

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CLINTON LANDFILL, INC.,)	
)	
Petitioner,)	PCB 15-60
)	PCB 15-76
v.)	PCB 15-111
)	PCB 15-113
ILLINOIS ENVIRONMENTAL)	(Consolidated)
PROTECTION AGENCY,)	(Permit Appeals - Land)
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on the 4th day of March, 2015, I have filed with the Office of the Clerk of the Pollution Control Board the Respondent's Response in Opposition to Petitioner's Motion to Supplement the Record. A copy of which is attached hereto and hereby served upon the persons listed in the attached Service List.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By LISA MADIGAN
Attorney General of the
State of Illinois



Stephen J. Sylvester
Assistant Attorney General
Environmental Bureau
69 W. Washington Street, Suite 1800
Chicago Illinois, 60602
(312) 814-2087
ssylvester@atg.state.il.us

Date: March 4, 2015

SERVICE LIST

For Petitioner:

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For Respondent:

James Jennings
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For the Illinois Pollution Control Board:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
(by electronic mail at carol.webb@illinois.gov)

CERTIFICATE OF SERVICE

I, STEPHEN J. SYLVESTER, an attorney, do certify that I caused the Respondent's Response in Opposition to Petitioner's Motion to Supplement the Record and Notice of Filing in this matter to be served upon the persons listed in the Service List by electronic mail at the listed electronic mail addresses.



STEPHEN J. SYLVESTER

Date: March 4, 2015

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**RESPONDENT’S RESPONSE IN OPPOSITION
TO PETITIONER’S MOTION TO SUPPLEMENT THE RECORD**

Now comes Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“IEPA”), by LISA MADIGAN, Attorney General of the State of Illinois, and hereby provides its response in opposition to Petitioner’s, CLINTON LANDFILL, INC. (“CLI”), Motion to Supplement the Record (“Motion”). In support of this Response, the IEPA states as follows:

INTRODUCTION

CLI requests that the Illinois Pollution Control Board (“Board”) allow the Administrative Record (“Record”) in this matter to be supplemented with two (2) letters; one from the Illinois Attorney General’s Office (“IAGO”) to the IEPA dated February 17, 2012, and one from the IEPA in response to the IAGO letter dated March 9, 2012. *See* Motion pp. 9-12. Neither the February 17, 2012 letter nor the March 9, 2012 letter was considered by the IEPA as part of any permitting decision, including Modification 47 (“Mod 47”). Therefore, CLI should not be allowed to supplement the Record with these documents and its Motion should be denied.

ARGUMENT

In preparing the Record, the IEPA is required to include, “all documents on which the Agency relied or *reasonably* should have relied.” 35 Ill. Adm. Code 105.212; *Ameren Energy Resources Generating Co. v. Illinois Env’tl Protection Agency*, PCB No. 14-41, 2014 WL

1218325 at *8 (March 20, 2014) (emphasis added). In its Motion, CLI cites to Section 105.212(b) of the Board Regulations, which provides, in pertinent part, that the record must include “[a]ny other information the Agency relied upon in making its final decision.” Motion at 4 citing 35 Ill. Adm. Code 105.212(b). This Section offers no support for CLI’s Motion, as the IEPA did not review or rely upon either the February 17, 2012 letter or the March 9, 2012 letter in any permitting decision for Clinton Landfill No. 3. See Affidavit of Stephen Nightingale, attached hereto and incorporated herein as Exhibit A.

CLI cites to *Joliet Sand and Gravel v. IEPA*, for the proposition that “if there was information in the Agency’s possession upon which it reasonably should have relied, the applicant may also submit the information to the Board for the Board’s consideration.” Motion at 4-5 citing PCB 86-159, 1987 WL 55908, at *4 (Feb. 5, 1987). However, this argument is not persuasive, because neither the February 17, 2012 letter nor the March 9, 2012 letter are documents the IEPA ‘reasonably should have relied upon.’

In particular, the February 17, 2012 IAGO letter is merely seeking information from IEPA – there is nothing in it upon which the IEPA could have relied in making its decision to issue any permits for Clinton Landfill No. 3. See Ex. A, p. 2, ¶ 5, Affidavit of Stephen Nightingale. Therefore, at a minimum, the Board should deny CLI’s Motion with respect to the February 17, 2012 letter.

Also, the IEPA Permit Section did not review or rely on the March 9, 2012 IEPA letter to the IAGO in any permitting decision. Ex. A, p. 2, ¶ 5, Affidavit of Stephen Nightingale. Rather in issuing Mod 47, the IEPA examined information provided by the DeWitt County Board to determine the presence (or absence) of CLI’s local siting approval to accept waste for disposal,

including manufactured gas plant (“MGP”) wastes that exceed the levels set forth in 35 Ill. Adm. Code 721.124(b) at the chemical waste unit (“CWU”) of the Clinton Landfill No. 3. A review of the Record in this matter supports this fact.

Specifically, on July 22, 2014, the IEPA sent a letter to the DeWitt County Board seeking information regarding the September 12, 2002 local siting approval. R. at 15838. Then, on July 24, 2014, the DeWitt County Board responded to the July 22, 2014 IEPA letter seeking information regarding the September 12, 2002 local siting approval. R. at 15389-15864. In its correspondence, the DeWitt County Board stated in response to the IEPA’s inquiry about its September 12, 2002 siting approval, as follows:

The Board did *not* authorize the disposal of TSCA-regulated PCBs in its September 12, 2002 siting approval. In fact, a Clinton Landfill representative testified at the siting hearing that no such PCB waste would be accepted by the Landfill. The Board also did *not* authorize the disposal of manufactured gas plant (MGP) waste which exceeds the regulatory levels contained in 35 Ill. Adm. Code 721.124(b) in its September 12, 2002 siting approval.

* * *

On November 14, 2013, the DeWitt County Board passed a resolution stating, in part, that the Board believes the Chemical Waste Unit of Clinton Landfill #3 (which has been permitted by Illinois EPA to accept both the PCB and MGP waste streams noted above) required local siting pursuant to the Illinois Environmental Protection Act (415 ILCS 5/39.2).


R. at 15839-15840. (emphasis added in original).

Although the March 9, 2012 letter from the IEPA to the IAGO includes information regarding MGP wastes, the letter does not address whether CLI received local siting approval from the DeWitt County Board to accept such wastes at the CWU. Therefore, the IEPA acted reasonably in not relying on the March 9, 2012 letter in in any permitting decision, including Mod 47. As such, the March 9, 2012 letter is irrelevant to the issuance of Mod 47 and should not be included as part of the Record before the Board.

WHEREFORE, for the foregoing reasons, the Respondent requests the Board deny
Petitioner's Motion to Supplement the Record.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney General
of the State of Illinois

By: 
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JENNIFER A. VAN WIE
Assistant Attorneys General
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Dated: March 4, 2015

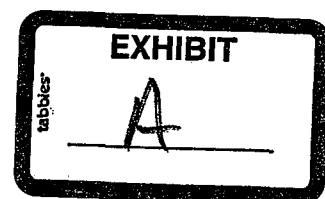
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AFFIDAVIT OF STEPHEN NIGHTINGALE

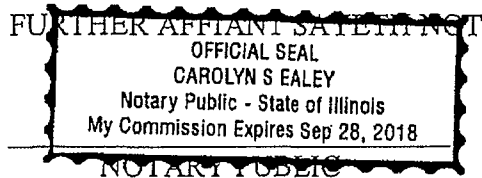
I, STEPHEN NIGHTINGALE, certify under penalty of perjury pursuant to Section 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, that the statements set forth in this affidavit are true and correct, and further state that if called upon to testify in this matter, I would competently testify as follows:

1. I am currently employed by the Illinois Environmental Protection Agency ("IEPA") as an Illinois licensed professional engineer and my title is Manager of the Illinois EPA, Bureau of Land ("BOL"), Permit Section.
2. I have been employed by the IEPA since June 1985 and have been the Manager of the BOL Permit Section since April 2006.
3. My duties and responsibilities include, among other things, reviewing the recommendations made by IEPA BOL personnel, who review landfill permit applications submitted to the IEPA for permits for landfills located in Illinois, to ensure that they are consistent with the Illinois Environmental Protection Act and the Illinois Pollution Control Board Waste Disposal Regulations.
4. As part of my duties and responsibilities, I have become familiar with the



permitting for the Clinton Landfill No. 3.

5. The BOL Permit Section did not review or rely on either of the two attached documents in any permitting decision for the Clinton Landfill No. 3: i) Illinois Attorney General's Office ("IAGO") letter to the IEPA dated February 17, 2012, and ii) the IEPA letter to the IAGO dated March 9, 2012. The February 17, 2012 and March 9, 2012 letters are attached as Exhibit 1.



Carolyn S Ealey


STEPHEN NIGHTINGALE 3/02/15

Subscribed and Sworn to
before me this 2nd day of
March, 2015.



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., Arbor 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

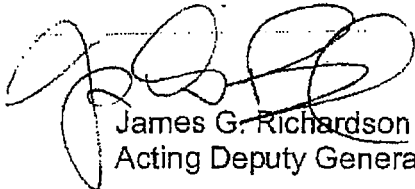


Soil borings at the landfill have documented that approximately 110 to 130 feet of glacial till material separates the bottom of the landfill liner and the top of the Mahomet Aquifer. With such substantial glacial till, contamination of the aquifer is unlikely to occur. As your letter neither identified 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 dotted line.

James G. Richardson
Acting Deputy General Counsel

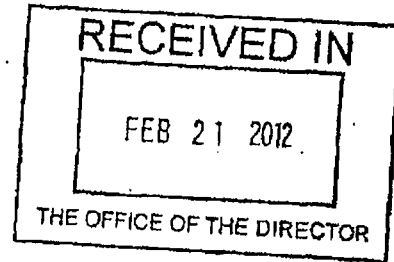


Julie Armitage

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]

REVIEWER EAV
FEB 21 2012

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