

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

vs.

COMMUNITY LANDFILL COMPANY, INC.,
an Illinois corporation, and
the CITY OF MORRIS, an Illinois
municipal corporation,

Respondents.

PCB No. 03-191
(Enforcement-Land)

to: Mr. Mark La Rose
La Rose & Bosco
200 N. La Salle Street, #2810
Chicago, Illinois 60601
(312)642-0434

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph, #2001
Chicago, IL 60601

Mr. Charles Helsten
Hinshaw & Culbertson
100 Park Avenue
Rockford IL 61105-1389
(815)963-9989

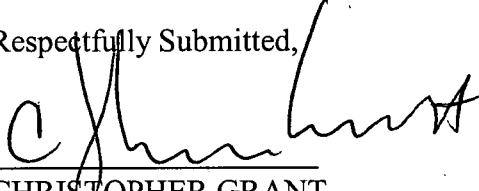
Mr. Scott Belt
105 East Main Street
Suite 206
Morris, Illinois 60450

NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, October 5, 2006, filed with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing, Complainant's Motion for Interim Relief, a copy of which is attached and herewith served upon you.

Respectfully Submitted,

BY:


CHRISTOPHER GRANT
Assistant Attorneys General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-5388

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COMPLAINANT'S MOTION FOR INTERIM RELIEF

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, and hereby moves the Board for an Order granting interim relief in favor of Complainant and against Respondents, jointly and severally, as follows.

1. The State files this Motion along with its Interlocutory Appeal of the October 3, 2006 Hearing Officer Order, and the State's Motion for Expedited Review. This Motion requests that the Board order Respondents, COMMUNITY LANDFILL COMPANY, INC., and the CITY OF MORRIS, to immediately provide compliant financial assurance for closure and post-closure care of the Morris Community Landfill, Morris, Grundy County, Illinois ("Landfill"). Financial assurance for closure and post closure care is required under Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2004), and 35 Ill. Adm. Code 811.700(f).

I. The Respondents Have Failed To Provide Financial Assurance

2. On February 16, 2006, the Board issued an Order finding that the Respondents had violated Section 21(d)(2) (2004, and 35 Ill. Adm. Code Sections 811.700(f), and 811.712.

However, the State's request for interim relief was denied, including its request that the Respondents be required to provide financial assurance. Rather, the Board directed the parties to hearing on all issues of remedy, requesting that evidence be presented on factors related to Sections 33(c), 42(f), and 42(h), 415 ILCS 5/33(c), 42(f), and 42(h)(2004) (February 16, 2006 Order, slip op., at 16).

3. As shown by the Affidavit of Brian White, attached hereto as Exhibit A, the Respondents are required to provide \$17,448,366.00 of closure/post-closure financial assurance meeting the requirements of 35 Ill. Adm. Code 811.700. However, despite been found in violation by the Board on February 16, 2006, the Respondents continue to avoid posting compliant financial assurance.

II. Hearing In This Matter Has Been Indefinitely Delayed

4. Because of the serious issues posed by the absence of financial assurance at the Morris Community Landfill, Complainant filed a Motion for Expedited Hearing on March 6, 2006, seeking an April, 2006 hearing date. However, establishment of a hearing date was prevented by the filing of Respondents' Motions for Reconsideration on March 31, 2006.

5. On June 1, 2006, the Board upheld its finding of violations by the Respondents, and again directed the parties to present evidence on the 33(c) and 42(h) factors (June 1, 2006 Order, at 5).

6. Following the Board's denial of the Respondents' Motions for Reconsideration, the City of Morris disclosed additional witnesses for hearing. Deposition of the these late-disclosed witnesses could not be completed until the beginning of August. On June 8, June 15, June 22, and July 6, 2006, the Hearing Officer held telephone meetings to attempt to establish a

date for hearing. On July 6, 2006, the hearing was scheduled for October 24-27, 2006.

7. If the Board upholds the Hearing Officer's October 3, 2006 Order cancelling the October 24-27 hearing date, hearing on the sole issue of remedy will be delayed indefinitely. Although the Hearing Officer has ordered a status on December 7, 2006, Respondent CLC's Motion to Cancel Hearing does not suggest a replacement hearing date, but only states that the health status of Edward Pruim will be reviewed in March 2007. This is more that one year after the Board found the violations and more than 18 months after Complainant's Motion for Summary judgment was filed. Without Board intervention, the Respondents will be out of compliance for the foreseeable future.

III. A Hearing is Not Necessary for the Board to Order the Requested Relief

8. The Board has already held extensive hearings on issues related to financial assurance for the Morris Community Landfill. In PCB 01-48/PCB 01-49 (Consolidated), a three-day hearing was held in Grundy County to determine the validity of certain conditions of the Respondents' sigmod permits, including the amount of financial assurance. On April 5, 2001, the Board affirmed the permit condition requiring financial assurance of \$17,427,366. In PCB 01-170, the Board held a second three-day hearing, related to a permit denial based, in part, on the type of financial assurance provided by the Respondents. On December 6, 2001, the Board upheld the Agency's denial, a decision subsequently affirmed by the Appellate Court.

9. The State does not believe that a third hearing is necessary for the Board to order the Respondents to finally provide compliant financial assurance for the Morris Community Landfill. The regulations are quite clear-owners and operators of landfills must maintain sufficient, compliant financial assurance to guarantee 100% of their closure and post-closure

obligations. Nothing in the Act, or pertinent regulations, allows for considerations of diligence, ability to pay, or economic reasonableness. Owners and operators of landfill are simply required to provide a compliant guarantee for these costs. In an enforcement action, any Board determination to the contrary would allow a violation of the Act.

IV. The Requested Relief is Necessary to Protect the State

10. The Board has broad authority to take actions reasonably necessary to accomplish the Act's purposes. *Discovery South Group Ltd. v. Pollution Control Board*, 275 Ill. App. 3d 547 (1st Dist. 1995). The Board has not hesitated to order compliance prior to final resolution of all penalty issues. *See, e.g., Kratusack v. Patel et al*, PCB 95-143 (August 21, 1997).

11. If the Board upholds the Hearing Officer's decision striking the October 24, 2006 hearing date, the State will be denied relief to which it arguably has been entitled since February 16, 2006, and violations will be allowed to continue to an unknowable date. The State cannot believe that, having found these ongoing violations, the Board is unwilling to stop them.

12. As stated in the Board's June 1, 2006 Order, "[t]he purpose of the Act is to ensure that financial assurance obligations are met so that neither human health nor the environment is harmed from the operation of a municipal solid waste landfill" (slip op. at 4). The Board takes financial assurance violations very seriously, and has noted that "...they are among the most insidious in character...[the provisions] are in place to ensure that other more threatening violations do not occur". *People v. ESG Watts, Inc.*, PCB 96-233 (February 5, 1998, slip op. at 10).

13. In our case, violation notices were first issued to the Respondents in 2000. The Respondents have known since 2002 (i.e. when the PCB 01-170 appeal was decided by the

Appellate Court) that they did not have any compliant financial assurance. However, neither Respondent has voluntarily complied with the financial assurance regulations, even after being found in violation in this case. Unless the Board issues a court-enforceable interim order to obtain compliant financial assurance, the Respondents will be allowed to avoid compliance as long as the hearing is delayed. Throughout this indefinite period, the citizens of Illinois will be exposed to the risk of covering closure and post-closure costs at the Landfill-a sum in excess of \$17,000,000. Given the continued and unpredictable delay in rescheduling a hearing, the Board should find this risk completely unacceptable.

14. The Board has correctly deferred decision on other issues of remedy. The State agrees that evidence is required for determining the amount of civil penalty (if any). Such evidence will include the duration of violation, whether waste disposal has continued illegally, and any economic benefit accruing to the Respondents from the violations. Now that the State's right to seek complete relief has once more been delayed, the Board should ensure that the State is not at risk of assuming closure and post-closure costs which rightfully should be borne by Community Landfill Company, Inc. and the City of Morris. The only way to protect the State, effectively address the violations already established, and ensure that the Morris Community Landfill does not become an 'orphaned landfill', is to require the Respondents to immediately post financial assurance meeting the requirements of the Part 811, Subpart G regulations, and maintain such financial assurance to and through the date of hearing on all other elements of remedy.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board grant Complainant's Motion, and issue an Order:

1. Requiring Respondents Community Landfill Company, Inc. and the City of Morris, to immediately arrange for, and provide to Illinois EPA, closure and post-closure financial assurance meeting the requirements of 35 Ill. Adm. Code, Subpart G, in the amount of \$17,448,366.00;
2. Setting a date for hearing on the remaining issues related to remedy, including civil penalty and attorneys' fees; and
3. Ordering any additional relief the Board deems appropriate and just.

RESPECTFULLY SUBMITTED

BY: 

Christopher Grant
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, Illinois 60601
(312) 814-5388

AFFIDAVIT OF BRIAN WHITE

I, Brian White, after being duly sworn on oath, state that if called upon to testify in this matter, I would competently testify as follows:

1. I have been employed by the Illinois Environmental Protection Agency ("Illinois EPA") since February 1988.

2. I received a Bachelor of Science Degree in Environmental Health in 1983 from Illinois State University. I also have 44 hours toward a Masters in Public Administration from the University of Illinois at Springfield.

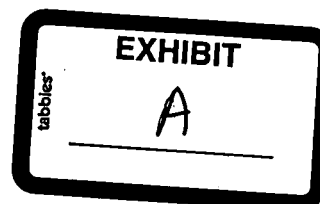
3. My working title is Compliance Unit Manager for the Bureau of Land and my payroll title is Public Service Administrator. I have been the compliance Unit Manager since January 1991.

4. As the Compliance Unit Manager, my responsibilities include supervising a staff that coordinate the compliance and enforcement activities for the Bureau of Land and supervising a staff of accountants in the bureau's financial assurance program.

5. I am familiar with the landfill generally known as the Morris Community Landfill ("Landfill") located in Morris, Illinois. The owner of the Landfill is the City of Morris ("City"). Community Landfill Co. ("CLC") is an operator of the Landfill. The Landfill consists of two parcels, Parcels A & B.

6. I have reviewed the Illinois EPA files regarding this matter that relate to CLC and the City's financial assurance obligations at the Landfill.

7. CLC and the City were issued various permits including closure and post-closure care permits for Parcel A, Permit No. 2000-155-LFM, dated August 4, 2000 ("Parcel A Significant



Modification Permit") and for Parcel B, Permit No. 2000-156-LFM, dated August 4, 2000 ("Parcel B Significant Modification Permit").

8. CLC and the City were required to have financial assurance for its significant modifications. See Section 21.1(a.5) of the Environmental Protection Act, 415 ILCS 21.1(a.5) (2004). These financial assurance requirements were initially incorporated into Parcel A Significant Modification Permit and Parcel B Significant Modification Permit.

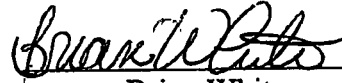
9. CLC and the City have received various modifications since the original significant modifications of permit. The last modification for Parcel A was dated August 15, 2006 ("Parcel A Significant Permit, Mod. 6). The last modification for Parcel B was dated August 15, 2006 (Parcel B Significant Modification Permit, Mod. 5). For Parcel A, CLC and the City are required to maintain financial assurance in the amount of \$12,357,756.00. See Parcel A Significant Permit, Mod. 6, Par. X.6, p. 44. For Parcel B, CLC and the City are required to maintain financial assurance in the amount of \$5,090,610.00. See Parcel B Significant Permit, Mod. 6, Par. IX.6, p. 37. Thus, the total amount of financial assurance that CLC and the City is required to maintain is \$17,448,366.00.

10. Pursuant to 35 Ill. Adm. Code 811.701(a) and 35 Ill. Adm. Code 811.706, CLC and the City are to provide financial assurance as specified in the regulations and provide continuous coverage until CLC and the City are released from the financial assurance requirements pursuant to 35 Ill. Adm. Code 813.403(b) or Section 811.326.

11. As of October 4, 2006, CLC does not have any financial assurance in place for the Landfill that satisfies the requirements of 35 Ill. Adm. Code Part 811, Subpart G.

12. As of October 4, 2006, the City does not have any financial assurance in place for the Landfill that satisfies the requirements of 35 Ill. Adm. Code Part 811, Subpart G.

FURTHER AFFIANT SAYETH NOT



Brian White

Subscribed and Sworn to
before me this 4th day of
October 2006.


NOTARY PUBLIC

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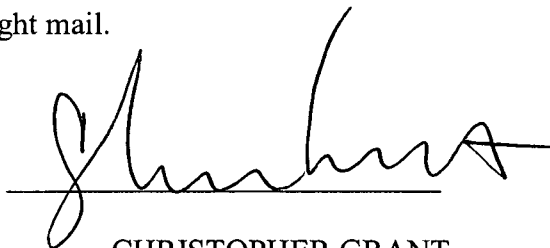
Respondents.

PCB No. 03-191

(Enforcement-Land)

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 5th day of October, 2006, the foregoing Motion for Interim Relief, and Notice of Filing, upon the persons listed on said Notice by hand delivery and/or overnight mail.

A handwritten signature in black ink, appearing to read 'Christopher Grant', is written over a horizontal line.

CHRISTOPHER GRANT