

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

No. PCB 2013-022
 (Enforcement - Land)

NOTICE OF ELECTRONIC FILING

To: All Parties of Record

PLEASE TAKE NOTICE that on November 13, 2013, I filed the following documents electronically with the Clerk of the Pollution Control Board of the State of Illinois:

1. Motion to file Supplemental *Amicus* Brief, with Supplemental *Amicus* Brief attached.
2. Notice of Electronic Filing

Copies of the above-listed documents were served upon you via U.S. Mail, First Class Postage Prepaid, sent on November 13, 2013, as is stated in the Certificates of Service attached to each document.

Respectfully submitted,

Village of Summit, Illinois, a
municipal corporation

By:


One of its Attorneys

Michael S. Blazer (ARDC No. 6183002)
Jeffery D. Jeep (ARDC No. 6182830)
Jeep & Blazer, L.L.C.
24 N. Hillside Avenue, Suite A
Hillside, IL 60162
Telephone: (708) 236-0830
Facsimile: (708) 236-0828
mblazer@enviroatty.com
jdjeep@enviroatty.com

CERTIFICATE OF SERVICE

I hereby certify that I did on November 13, 2013, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Hillside, Illinois, a true and correct copy of the following instruments entitled Motion to file Supplemental *Amicus* Brief and Notice of Electronic Filing upon the persons listed on the Service List.



Michael S. Blazer

SERVICE LIST

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

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

Brian J. Meginnes
Janaki Nair, Esq. (jnair@emrslaw.com)
Elias, Meginnes, Riffle & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602-1153

Thomas Davis, Bureau Chief
Office of Attorney General of the State of Illinois
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

Sorling Northrup
James M. Morpew, Esq., of counsel
1 North Old State Capitol Plaza
Suite 200
P.O. Box 5131
Springfield, IL 62705

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

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

No. PCB 2013-022
 (Enforcement - Land)

**MOTION FOR LEAVE TO FILE SUPPLEMENTAL AMICUS BRIEF
 IN RESPONSE TO COMPLAINANTS' AND INTERVENOR'S
MOTION TO RECONSIDER**

NOW COMES the Village of Summit, an Illinois municipal corporation (the "Village" or "Summit"), by its attorneys, and for its Motion pursuant to IPCB Rule 101.110(c) for Leave to File a Supplemental *Amicus Curiae* Brief in Response to the Motion to Reconsider the Board's final order states:

1. This Board previously granted Summit's Motion for Leave to File an *Amicus* Brief in support of the Motion to Dismiss filed by Respondent Clinton Landfill, Inc. ("CLI"). (September 19, 2013 Opinion and Order – the "Final Order" – at 4)

2. As indicated in the Motion that led to that portion of the Final Order, Summit has a direct and tangible interest in the outcome of this case. The Midwest

Metallics Superfund Site (the "Site") is a 12.84 acre highly polluted property in the Village. The USEPA and Illinois EPA have failed to implement a permanent remedy that will allow for the redevelopment of the Site and surrounding parcels. The Village has been left to its own devices to develop a realistic plan for addressing the Site. The most promising and realistic solution is to accept an application to locate a new pollution control facility on the Site and, if the application is granted, to use the host community fees paid by a developer to pay for the off-site disposal of the waste on the Site.

3. The Village has reached an agreement in principal with the owner of parcels within the Site and Peoria Disposal Company ("PDC")¹ with respect to redevelopment of the Site, subject to PDC's compliance with the requirements of §39.2 of the Illinois Environmental Protection Act, 415 ILCS 5/39.2.

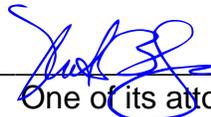
4. A decision that the Clinton Landfill permit is subject to collateral attack by a third-party will present an insurmountable obstacle to redeveloping the Site. The purpose of Section 40(a)(1) of the Act is to eliminate this very type of regulatory uncertainty, and allow the regulated community to make investment decisions in reliance on an Illinois EPA permit decision.

5. The Village desires to submit argument that may assist the Board in its consideration of the Complainants' Motion to Reconsider filed on October 25, 2013. Allowing Summit's filing will neither unduly delay nor materially prejudice this proceeding or any existing party.

¹ Peoria Disposal Company is CLI's parent company.

For all of the foregoing reasons, the Village of Summit requests leave to file its Supplemental *Amicus* Brief instanter. A copy of the Village's Brief is attached hereto as Exhibit A.

Respectfully submitted,
The Village of Summit, Illinois

By:  _____
One of its attorneys

Michael S. Blazer (ARDC No. 6183002)
Jeffery D. Jeep (ARDC No. 6182830)
Jeep & Blazer, L.L.C.
24 N. Hillside Avenue, Suite A
Hillside, IL 60162
Telephone: (708) 236-0830
Facsimile: (708) 236-0828
mblazer@enviroatty.com
jdjeep@enviroatty.com

EXHIBIT A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

No. PCB 2013-022
 (Enforcement - Land)

SUPPLEMENTAL AMICUS BRIEF OF THE VILLAGE OF SUMMIT, ILLINOIS

NOW COMES the Village of Summit, an Illinois municipal corporation (the “Village” or “Summit”), by its attorneys, and hereby submits its Supplemental *Amicus Curiae* Brief in Response to the Motion of Complainants, and the Illinois Attorney General (“IAG”), purporting to represent the People of the State of Illinois, to Reconsider this Board’s Opinion and Order of September 19, 2103 (the “Final Order”) dismissing the Complaint herein.

I. COMPLAINANTS AND THE IAG PROVIDE NO BASIS FOR RECONSIDERATION

Motions to reconsider before this Board are governed by §§101.902 and 101.904 of the Board’s General Rules. 35 IAC 101.902, 101.904 A motion to reconsider in this

case was certainly not necessary. Assuming Complainants and the IAG wished to appeal the Final Order, they could have simply done so after the Final Order was issued and served. "A motion for reconsideration of a final Board order is not a prerequisite for the appeal of that final Board order." See 35 IAC 101.904(f) See also *Worthen v. Village of Roxana*, 253 Ill.App.3d 378, 382-383 (5th Dist. 1993); *Grigoleit Co. v. Pollution Control Board*, 245 Ill.App.3d 337, 342 (4th Dist. 1993); *Strube v. Illinois Pollution Control Board*, 242 Ill.App.3d 822, 825-826 (3rd Dist. 1993)

Moreover, §101.902 sets forth the potential bases for reconsideration: new evidence, or a change in the law. In this case, there is no new evidence and the law has not changed. Indeed, the law has always been that third parties "are statutorily precluded from legally challenging the Agency's decision to grant a development permit for a pollution control facility." *City of Elgin v. County of Cook*, 169 Ill.2d 53, 61 (1996) See also *City of Waukegan v. Illinois Environmental Protection Agency*, 339 Ill.App.3d 963, 974-975 (2nd Dist. 2003); *Lipe v. Illinois Environmental Protection Agency*, PCB 12-95, 2012 WL 1650149, Slip Op. Cite at 8-9 (May 3, 2012)

Yet Complainants and the IAG raise the identical arguments that already led this Board to find that the claims in this case 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' ". (Final Order at 31-32) Complainants and the IAG again ask this Board to ignore, and effectively overturn, the issuance by the Illinois Environmental Protection Agency (the "Agency") of a permit, permit renewal, and permit modifications in connection with CLI's pollution control facility.

The purpose of the limited siting and permit appeal procedures under the Illinois Environmental Protection Act is to ensure that local siting approvals and Agency permits become, at a definable and reliable point, final and non-appealable. Without that certainty, the development of pollution control facilities, and indeed the entire pollution control facility permit program, would be thrown into chaos.

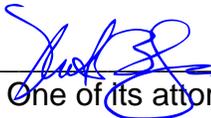
Of no less concern is the IAG's position in this case. The IAG appears to have taken a significant role in the Motion to Reconsider, as it did in intervening on Complainants' behalf. As noted in Summit's initial *Amicus* Brief, the IAG's position in this case is completely contrary to its historic position on the issue of third party challenges to Agency permitting decisions. See, e.g., *Lipe v. Illinois Environmental Protection Agency*, *supra*, 2012 WL 1650149, Slip Op. Cite at 4

The IAG's conduct in this case places a wholly unnecessary burden on this Board. The IAG has a statutory obligation to represent this Board. 15 ILCS 205/4 When an appeal is filed from a final Board order, it is the IAG who routinely represents the Board in defending its final decision. But that cannot happen here. The IAG's failure to acknowledge both the binding precedents and its own consistent position in cases on behalf of this Board, has unnecessarily conflicted itself out of complying with its statutory obligation. Assuming an appeal is filed, this Board will now have to expend limited resources on special counsel – for no good reason. It is bad enough that Complainants assert positions that are contrary to every case to ever address the issues they raise. For the chief legal officer of the State to do so is unconscionable.

II. CONCLUSION

For all of the foregoing reasons, and those set forth in Summit's initial *Amicus* Brief, the Village requests that the Motion to Reconsider be denied.

Respectfully submitted,
Village of Summit,
Amicus Curiae

By:  _____
One of its attorneys

Michael S. Blazer (ARDC No. 6183002)
Jeffery D. Jeep (ARDC No. 6182830)
Jeep & Blazer, L.L.C.
24 N. Hillside Avenue, Suite A
Hillside, IL 60162
Telephone: (708) 236-0830
Facsimile: (708) 236-0828
mblazer@enviroatty.com
jdjeep@enviroatty.com