

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CLINTON LANDFILL, INC.,)	
)	
Petitioner,	)	PCB 2015-060
	)	PCB 2015-076
v.	)	PCB 2015-111
	)	PCB 2015-113 (cons.)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,	)	(Permit Appeals)
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

TO: All Parties of Record


PLEASE TAKE NOTICE that on February 18, 2015, I filed the following documents electronically with the Clerk of the Pollution Control Board of the State of Illinois:

1. Motion to Supplement the Record (not agreed); 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: 
One of its attorneys

Brian J. Meginnes, Esq. (bmeginnes@emrslaw.com)
 Janaki Nair, Esq. (jnair@emrslaw.com)
 Elias, Meginnes & Seghetti, P.C.
 416 Main Street, Suite 1400
 Peoria, IL 61602
 Telephone: (309) 637-6000
 Facsimile: (309) 637-8514

915-0165

CERTIFICATE OF SERVICE

The undersigned certifies that on February 18, 2015, 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

Jennifer A. VanWie, Esq., Assistant Attorney General
Stephen Sylvester, Esq., Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
Emails: jvanwie@atg.state.il.us
ssylvester@atg.state.il.us

Matthew J. Dunn
Division Chief, Environmental Enforcement and Asbestos
Litigation Division
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706
Email: mdunn@atg.state.il.us

Hearing Officer Carol Webb
VIA EMAIL ONLY: Carol.Webb@illinois.gov

By: _____


Attorney

Brian J. Meginnes, Esq. (bmeginnes@emrslaw.com)
Janaki Nair, Esq. (jnair@emrslaw.com)
Elias, Meginnes & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
Telephone: (309) 637-6000
Facsimile: (309) 637-8514

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CLINTON LANDFILL, INC.,)	
)	
Petitioner,	)	PCB 2015-060
	)	PCB 2015-076
v.	)	PCB 2015-111
	)	PCB 2015-113 (cons.)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,	)	(Permit Appeals)
)	
Respondent.)	

MOTION TO SUPPLEMENT THE RECORD

NOW COME the Petitioner, CLINTON LANDFILL, INC. (“CLI”), by and through its undersigned attorneys, and as and for its Motion to Supplement the Record in this consolidated case, states as follows:

INTRODUCTION

CLI requests that the Pollution Control Board (the “Board”) cause the Record in this case to be supplemented to add two letters, namely, a letter from the Illinois Attorney General’s Office to the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (the “Agency”), and the Agency’s written response. These letters were presumably in the Agency’s possession at the time it rendered the relevant permitting decision, and should have been relied upon in making that decision. Therefore, the letters should be included in the Record.

BACKGROUND

Mod 47

The Agency issued Permit No. 2005-070-LF for the development of Clinton Landfill No. 3 on March 2, 2007. (R6976-7488). 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). Thereafter, the Agency issued dozens of modifications to the Permit pertaining to and permitting the Chemical Waste Unit.

On July 31, 2014, the Agency issued Modification No. 47 to Permit No. 2005-070-LF (R15756-835) ("Mod 47"), which made the following revisions to the Permit:

- (1) Special Condition Section II.10.f: As of July 30, 2014, Section II.10.f provided that there were three (3) conditions before the Chemical Waste Unit could accept certain types of PCB wastes. (R18348). On July 31, 2014, the Agency added a fourth condition: "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 CWU." (R15772).
- (2) Special Condition Section III.A.2.f: As of July 30, 2014, Section III.A.2.f included the following exception to the Agency's general policy prohibiting disposal of Manufactured Gas Plant (MGP) waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) in landfills in Illinois: "Manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) can be disposed in the CWU." (R18355). On July 31, 2014, the Agency deleted this exception. (R15779-80).
- (3) Special Condition Section VII.12: On July 31, 2014, the Agency added the following as a condition to triggering of the leachate management protocols in the section: "the local siting authority for Clinton Landfill 3 grants local siting approval specifically allowing PCB waste to be disposed of in the CWU...." (R15801).

(See Petition for Review filed in PCB 2015-060). As above, the changes to the Permit in Mod 47 concerned the disposal of certain PCB and MGP wastes in the Chemical Waste Unit.

On August 28, 2014, CLI filed a Petition for Review of Modification No. 47 to Permit No. 2005-070-LF with the Pollution Control Board (the "Board"), seeking review of the three above-listed changes to the Permit made in Mod 47. The case was docketed as PCB 2015-060.

The Consolidated Cases

On October 7, 2014, CLI filed a Petition for Review of Modification No. 48 ("Mod 48"), requesting that the Board review Mod 48, as to the changes that were made in Mod 47 (incorporated in Mod 48). The Board docketed that Petition as PCB 2015-076. On December 18, 2014, CLI filed a Petition for Review of Modification No. 49 ("Mod 49"), requesting that the Board review Mod 49, as to the changes that were made in Mod 47 (incorporated into Mod 49). The Board docketed that Petition as PCB 2015-111. On December 19, 2014, CLI filed a Petition for Review of Modification No. 50 ("Mod 50"), requesting that the Board review Mod 50, as to the changes that were made in Mod 47 (incorporated into Mod 50). The Board docketed that Petition as PCB 2015-113.

On November 20, 2014, the Board consolidated PCB 2015-060 and PCB 2015-076 on CLI's motion, without objection by the Agency. On January 22, 2015, the Board consolidated PCB 2015-111 and PCB 2015-113 with PCB 2015-060 and PCB 2015-076 on the joint motion of CLI and the Agency. (All capitalized terms not otherwise defined herein are ascribed the meanings given then in CLI's Petitions for Review filed in these consolidated cases).

The Existing Record

The Agency initially filed the Record in PCB 2015-060 on October 20, 2014, and supplemented the Record in the consolidated cases on December 9, 2014, January 13, 2015, and

January 29, 2015, with CLI's agreement. In its Unopposed Motion to Supplement the Record filed on February 6, 2015, CLI requested that the Record be supplemented with the First Amendment to Host County Agreement by and between CLI and the County of DeWitt, Illinois, dated as of August 24, 2007 (pages labeled 18848-18850). That Motion was granted on February 10, 2015.

APPLICABLE LAW

The Board's regulations require the Agency to file the administrative record with the Board. 35 Ill. Adm. Code §105.116; 35 Ill. Adm. Code §105.212(a). The record must include all the documents and information considered by the Agency in rendering its decision:

(b) The record must include:

1) Any permit application or other request that resulted in the Agency's final decision;

2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the permit application;

3) The permit denial letter that conforms to the requirements of Section 39(a) of the Act or the issued permit or other Agency final decision;

4) The hearing file of any hearing that may have been held before the Agency, including any transcripts and exhibits; and

5) ***Any other information the Agency relied upon in making its final decision.***

35 Ill. Adm. Code §105.212(b) (emphasis added). Furthermore:

To the extent that the Agency has relied upon information beyond that contained in the application, such information must be included in the permit record filed with the Board; if it is not, the applicant may properly submit such information to the Board during the course of the Board's hearing. Additionally, if there was information in the Agency's possession upon which it reasonably

should have relied, the applicant may also submit such information to the Board for the Board's consideration. [Citations omitted].

Joliet Sand & Gravel Co. v. IEPA, PCB 86-159, 1987 WL 55908, at *4 (Feb. 5, 1987). *See also* KCBX Terminals Company vs. Illinois Environmental Protection Agency, PCB 14-110, Hearing Officer Order entered April 8, 2014, pg. 4, *affirmed* by the Board, April 17, 2014, *quoting* Joliet Sand & Gravel, *supra*.

THE PROPOSED SUPPLEMENT

CLI now requests that the Record be additionally supplemented with the attached documents, namely:

- A. Letter dated February 17, 2012, from J. L. Homan, Assistant Attorney General, Environmental Bureau, Office of the Attorney General of the State of Illinois, to Mr. John Kim, Interim Director, Illinois Environmental Protection Agency (pages labeled 18851-18852) (the “AG Letter”); and
- B. Letter dated March 9, 2012, from James G. Richardson, Acting Deputy General Counsel, Illinois Environmental Protection Agency, to Ms. Javonna Homan, Assistant Attorney General, Environmental Bureau, Illinois Attorney General’s Office (pages labeled 18853-18854) (the “Agency Letter”).

In the AG Letter (provisionally marked 18851-52), the Attorney General’s Office raises specific concerns about the disposal of MGP waste at Clinton Landfill No. 3: “The citizens report that the landfill is accepting manufactured gas plant wastes from remediation sites around the State.... Division Chief Matt Dunn has directed me to inquire as to the Illinois EPA’s position on the suitability of this waste material for disposal in a municipal landfill....” (AG Letter, 18851). In addition, the Attorney General’s Office asks for the Agency’s position on

CLI's proposed disposal of PCB wastes requiring the approval of the USEPA under the Toxic Substances Control Act ("TSCA"). (Id.)

In the Agency Letter (provisionally marked 18853-54), the Agency explains the law regarding disposal of MGP waste as follows:

Generally, there are two types of waste generated by remediation activities at MGP sites. In Illinois, coal tar captured at these facilities is almost always transported out of state for incineration or disposal at a hazardous waste landfill. Then there are the excavated soils that can have BTEX (benzene, ethylbenzene, toluene, xylene) and/or polynuclear aromatic hydrocarbons contamination. Since the 2000 decision by the United States Court of Appeals for the District of Columbia Circuit in Association of Battery Recyclers, Inc., et. al. v. USEPA, 208 F.3rd 1047, ***contaminated soils from MGP sites can be disposed in municipal solid waste ("MSW") landfills without any pre-disposal chemical characterization.***

(Agency Letter, 18853; emphasis added). The Agency goes on to explain the relevant facts regarding CLI's disposal of MGP waste at Clinton Landfill No. 3 as follows:

Even so, MGP contaminated soils are not being disposed in the MSW unit of Clinton Landfill. These soils are instead disposed in a Chemical Waste Unit that has been developed at Clinton Landfill with a liner system and leachate collection system that meet the requirements of a RCRA Subtitle C hazardous waste landfill. Therefore, ***Clinton Landfill exceeds the applicable requirements in its disposal of MGP wastes.***

(Id.; emphasis added).

ARGUMENT

CLI believes that the AG Letter and the Agency Letter constitutes "information in the Agency's possession upon which it reasonably should have relied..." in making its unilateral decision to modify CLI's permit in Mod 47. KCBX Terminals Company, *supra*, pg. 4. Therefore, "the applicant [CLI] may ... submit such information to the Board for the Board's consideration." Id.

In Mod 47, the Agency seeks to prohibit CLI from disposing of MGP waste “exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b)” in the Chemical Waste Landfill. (R15779-80). The referenced section of the Board’s regulations requires a waste to be subjected to the “Toxicity Characteristic Leaching Procedure” or “TCLP” to determine whether it exhibits the hazardous characteristic of toxicity before being disposed in a municipal solid waste landfill. However, the Board’s regulation *expressly* bars the use of the TCLP on MGP wastes. *See* 35 Ill. Adm. Code §721.124(a).

In the AG Letter, the Attorney General’s Office asked the Agency for “the Illinois EPA’s position on the suitability of this waste material for disposal in a municipal landfill, and as to the applicable standards and methods to properly characterize the wastes prior to disposal.” (AG Letter, 18851). In the Agency Letter (provisionally marked 18853-54), the Agency clearly acknowledges (and explains to the Attorney General’s Office) that MGP waste is not subject to the TCLP or to the chemical characterization called for in 35 Ill. Adm. Code §721.124: “contaminated soils from MGP sites can be disposed in municipal solid waste (‘MSW’) landfills *without any pre-disposal chemical characterization.*” (Agency Letter, 18853; emphasis added). The Agency further specifically states that CLI’s disposal of MGP waste in the Chemical Waste Unit “*exceeds the applicable requirements in its disposal of MGP wastes.*” (*Id.*; emphasis added). The Agency Letter directly conflicts with the Agency’s issuance of Mod 47.

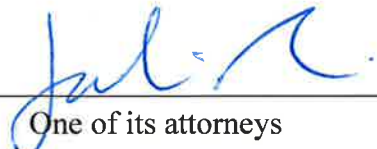
Given that the AG Letter was directed to the Agency, and given that the Agency Letter was actually written by the Agency, both letters were presumably in the Agency’s “possession” at the time that Mod 47 was issued. CLI submits that the Agency should have relied upon, or at least considered, the AG Letter and the Agency Letter in deciding to unilaterally modify CLI’s Permit.

For the foregoing reasons, CLI respectfully submits that the Record in this case should be supplemented to include the AG Letter and the Agency Letter.

WHEREFORE, CLI requests that the Board or the Hearing Officer order that Record in this case be supplemented to include the attached documents.

Respectfully submitted,

CLINTON LANDFILL, INC.,
Petitioner

By: 
One of its attorneys

Brian J. Meginnis, Esq.
Janaki Nair, Esq.
Elias, Meginnis & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
Telephone: (309) 637-6000
Facsimile: (309) 637-8514
Emails: bmeginnis@emrslaw.com
jnair@emrslaw.com

915-0139

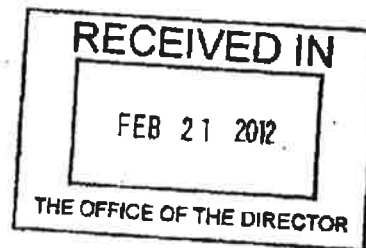


Julie Armitage

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

February 17, 2012



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

Re: *Clinton Landfill*

Dear John,

Several concerned citizens and municipal representatives have contacted the Attorney General's Office recently about the Clinton Landfill. Numerous issues were raised in several calls about the conditions at the site.

The citizens report that the landfill is accepting manufactured gas plant wastes from remediation sites around the State and they have serious concerns about the wisdom of allowing this waste stream to be placed in a municipal landfill. Division Chief Matt Dunn has directed me to inquire as to the Illinois EPA's position on the suitability of this waste material for disposal in a municipal landfill, and as to the applicable standards and methods to properly characterize the wastes prior to disposal. The facility also has a pending permit application before USEPA for a TSCA permit at the site, and the facility wishes to accept more diverse, and more regulated, wastes.

I have also been directed to inquire as to the Agency's position on the proposed expansion of the Clinton Landfill waste stream, and specifically how this may impact the permits already held by the company. The Illinois State Water Survey has voiced concerns about the landfill depth and the water table, along with possible leakage from the landfill into the underlying aquifers.

[Handwritten marks and scribbles]

RESOURCES MANAGEMENT
DIVISION

FEB 05 2012

REVIEWER EAV

John Kim
February 17, 2012
Page 2

Lastly, the citizens indicated that there are currently several outstanding FOIA requests for information that have been pending for a significant period of time without Agency response.

[REDACTED]

Sincerely,



J. L. Homan
Assistant Attorney General
Environmental Bureau
Springfield, IL 62706

JLH/pp



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

217) 782-5544
TDD (217) 782-9143

March 9, 2012

Ms. Javonna Homan
Assistant Attorney General, Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

Re: Clinton Landfill

Dear Ja:

In your February 17, 2012 letter, you inquire about the disposal of manufactured gas plant ("MGP") wastes at Clinton Landfill, potential impacts of the facility on groundwater, and the status of Freedom of Information ("FOIA") Requests seeking information pertaining to this site.

Generally there are two types of waste generated by remediation activities at MGP sites. In Illinois, coal tar captured at these facilities is almost always transported out of state for incineration or disposal at a hazardous waste landfill. Then there are the excavated soils that can have BTEX (benzene, ethylbenzene, toluene, xylene) and/or polynuclear aromatic hydrocarbons contamination. Since the 2000 decision by the United States Court of Appeals for the District of Columbia Circuit in Association of Battery Recyclers, Inc., et. al. v. USEPA, 208 F.3rd 1047, contaminated soils from MGP sites can be disposed in municipal solid waste ("MSW") landfills without any pre-disposal chemical characterization. Even so, MGP contaminated soils are not being disposed in the MSW unit of Clinton Landfill. These soils are instead disposed in a Chemical Waste Unit that has been developed at Clinton Landfill with a liner system and leachate collection system that meet the requirements of a RCRA Subtitle C hazardous waste landfill. Therefore, Clinton Landfill exceeds the applicable requirements in its disposal of MGP wastes.

With respect to groundwater, Clinton Landfill is undertaking all of the measures required of it by the applicable regulations and its permits. Concerning the Mahomet Aquifer, a major groundwater aquifer in the region, the geologic units beneath the landfill include surface windblown loess/silt deposits and thick glacial till formations. The glacial till is identified as Tiskilwa Formation, which consists mainly of dense silty clays with sand/gravel and the occasional thin sand and/or gravel seam. This formation has a low groundwater flow rate.

4302 N. Main St., Rockford, IL 61103 (815)987-7760
595 S. State, Elgin, IL 60123 (847)608-3131
2125 S. First St., Champaign, IL 61820 (217)278-5800
2009 Mall St., Collinsville, IL 62234 (618)346-5120

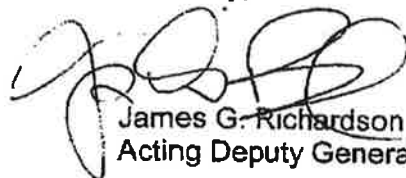
9511 Harrison St., Des Plaines, IL 60016 (847)294-4000
5407 N. University St., Arbar 113, Peoria, IL 61614 (309)693-5462
2309 W. Main St., Suite 116, Marion, IL 62959 (618)993-7200
100 W. Randolph, Suite 11-300, Chicago, IL 60601 (312)814-6026

Soil borings at the landfill have documented that approximately 110 to 130 feet of glacial till material separates the bottom of the landfill liner and the top of the Mahomet Aquifer. With such substantial glacial till, contamination of the aquifer is unlikely to occur. As your letter neither identified the specifics of the Illinois State Water Survey information it referenced nor indicated if the information had ever officially been provided to the Illinois EPA, there is nothing to suggest that this conclusion, based on the geologic characteristics of the site, is incorrect.

There have been several recent FOIA requests regarding this site. Three February information requests were timely answered. A Mr. Bill Spencer of Kenney, Illinois complained in a February 3, 2012 Request for Review filed with your Public Access Bureau ("PAB") that a January request from him had not been answered by the Illinois EPA. Illinois EPA advised the PAB that it had responded to Spencer on January 18, 2012, which led the PAB to determine that Illinois EPA's response resolved Spencer's complaint. It should be noted that Spencer has declined opportunities offered by the Illinois EPA to personally review files at Illinois EPA headquarters in Springfield. The Illinois EPA remains committed to timely answer all of the FOIA requests it receives.

Should you have additional comments or questions regarding this site, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Richardson', is written over a horizontal line. The signature is stylized and cursive.

James G. Richardson
Acting Deputy General Counsel

CERTIFICATE OF SERVICE

The undersigned certifies that on February 18, 2015, 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

Jennifer A. VanWie, Esq., Assistant Attorney General
Stephen Sylvester, Esq., Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
Emails: jvanwie@atg.state.il.us
ssylvester@atg.state.il.us

Matthew J. Dunn
Division Chief, Environmental Enforcement and Asbestos
Litigation Division
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706
Email: mdunn@atg.state.il.us

Hearing Officer Carol Webb
VIA EMAIL ONLY: Carol.Webb@illinois.gov

By: _____


Attorney

Brian J. Meginnes, Esq. (bmeginnes@emrslaw.com)
Janaki Nair, Esq. (jnair@emrslaw.com)
Elias, Meginnes & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
Telephone: (309) 637-6000
Facsimile: (309) 637-8514