its application pending before the United States Environmental Protection Agency ("USEPA") for authorization to accept polychlorinated biphenyl ("PCB") waste, and its current acceptance of manufactured gas plant ("MGP") waste, which WATCH characterizes as hazardous. More specifically, WATCH claims that the permit modification issued to the Landfill in January 2010 by the Bureau of Land Permit Section is in "violation of conditions established by the DeWitt County Board in 2002 . . ."[1] The letter notes that excerpts from transcripts of the hearings held by the DeWitt County Board ("Board") on July 11 and 15, 2002, include statements by representatives of Clinton Landfill, Inc. "voluntarily [excluding] hazardous waste and PCB waste" from acceptance at the Landfill. WATCH asserts that this testimony became a condition of the Board's siting approval resolution and that issuance of permit modifications by the Illinois EPA in furtherance of acceptance of PCB waste or MGP waste for disposal constitutes violation of the condition.

The Illinois EPA disagrees with these characterizations and conclusions. As WATCH is aware, the Illinois EPA is prohibited from issuing a development or construction permit to certain "pollution control facilities" (i.e., waste management facilities) unless the applicant submits proof that the local siting authority has approved the proposed location of the facility in accordance with Section 39.2 of the Environmental Protection Act. 415 ILCS 5/39(c), 39.2. Clinton Landfill, Inc. submitted the proof in the required Form LPC-PA8, a notarized document

[1] The DeWitt County Board is the local siting authority for Clinton Landfill 3 for purposes of the local siting provision of the Environmental Protection Act. 415 ILCS 5/39.2. The DeWitt County Board adopted a resolution approving siting for Clinton Landfill 3 on September 12, 2002.

Rockford • 4302 N. Main St., Rockford, IL 61103 • (815) 987-7760
Elgin • 595 S. State, Elgin, IL 60123 • (847) 608-3131
Bureau of Land – Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5462
Collinsville • 2009 Mall Street, Collinsville, IL 62234 • (618) 346-5120
Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60016 • (847) 294-4000
Peoria • 5415 N. University St., Peoria, IL 61614 • (309) 693-5463
Champaign • 2125 S. First St., Champaign, IL 61820 • (217) 278-5800
Marion • 2309 W. Main St., Suite 116, Marion, IL 62959 • (618) 993-7200

EXHIBIT A TO MOTION TO DISMISS

signed by the Board Chairman certifying that the facility was approved for waste storage, waste treatment, waste disposal and landfilling. As further required by the LPC-PA8, the Board resolution approving the siting and stating conditions of the approval was attached to the certification. The LPC-PA8 clearly states that the conditions are provided for information only and the Illinois EPA has no obligation to monitor or enforce local conditions. Even if there were such an obligation, the document contains no conditions excluding the acceptance of PCB wastes or MGP wastes at Clinton Landfill 3.

Clinton Landfill, Inc. submitted an application for the development and construction of a combined municipal solid waste landfill unit and chemical waste unit authorized to receive non-hazardous solid waste and non-hazardous special waste. The application was reviewed and issued in accordance with the regulations for such facilities at 35 Ill. Adm. Code 810-813 and, in particular, in accordance with Part 811 standards and requirements for municipal solid waste landfills and chemical waste landfills, the state's most stringent standards applicable to non-hazardous landfills. The permit modification issued by the Illinois EPA does not authorize the acceptance of "hazardous waste" within the meaning of state and federal environmental laws. However, the permit does authorize the acceptance of non-hazardous special waste including non-hazardous MGP waste. PCB waste may not be accepted unless authorized by the USEPA. If acceptance is authorized by the USEPA, only PCB waste considered non-hazardous special waste may be accepted at the facility. In addition, there was nothing in the application making the unit a "new pollution control facility" and triggering a second local siting approval procedure. The application did not propose an expansion to the area that was approved by the Board in the 2002 siting approval resolution, and it did not propose the acceptance of special or hazardous waste for the first time. 415 ILCS 5/3.330(b). Therefore, the Illinois EPA's issuance of the permit modification in January 2010 complied with all statutory and regulatory requirements applicable to the review of the application.

Sincerely,

Lisa Bonnett
Interim Director

cc: Scott Phillips
Doug Clay
Steve Nightingale
Imran Syed
John Kim
Kyle Rominger

EXHIBIT A TO MOTION TO DISMISS

EXHIBIT 3:

DEWITT COUNTY BOARD'S FIRST AMENDMENT TO HOST COUNTY AGREEMENT DATED AUGUST 24, 2007

(attached as Exhibit 3 to CLI's Reply to Intervenor's Response to CLI's Motion to Dismiss)

FIRST AMENDMENT TO HOST COUNTY AGREEMENT

THIS FIRST AMENDMENT TO HOST COUNTY AGREEMENT ("Agreement") is made and effective August 24, 2007, between Clinton Landfill, Inc., an Illinois corporation ("CLI"), and the County of DeWitt, Illinois (the "County").

WHEREAS, CLI and the County entered into a certain Host County Agreement effective April 20, 2001 (the "Host County Agreement");

WHEREAS, on September 12, 2002, the County approved the site location suitability of Clinton Landfill No. 3 as a new pollution control facility in accordance with Section 39.2 of the Illinois Environmental Protection Act, 415 ILCS 5/39.2 ("Clinton Landfill No. 3");

WHEREAS, as part of the site location approval, the County imposed certain conditions on the operation of Clinton Landfill No. 3 (the "Siting Conditions");

WHEREAS, on March 2, 2007, the Illinois Environmental Protection Agency issued Permit No. 2005-070-LF to CLI for the development and construction of Clinton Landfill No. 3;

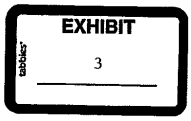
WHEREAS, Clinton Landfills No. 2 and No. 3 are already permitted to accept regulated PCB wastes, notably PCB bulk product wastes, for disposal.

WHEREAS, in order for CLI to accommodate the disposal needs of its customers, CLI intends to file an application with the U.S. Environmental Protection Agency to permit, develop, construct and operate a Chemical Waste Landfill for the disposal of PCBs and PCB Items within a section of Clinton Landfill No. 3, pursuant to the Toxic Substances Control Act (the "Chemical Waste Landfill");

WHEREAS, although receiving the support of the DeWitt County Board is not a requirement of the permit application process for a Chemical Waste Landfill under the Toxic Substances Control Act, CLI desires to maintain its positive relationship with the citizens of the County;

WHEREAS, if CLI is successful in permitting a Chemical Waste Landfill within a section of Clinton Landfill No. 3, CLI shall be responsible for providing perpetual care for the Chemical Waste Landfill pursuant to the Toxic Substances Control Act;

WHEREAS, in order to better serve its customers and reduce the number of waste vehicles entering and exiting Clinton Landfill No. 3, CLI intends to file an application with the Illinois Environmental Protection Agency to permit, develop, construct and operate a rail unloading facility at Clinton Landfill No. 3 (the "Rail Unloading Facility");



Unloading Facility Fee of $1.25 for each ton of waste unloaded at the Rail Unloading Facility for deposit into Clinton Landfill No. 3. Said payments shall be paid on or before the 20th day following the end of each calendar quarter and shall be subject to the same documentation and verification requirements of the Host Benefit Fee. Pursuant to the Siting Conditions, the County hereby gives its written permission that waste unloaded at the Rail Unloading Facility shall not be included in calculating whether CLI has exceeded an average of 3,000 tons per day of waste deposited in Clinton Landfill No. 3. In order to facilitate the development of the Rail Unloading Facility, the County hereby authorizes and approves the construction of a railroad crossing by CLI across County Highway No. 1, and upon the request of CLI, the County shall provide a resolution evidencing such authorization and approval to the Illinois Commerce Commission.

3. Except as hereinabove set forth, the Host County Agreement shall remain unmodified and be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers or representatives on the date first above written.

COUNTY OF DEWITT

By: _____
Steve Lobb, Chairman

Attest:
By: _____
DeWitt County Clerk

CLINTON LANDFILL, INC.

By: _____
Royal J. Coulter, President

Attest:
By: _____
Steven C. Davison, Secretary

107-1266

WHEREAS, operating a Rail Unloading Facility at Clinton Landfill No. 3 does not require local siting approval from the DeWitt County Board under Section 39.2 of the Illinois Environmental Protection Act, 415 ILCS 5/39.2;

WHEREAS, due to the development of the Chemical Waste Landfill and the Rail Unloading Facility, CLI and the County desire to amend the Host County Agreement to effectuate certain changes and revisions thereof;

NOW, THEREFORE, for and in consideration of the foregoing recitals, and other good and valuable consideration, the receipt of which is hereby acknowledged, CLI and the County hereby amend the Host County Agreement as follows:

1. The recitals of the Host County Agreement are hereby deleted in their entirety, and the Siting Conditions contained therein are hereby deleted.

2. Paragraph 33 through 35 are added to the Host County Agreement as follows:

33. CHEMICAL WASTE LANDFILL

The County supports and approves the permitting, development, construction and operation of the Chemical Waste Landfill by CLI.

34. DEWITT COUNTY'S SOLID WASTE MANAGEMENT PLAN

Commencing on January 1, 2008, and continuing on each January 1 thereafter until the certified closure of the Chemical Waste Landfill, CLI shall pay to the County the sum of Fifty Thousand Dollars ($50,000.00) per year to use to support implementation of the DeWitt County Solid Waste Management Plan. On or before April 15, 2014, CLI and the County shall in good faith negotiate an adjustment in the amount of this fee. In the event CLI does not receive a permit from the U.S. Environmental Protection Agency by January 1, 2010, to develop, construct and operate the Chemical Waste Landfill, then CLI shall not be required to make any further such payments to the County, until the permit is issued by the U.S. Environmental Protection Agency.

35. RAIL UNLOADING FACILITY

The County supports and approves the permitting, development, construction and operation of the Rail Unloading Facility by CLI, and the County agrees and acknowledges that operating a Rail Unloading Facility at Clinton Landfill No. 3 does not require local siting approval from the DeWitt County Board under Section 39.2 of the Illinois Environmental Protection Act, 415 ILCS 5/39.2. In addition to the Host Benefit Fee payable under Paragraph 11 of the Host County Agreement, CLI shall pay the County a Rail

CERTIFICATE OF SERVICE

The undersigned certifies that on November 7, 2013, the foregoing document (including the Notice of Electronic Filing and the Response in Opposition to Motion to Reconsider) 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, Bureau 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

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