

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CLINTON LANDFILL, INC.,)	
)	
Petitioner,)	PCB 2015-060
)	(Permit Appeal)
v.)	
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

TO: All Parties of Record

PLEASE TAKE NOTICE that on November 7, 2014, I filed the following documents electronically with the Clerk of the Pollution Control Board of the State of Illinois:

1. Clinton Landfill, Inc.'s Motion for Partial Summary Judgment Regarding Changes to Special Condition Section III.A.2.f (MGP Waste); and
2. This Notice of Electronic Filing

Copies of the above-listed documents were served upon you in the manner stated in the Certificate of Service attached hereto.

Respectfully submitted,

CLINTON LANDFILL, INC.,
Petitioner

By:  _____

Brian J. Meginnis, Esq. (bmeginnis@emrslaw.com)
 Janaki Nair, Esq. (jnair@emrslaw.com)
 Elias, Meginnis & Seghetti, P.C.
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 914-1159

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CLINTON LANDFILL, INC.,)	
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Petitioner,)	PCB 2015-060
)	(Permit Appeal)
v.)	
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ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

**MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING
CHANGES TO SPECIAL CONDITION SECTION III.A.2.f (MGP WASTE)**

NOW COMES the Petitioner, CLINTON LANDFILL, INC. (“CLI”), by and through its undersigned attorneys, and as and for its Motion for Partial Summary Judgment regarding the changes to Special Condition Section III.A.2.f of the Permit (concerning MGP Waste), pursuant to 35 Ill. Admin. Code §101.516, states as follows:

INTRODUCTION

CLI filed its Petition for Review in this case on August 28, 2014, requesting that the Pollution Control Board (the “Board”) review Modification No. 47 to Permit No. 2005-070-LF, which modification was issued by the Illinois Environmental Protection Agency (the “Agency”) on July 31, 2014 (“Modification No. 47”). The Board accepted the Petition for hearing in its Order entered on September 4, 2014. In this Motion for Partial Summary Judgment, CLI requests summary judgment in its favor concerning the changes made in Modification No. 47 to Special Condition Section III.A.2.f of the Permit, which concern the disposal of certain manufactured gas plant (“MGP”) wastes only.

APPLICABLE LAW

The Board's regulations provide, in pertinent part, as follows regarding motions for partial summary judgment:

a) Any time after the opposing party has appeared (or after the expiration of time within which any party is required to appear), but no fewer than 30 days prior to the regularly scheduled Board meeting before the noticed hearing date, a party may move the Board for summary judgment for all or any part of the relief sought. * * *.

b) If the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment. * * *.

35 Ill. Admin. Code §101.516.

The purported basis for Modification No. 47 was 35 Ill. Admin. Code §813.201(b)(1)(B), which provides as follows:

b) Agency Initiated Modification

1) The Agency may modify a permit under the following conditions:

* * *

B) Discovery that a determination or condition was based upon false or misleading information * * *.

35 Ill. Admin. Code §813.201(b)(1)(B). The Section further provides that an operator "may file a petition with the Board pursuant to Section 813.106" as to Agency-initiated modifications. 35 Ill. Admin. Code §813.201(b)(2). Section 813.106 concerns appeals from Agency permit denials and Agency permit approvals subject to conditions. 35 Ill. Admin. Code §813.106.

CLI bears the burden of establishing (1) that vacating the Agency's modifications to CLI's Permit will not result in the violation of the Illinois Environmental Protection Act, 415

ILCS §5/1, *et seq.* (the “Act”), or (2) that the Agency’s modification was not necessary. *See* September 4, 2014 Order, pg. 2. In the case of Browning-Ferris Indus. of Illinois, Inc. v. Pollution Control Bd., the Agency made modifications to an operator’s closure/post-closure plan for a landfill, based on changes to the applicable law and science. 179 Ill. App. 3d 598, 534 N.E.2d 616 (2nd Dist. 1989). On appeal, the Court described the showing required of the operator as follows:

[I]n order to prevail on its claim BFI needed to show that the modifications imposed by the Agency were not necessary to accomplish the purposes of the Act, or, stated alternatively, BFI had to establish that its plan would not result in any future violation of the Act and the modifications, therefore, were arbitrary and unnecessary. [Citations omitted.]

Id., at 603, 620; *see also* Clayton Chemical Acquisition Limited Liability Company d/b/a Resource Recovery Group, L.L.C. v. Illinois Environmental Protection Agency, PCB 98-113, PCB 99-28, PCB 99-158, 2001 WL 237473, at *2-3 (Ill. Pol. Contr. Board March 1, 2001).

The Board’s review of the Agency’s unilateral modification in this case will be based exclusively on the record before the Agency at the time the Agency issued its permit decision. *See* 35 Ill. Adm. Code §105.214(a); September 4, 2014 Order, pg. 2.

STATEMENT OF UNDISPUTED FACTS

1. The Agency issued Permit No. 2005-070-LF for the development of Clinton Landfill No. 3 on March 2, 2007. (R6976-7488¹).
2. The Agency issued Modification No. 9 to Permit No. 2005-070-LF permitting the development of the Chemical Waste Unit or “CWU” on January 8, 2010. (R7854-919).

¹ References to page numbers in the Record filed in this case by the Agency on or about October 20, 2014, will be preceded with an “R” for the sake of clarity. Zeros at the beginning of R page numbers will be left out of citations.

3. Special Condition Section III.A.2.f of Modification No. 9 to Permit No. 2005-070-LF provided as follows:

f. CLARIFICATIONS:

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

Manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) can be disposed in the CWU.

(R7871; the cover (R7854) and page 18 (R7871) of Modification No. 9 are attached hereto as Exhibit 1 for the Board's convenience).

4. The Agency renewed Permit No. 2005-070-LF on July 5, 2012 (Modification No. 29 to Permit No. 2005-070-LF). (R14756-833).

5. Special Condition Section III.A.2.f of Modification No. 29 to Permit No. 2005-070-LF was unchanged since issuance of Modification No. 9 on January 8, 2010. (R14778).

6. The Agency issued Modification No. 46 to Permit No. 2005-070-LF on July 30, 2014. (Modification No. 46 to Permit No. 2005-070-LF is not included in the Record at this time; CLI has asked the Agency to supplement the Record to include the document. Modification No. 46 was attached with CLI's Petition for Review in this case as Exhibit D.)

7. Special Condition Section III.A.2.f of Modification No. 46 to Permit No. 2005-070-LF was unchanged in each of the permit modifications that were approved by the Agency since issuance of Modification No. 9 on January 8, 2010.

8. The Agency issued Modification No. 47 to Permit No. 2005-070-LF on July 31, 2014. (R15756-835).

9. The Agency's cover letter sent to CLI with Modification No. 47 is attached hereto for the Board's convenience as Exhibit 2. (R15752-55).

10. Special Condition Section III.A.2.f of Modification No. 47 to Permit No. 2005-070-LF provides as follows:

f. CLARIFICATIONS:

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

(R15779-80; the cover (R15756) and pages 24-25 (R15779-80) of Modification No. 29 are attached hereto as Exhibit 3 for the Board's convenience).

11. From the issuance of Modification No. 9 to Permit No. 2005-070-LF on January 8, 2010, through the issuance of Modification No. 46 on July 30, 2014, up until the issuance of Modification No. 47 on July 31, 2014, Special Condition Section III.A.2.f included the statement that "Manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) can be disposed in the CWU." (See Ex. 2, R15753, table tracking changes from Modification No. 46 to Modification No. 47).

ARGUMENT

MGP waste is non-hazardous special waste. In each of the thirty-eight (38) permit modifications issued by the Agency between Modification No. 9 and Modification No. 47,

Section III.A.2.f of CLI's Permit included the following statement regarding disposal of MGP waste in the CWU:

f. CLARIFICATIONS:

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

Manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) can be disposed in the CWU.

(Ex. 1, R7871; emphasis added).

In Modification No. 47, the Agency modified Special Condition Section III.A.2.f of the Permit "to prohibit the disposal of Manufactured Gas Plant (MGP) waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) in the CWU." (Ex. 2 (cover letter), R15753). In particular, in Modification No. 47, the Agency added the words "or the CWU" to the first paragraph of Special Condition Section III.A.2.f, and deleted the second sentence, which previously provided that "Manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) can be disposed in the CWU," which left Special Condition Section III.A.2.f to read as follows:

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

(Ex. 3, R15779-80; emphasis added).

Therefore, in Modification No. 47, the Agency purports to ban certain MGP waste from disposal in the CWU, “unless: i) the waste has been tested in accordance with subsection (d) of this special condition, and ii) the analysis has demonstrated that the waste does not exceed the regulatory levels for any contaminant given in the table contained in 35 Ill. Adm. Code 721.124(b).” (Id.)

At all relevant times, subsection (d) of Special Condition Section III.A.2 of the Permit has provided as follows:

The permittee shall obtain metals and organics analysis. Either procedure may be utilized (i.e., total or TCLP), but any constituent whose total concentration exceeds the TCLP limit specified in 35 Ill. Adm. Code, Section 721.124 must be analyzed using the TCLP test and the results reported, unless an alternative test has been approved by the Illinois EPA. TCLP test methods must be in accordance with SW 846-1311.

(Ex. 3, R15779) (unchanged in Modification No. 47). The test referenced in subsection (d) is the Toxicity Characteristic Leaching Procedure or “TCLP,” which is called for in 35 Ill. Adm. Code §721.124 to test the toxicity of solid wastes. *See also* 40 C.F.R. §261.24 (Illinois law is “identical in substance” to Federal law on this point).

However, *the TCLP is not applicable to MGP waste as a matter of law*. The Illinois regulation provides, in pertinent part, as follows:

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

35 Ill. Adm. Code 721.124(a) (emphasis added); *see also* 40 C.F.R. §261.24(a). Subsection (b) of 35 Ill. Adm. Code 721.124 is the table of contaminants referenced in subsection (a) of the regulation. *See also* 40 C.F.R. §261.24(b). The Agency actually acknowledges that the TCLP does not apply to MGP waste in Special Condition Section III.A.2.f of the Permit, stating that “[n]otwithstanding the exception for manufactured gas plant waste contained in 35 Ill. Adm. Code 721.124(a), no manufactured gas plant waste shall be disposed....” (Ex. 3, R15779; emphasis added).

It is the role of the **Board**, not the Agency, to create regulations under the Act:

The Board, which was created by the Act, serves both quasi-legislative and quasi-judicial functions within a statutorily established framework. It must determine, define, and implement the environmental control standards and may adopt rules and regulations. * * *. It may adopt substantive regulations and procedural rules to accomplish the purposes of the Act.

The Agency too was created by the Act and performs technical, licensing, and enforcement functions. It has the duty to collect and disseminate information, acquire technical data, and conduct experiments to carry out the purposes of the Act. It has the authority to conduct surveillance and inspection of actual or potential pollution sources. It has the duty to investigate violations of the Act, regulations, and permits. The Agency must appear before the Board in hearings on the denial of permits, among other specified instances, and may appear in any other hearing under the Act. The Agency has the duty to administer permit systems established by the Act or regulations and has the authority to require permit applicants to submit plans and specifications and reports regarding actual or potential violations of the Act, regulations or permits.

Landfill, Inc. v. Pollution Control Bd., 74 Ill. 2d 541, 554, 387 N.E.2d 258, 262-63 (1978) (internal citations to the Act omitted). “The Board's principal function is to adopt regulations defining the requirements of the permit system. The Agency's role is to determine whether specific applicants are entitled to permits.” Id. at 557, 264 (internal citations to the Act omitted).

In Special Condition Section III.A.2, the Agency is attempting to rewrite 35 Ill. Adm. Code 721.124(a) to require the application of the TCLP to MGP wastes. The Board has spoken on this issue already. The Agency cannot overrule the Board by writing provisions into permits that contradict or conflict with the Board's regulations.

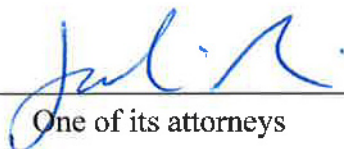
MGP waste is *non-hazardous special waste*, regardless of whether any constituent in the waste exceeds the regulatory levels specified in 35 Ill. Adm. Code §721.124(b), which are not applicable to MGP waste as a matter of law. The Permit (even as modified through Modification No. 47) allows CLI to accept non-hazardous special waste for disposal at the CWU. Therefore, the Agency has no legal basis for excluding one type of non-hazardous special waste, *i.e.*, those MGP wastes that include constituents exceeding the regulatory levels specified in 35 Ill. Adm. Code §721.124(b), from disposal at the CWU. There is no basis at law for the Agency to distinguish between MGP waste that includes constituents exceeding the regulatory levels specified in 35 Ill. Adm. Code §721.124(b) from other non-hazardous special wastes (including other MGP wastes).

Based on the foregoing, CLI has established that vacating the Agency's modifications to CLI's Permit will not result in the violation of the Act, and that the Agency's modification was arbitrary and unnecessary as a matter of law.

WHEREFORE, CLI respectfully requests that the Board (A) declare the Agency's action issuing changes in Modification No. 47 relating to MGP waste to be arbitrary, capricious, unreasonable, unlawful, and/or beyond the regulatory authority of the Agency; (b) vacate the Agency's action issuing changes relating to MGP waste in Modification No. 47; and (c) grant CLI such other and further relief as is deemed appropriate under the circumstances.

Respectfully submitted,

CLINTON LANDFILL, INC.,
Petitioner

By: 
One of its attorneys

Brian J. Meginnes, Esq. (bmeginnes@emrslaw.com)

Janaki Nair, Esq. (jnair@emrslaw.com)

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Peoria, IL 61602

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914-1119.2

Bureau



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/524-3300

January 8, 2010

CERTIFIED MAIL

7004 2510 0001 8615 7834

Clinton Landfill, Inc.
Attn: Mr. Ron L. Edwards
P.O. Box 9071
Peoria, Illinois 61612-9071

Re: 0390055036 – DeWitt County
Clinton Landfill 3
Permit No. 2005-070-LF
Log No. 2008-054
Modification No. 9
Expiration Date: February 15, 2012
Permit Landfill 810-817 File
Permit Approval

RELEASABLE

MAR 17 2010

REVIEWER MD

Dear Mr. Edwards:

Permit is hereby granted to Clinton Landfill, Inc. as owner and operator, approving the development of a new municipal solid waste and non-hazardous special waste landfill all in accordance with the application and plans prepared by George L. Armstrong, P.E. of PDC Technical Services, Inc. Final plans, specifications, application, and supporting documents, as submitted and approved, shall constitute part of this permit and are identified in the records of the Illinois Environmental Protection Agency (Illinois EPA), Bureau of Land, Division of Land Pollution Control by the permit number and log number designated in the heading above.

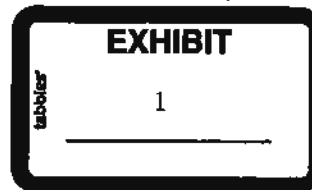
Specifically, Permit No. 2005-070-LF issued March 2, 2007 approved:

- a. The development of this landfill so as to comply with the applicable requirements of Title 35, Illinois Administrative Code (hereinafter 35 Ill. Adm. Code), Subtitle G, Parts 811 and 812, pursuant to 35 Ill. Adm. Code, Section 813.104;
- b. The development of a new Municipal Solid Waste Landfill (MSWLF) unit consisting of a 266.533 acre facility with a single waste disposal unit of approximately 157.451 acres with a gross airspace of approximately 32,014,225 cubic yards, including daily cover and intermediate cover; and excluding leachate sand drainage layer, sidewall liner protective soils and final cover. The maximum final elevation shall be approximately 870 feet above mean sea level. Based on the anticipated waste acceptance rate of 426,000 tons

Rockford • 4302 N. Main St., Rockford, IL 61103 • (815) 987-7760
Elgin • 595 S. State, Elgin, IL 60123 • (847) 698-3131
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) 278-5000
Marion • 2309 W. Main St., Suite 116, Marion, IL 62959 • (618) 993-7200

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Page 18

f. CLARIFICATIONS:

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

Manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) can be disposed in the CWU.

- g. Pursuant to 35 Ill. Adm. Code 722.111, the generator of a solid waste is required to determine if the waste is hazardous and comply with all applicable hazardous waste regulations. For any waste that has been determined to be hazardous, the results of quality assurance testing for the treatment program, taken at an appropriate frequency to demonstrate the waste is no longer hazardous, must be obtained. Verification that the waste meets the land disposal restrictions must also be documented. These requirements are in addition to the other standard special waste test requirements.
3. An individual waste stream permit is no longer required by the Illinois EPA for this facility. Therefore, a waste stream permit number will no longer be required on the manifest when shipping waste to this facility as authorized by this permit.
4. Special waste generated due to an emergency situation may be disposed without complete TCLP analysis if:
- a. The permittee receives authorization from the Emergency Response Unit of the Illinois EPA at 1-217-782-3637;
 - b. The permittee ensures that the generator has received an incident number from the Illinois Emergency Management Agency at 1-800-782-7860 within Illinois, or 1-217-782-7860 outside of Illinois; and
 - c. The waste is analyzed for the chemical constituents required by the Emergency Response Unit.
5. The permittee shall conduct the following analyses for waste received in labeled containers in lab packs, including commingled wastes:
- a. Compatibility review in accordance with the procedures identified in USEPA document EPA-600/2-80-076; and

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-2829
PAT QUINN, GOVERNOR LISA BONNETT, DIRECTOR

Bureau

July 31, 2014

CERTIFIED MAIL
7010 2780 0002 1196 6934

Clinton Landfill, Inc.
Attn: Mr. Ronald J. Welk
4700 North Sterling Avenue
P.O. Box 9071
Peoria, Illinois 61612-9071

EPA-DIVISION OF RECORDS MANAGEMENT
RELEASABLE
SEP 03 2014
REVIEWER: JKS

Re: 0390055036 - DeWitt County
Clinton Landfill 3
Permit No. 2005-070-LF
Log No. 2014-359
Expiration Date: February 15, 2017
Permit File

Dear Mr. Welk:

In accordance with 35 Ill. Admin. Code 813.201(b), the Illinois Environmental Protection Agency is hereby modifying the permit granted to Clinton Landfill, Inc. as owner and operator. On February 5, 2008, the Agency received from Clinton Landfill, Inc. a permit application to modify Permit No. 2005-070-LF to create an area designated as a "chemical waste unit" that would accept wastes Clinton Landfill No. 3 was already permitted to accept as well as wastes it was not yet permitted to accept. The application did not contain a Certification of Siting Approval. Instead, Section 812.105 of the application stated that "[t]his application does not propose a new nor expansion to the currently permitted Clinton Landfill No. 3 and, therefore, local siting approval is not required for this permit modification." On January 8, 2010, the Agency issued Permit Modification No. 9, which incorporated the information contained in the February 5, 2008 application. Since issuing Permit Modification No. 9, the Agency has received information indicating that the necessary local siting approval has not been granted for the modifications in Permit Modification No. 9.

This modification, which is Modification No. 47 and is designated in the Agency files as application Log No. 2014-359, includes several revisions to the introductory section included in Modification No. 46 to Permit No. 2005-070-LF. The introductory section of Modification No. 47 includes the following new language:

Under the provisions of 35 Ill. Adm. Code 813.201(b)(1), Modification No. 9 to Permit No. 2005-070-LF, which was originally issued on January 8, 2010 and approved development of the Chemical Waste Unit (CWU) at Clinton Landfill 3, is being revised, on July 31, 2014, through an Agency initiated modification (Modification No. 47) to prohibit acceptance of the following wastes at Clinton Landfill 3:

1. Manufactured Gas Plant (MGP) waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) in the CWU; and
2. Polychlorinated Biphenyl (PCB) wastes, as defined in 40 Code of Federal Regulations (CFR) 761.3 in the CWU, unless:

EXHIBIT
2

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- a. The local siting authority for Clinton Landfill 3 (currently the DeWitt County Board) grants local siting approval specifically allowing such waste to be disposed of in the CWU; and
- b. The U.S. Environmental Protection Agency (USEPA) approves the CWU as a "chemical waste landfill" as defined in 40 CFR 761.3.

Except for the differences indicated in the table below, the special conditions in Modification No. 47 are identical to the special conditions in Modification No. 46 to Permit No. 2005-070-LF, issued on July 30, 2014.

<u>Special Condition in Modification No. 46</u>	<u>Special Condition in Modification No. 47</u>	<u>Description of Modification</u>
<u>II.10.f</u>	<u>II.10.f</u>	<u>Amended to add obtaining local siting approval as a precondition to accepting PCB waste.</u>
<u>II.27.d and II.27.g</u>	<u>II.27.d and II.27.g</u>	<u>Revised to reference Modification No. 47 and Log No. 2014-359.</u>
<u>III.A.2.f</u>	<u>III.A.2.f</u>	<u>Amended to prohibit the disposal of Manufactured Gas Plant (MGP) waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) in the CWU.</u>
<u>VII.12</u>	<u>VII.12</u>	<u>Amended to reflect the need to obtain local siting approval before accepting PCB waste and correct a typographical error.</u>
<u>VII.13</u>	<u>VII.13</u>	<u>Revised to correct a typographical error.</u>

In addition, Modification No. 47 includes the following revisions to the special conditions included in Modification No. 46 (added text is underlined; deleted text is ~~stricken~~):

Section II.10.f

- f. Only those types of polychlorinated biphenyls (PCB) wastes, as defined in 40 CFR 761.3 and subject to Toxic Substances Control Act (TSCA), that are allowed by 40 CFR Part 761 or TSCA to be disposed in a municipal solid waste landfill may be disposed in the MSW unit. PCB wastes which are allowed by 40 CFR 761 to be disposed in a "chemical waste landfill" as defined in 40 CFR 761.3 may be disposed in the CWU Unit, if and when all of the following conditions have been met:
 - i. The local siting authority for Clinton Landfill 3 (currently the DeWitt County Board) grants local siting approval specifically allowing such waste to be disposed of in the CWU;
 - ii. The U.S. Environmental Protection Agency (USEPA) permits the CWU as a "chemical waste landfill" as defined in 40 CFR 761.3;
 - iii. The CWU is constructed; and
 - iv. The Illinois EPA has approved operation authorization for the CWU, pursuant to 35 Ill. Adm. Code 813.203, allowing waste disposal to begin.

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Section II.27.d

- d. The approximately 4.5 acres of Phase 1A of CWU, in accordance with application and plans provided in permit application Log Nos. 2011-024 and 2014-359 and approved by Modification Nos. 18 and 47, respectively;

Section II.27.g

- g. The approximately 1.64 acres of Phase 1A of CWU, in accordance with application and plans provided in permit application Log Nos. 2011-024, 2012-047 and 2014-359 and approved by Modification Nos. 18, 28 and 47, respectively;

Section III.A.2.f

- f. CLARIFICATIONS:

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

~~Manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) can be disposed in the CWU.~~

Section VII.12

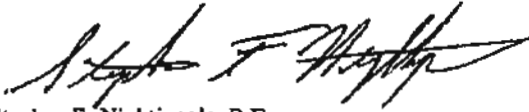
12. If and when the local siting authority for Clinton Landfill 3 grants local siting approval specifically allowing PCB waste to be disposed of in the CWU and the USEPA permits the CWU as a "chemical waste landfill" as defined in 40 CFR 761.3, leachate from the CWU must be managed in accordance with Condition No. VII.11 (a) and (b) of this permit. In the event the operator wants to transport leachate offsite for treatment and discharge under a NPDES permit, the operator shall provide written notification to the Illinois EPA, Bureau of Land, Permit Section that necessary approval has been obtained from the wastewater treatment plant to accept leachate from the CWU. The wastewater treatment facility must be made aware that PCB wastes which are allowed by 40 CFR 761 to be disposed in a "chemical waste landfill" as defined in 40 CFR 761.3 are being accepted in the CWU. This documentation shall be provided prior to commencement of shipping of leachate to the wastewater treatment plant and must include a copy of letter of approval from the wastewater treatment plant.

Section VII.13

13. Leachate from the CWU shall be pumped to the CWU leachate storage tank and managed in accordance with Condition No. VII.11. Leachate from the CWU shall not be recirculated in the MSW unit or in any way comingled with the leachate from the MSW unit.

This modification, which is Modification No. 47 and is designated in the Agency files as application Log No. 2014-359, is enclosed with this letter.

Sincerely,



Stephen F. Nightingale, P.E.
Manager, Permit Section
Bureau of Land

CTL
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Enclosures: Clinton Landfill 3 - Modification No. 47

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- iii. That air concentrations of H₂S and/or HCN above 10 ppm have not been encountered in areas where the waste is generated, stored or otherwise handled.
- c. The permittee shall obtain analysis for phenols. If the total phenol concentration is greater than 1000 ppm, the waste will be required to be drummed and labeled, unless justification that this precaution is not necessary is provided. The justification must demonstrate skin contact is unlikely during transport or disposal.
- d. The permittee shall obtain metals and organics analysis. Either procedure may be utilized (i.e., total or TCLP), but any constituent whose total concentration exceeds the TCLP limit specified in 35 Ill. Adm. Code, Section 721.124 must be analyzed using the TCLP test and the results reported, unless an alternative test has been approved by the Illinois EPA. TCLP test methods must be in accordance with SW 846-1311.
- e. EXCEPTIONS:
 - i. The generator may certify that the eight pesticides (D012, D013, D014, D015, D016, D017, D020 and D031) would not reasonably be expected to be present in the waste based on the nature of the process generating the waste.
 - ii. Petroleum contaminated media and debris from LUST sites subject to corrective action regulation under 35 Ill. Adm. Code, Parts 731 and 732 are temporarily exempt from complete TCLP analysis and the generator may limit analyses to flashpoint, paint filter test and TCLP lead.
 - iii. For off-specification, unused or discarded commercial or chemical products, an MSDS to determine the hazardous constituents present may be provided in lieu of analytical results.

f. CLARIFICATIONS:

Notwithstanding the exception for manufactured gas plant waste contained in 35 Ill. Adm. Code 721.124(a), no manufactured gas plant waste shall be disposed in Clinton Landfill 3's MSW unit or the CWU, unless: i) the waste has been tested in accordance with subsection (d) of this special condition, and ii) the analysis has demonstrated that the waste does not

CERTIFICATE OF SERVICE

The undersigned certifies that on November 7, 2014, the foregoing document will be served upon each party to this case in the following manner:

X VIA EMAIL with confirmation by United States Mail

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