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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,,)

Complainant,)

v.)

COMMUNITY LANDFILL COMPANY, INC.,)
an Illinois Corporation, and CITY OF MORRIS,)
an Illinois Municipal Corporation,,)

Respondents.)

PCB No. 03-191

NOTICE OF FILING

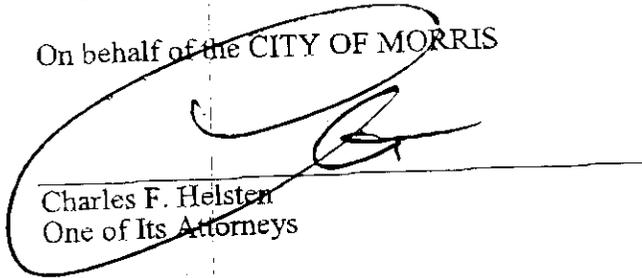
TO: All counsel of Record (see attached Service List)

Please take notice that on February 23, 2007, the undersigned filed with the Illinois Pollution Control Board, 100 West Randolph Street, Chicago, Illinois 60601, Response to People of the State of Illinois' Motion to Set Hearing Date or Alternatively for Severance of Claims.

Dated: 2/23/07

Respectfully submitted,

On behalf of the CITY OF MORRIS



Charles F. Helsten
One of Its Attorneys

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, ex)
rel. LISA MADIGAN, Attorney General of the)
State of Illinois,)

Plaintiff,)

v.)

COMMUNITY LANDFILL CO., an Illinois)
Corporation, and the CITY OF MORRIS, an)
Illinois Municipal Corporation,)

Defendants.)

PCB No. 03-191
(Enforcement-Land)

**RESPONSE TO PEOPLE OF THE STATE OF ILLINOIS' MOTION TO
SET HEARING DATE OR ALTERNATIVELY FOR SEVERANCE OF
CLAIMS**

NOW COMES the CITY OF MORRIS, an Illinois Municipal Corporation, by and through its attorneys, HINSHAW & CULBERTSON LLP, and for its Response to Complainant's Motion to Set Hearing Date or Alternatively for Severance of Claims, states as follows:

INTRODUCTION

The State of Illinois has brought a Motion to Set Hearing Date or Alternatively for Severance of Claims which raises issues regarding the hearing date and the necessity for all parties to participate in the "remedy" hearing portion of this action. However, these issues have already been decided by the Illinois Pollution Control Board in its Order of October 3, 2006 in response to Respondent's, Community Landfill Co., Inc. ("CLC"), previous Motion to Cancel the Hearing. The State of Illinois has merely reasserted that Edward Pruiim's testimony is not necessary for the hearing because he is merely a shareholder and officer and his brother, who is also a shareholder and officer, can testify as to all matters, but offers no new grounds in support of its Motion over and above those it previously raised this past Fall. Alternatively, the State argues that the hearing as it pertains to the City of Morris ("Morris") and CLC should be severed

so that the State can proceed against Morris regardless of Edward Pruim's physical condition. Whether or not Edward Pruim's presence at the hearing is necessary is the exact same issue that was raised at the time the Motion to Cancel Hearing was argued, and the necessity of his presence at that hearing has, again, already been decided by the Board. In accordance with the Board's Order of October 3, 2006, the Motion to Set a Hearing Date should be denied.

The issue of whether or not the claims can be severed has also been previously addressed in Morris's Response to both CLC's Motion to Cancel Hearing and the State's Response to CLC's Motion to Cancel Hearing. The State's assertion that the Board's Order of June 1, 2006 held that each Respondent was responsible for the closure and post-closure financial assurances is simply incorrect. A review of the Board's June 1, 2006 Order reveals that, "As concerns the Board's finding of violations against both Respondents, the Board's procedural rules require the "owner *or* operator" to provide financial assurance." The Board further stated, "Under the Illinois codification scheme, the use of "*or*" involves either or both parties to meet the requirements. The Board is not allowed to use "and/or" in drafting rule language." (See June 1, 2006 Order) The determination of whether both or one Respondent shall be liable for any remedy crafted by the Board is yet to be determined.

In that Order, the Board further stated that the parties have not yet analyzed the 33(c) or 42(h) factors regarding an appropriate remedy, including civil penalty, if any, in this proceeding. This Board cannot allow the severance of claims due to the fact that the factors set forth in 33(c) and 42(h) need to be examined with both parties present in order to determine whether or not each Respondent is held liable for a remedy. For the reasons set forth below, Morris asserts the State's Motion to Set Hearing Date or Alternatively for the Severance of Claims must be denied

in accordance with the Board's previous rulings as well as the intent under the Illinois Environmental Protection Act.

ARGUMENT

THE NECESSITY OF EDWARD PRUIM'S ATTENDANCE AT HEARING HAS ALREADY BEEN DECIDED BY THE BOARD

The Board has already held in its October 3, 2006 Order:

"On October 2, 2006, Morris filed a witness list pursuant to the August 17, 2006 Hearing Officer Order. Edward Prum is listed as one of the witnesses. Finally, Morris represents that the preliminary closure activities have been initiated at the site and represents, as reflected in the attached deposition of expert witness Devin Moose, that based upon the current status and activities of the site, no eminent or substantial threat to human health and environment is posed by the site in question."

The Board further ordered:

"After reviewing the Motion to Cancel, the respective Responses and taking the oral arguments into consideration, I find good cause to grant CLC's Motion to Cancel the Hearing scheduled for October 24, 25, 26 and 27, 2006. Due to the issues that need to be addressed at hearing on the issue of remedy, it appears *imperative* that Edward Prum, as a financial officer of CLC, be present at the hearing and available to testify." (emphasis added)

The necessity for Edward Prum to be present and available to testify has not changed from October 3, 2006 through the filing of the State's Motion. In fact, the State's Motion is premature after reviewing the Board's Order. In the October 3, 2006 Order, the board noted Edward Prum's physicians recommended that Edward Prum's physical condition be reviewed again in March of 2007, to ascertain whether he can partake in a hearing. (See October 3, 2006 Illinois Pollution Control Board Order.) While the State has complained that the hearing is continued indefinitely, the State has deliberately chosen to ignore the time frame previously set forth by Mr. Prum's physicians, and, in turn, specifically noted by the Board in its order. Therefore, in addition to the State's mere reassertion of arguments that were already heard and

ruled on by the Board at the time the Motion to Cancel Hearing was considered, they also are premature in light of the time constructs set forth in the Board's October 3, 2006 Order.

As previously asserted by Morris, based upon the City's review of other depositions and other testimony given by the Pruim brothers in other related matters, it fears that if only one corporate representative (i.e., Robert Pruim) is called in this matter that, that corporate representative will simply demur and defer to knowledge possessed by Edward Pruim. In turn, since Edward Pruim was the Treasurer and Chief Financial Officer of the corporation, and since closure and post-closure matters by their very essence relate to financial issues, the City submits that it is absolutely essential that it be allowed to question Edward Pruim in detail as to why the parties found themselves in the present situation. This Honorable Board has already found that it is "essential" for Mr. Pruim to be present at the hearing. The State's Motion seeks to set a hearing which would prejudice the City of Morris, and prevent Morris from receiving the benefit of presenting all facts and evidence necessary for this Board to apply the individual circumstances to the factors set forth in 33(c) and 42(h) before determining which Respondent is responsible. The State's Motion, if granted, would severely prejudice the City of Morris by requiring Morris to proceed without the Benefit of an identified witness whose presence this Board has already expressly held is essential at the hearing in question. As Edward Pruim's attendance at that hearing is essential, not only for the defense to be asserted by CLC, but also so that the appropriate apportionment of remedy responsibility can be made between the parties, the State's Motion must be denied.

MORRIS CANNOT PRESENT ALL RELEVANT EVIDENCE AT THE HEARING WITHOUT THE PRESENCE OF CLC AND THEREFOR THE STATE'S MOTION FOR SEVERANCE MUST BE DENIED

The State asserts in its Motion to Sever in bald, conclusory and unsubstantiated fashion that the City of Morris cannot legitimately claim that Edward Pruim's testimony is necessary for

a fair hearing on the remedy for its own violation. The State then again incorrectly asserts that the Board's earlier finding was that the City of Morris and CLC were each required to insure that the closure and post-closure financial assurance was maintained for the subject landfill. Again, a review of the Board's June 1, 2006 Order reveals the Board has held that the owner or operator can be held liable for financial assurance requirement; and that it is now necessary to examine the 33(c) and 42(h) factors to determine the liability of the respective Respondents for any remedy that is ordered. The State correctly points out in its Motion to Sever that the CLC and Morris are adverse. What the State continues to deliberately ignore is the Morris' position that it is essentially a putative, ancillary Respondent in this matter, essentially caught in a "crossfire" between the Complainant, State of Illinois, and the Respondent, Community Landfill Co., Inc. (the entity which, even by this Honorable Board's admission at page 14 of its February 16, 2006 interim Order, conducted the actual day-to-day waste disposal activities at the facility in question.). The City cannot receive a fair hearing if it is not afforded the opportunity to examine the party that has already been determined to have conducted the day-to-day operations. To sever the claims against the respective Respondent would prejudice the City of Morris by eliminating the opportunity to illustrate to the Board which responsibilities were placed upon CLC and which, if any, responsibilities were maintained by the City of Morris. This apportionment of operations is essential under the 33(c) and 42(h) factors to determine what remedies, if any, the City of Morris should be responsible.

As the financial assurance obligations being sought by the State will likely reach into the millions of dollars, it is imperative that the City of Morris be afforded the opportunity to present all relevant evidence and testimony at its hearing. To sever the claims and force the City of Morris to proceed to hearing prior to the availability of Mr. Edward Pruim, which this Board has

already determined is essential for the hearing, would be to deprive the City of Morris the opportunity to present all relevant evidence and testimony at the hearing.

This Honorable Board has consistently held in hearings such as this that for its own benefit (as well as the benefit of each party to such an action), a complete and full hearing on all relevant evidence should be conducted, and that the needs of all parties for a complete and full hearing should be satisfied. The basic precepts of fundamental fairness established by this Board require nothing less.

WHEREFORE, the City of Morris respectfully requests that the State's Motion to Set matter for Hearing or Alternatively for the Severance of Claims be denied.

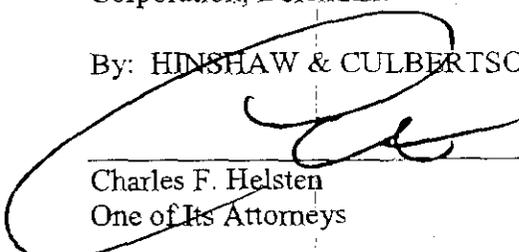
Dated:

2/23/07

Respectfully submitted,

CITY OF MORRIS, an Illinois Municipal Corporation, Defendant

By: HINSHAW & CULBERTSON LLP



Charles F. Helsten
One of Its Attorneys

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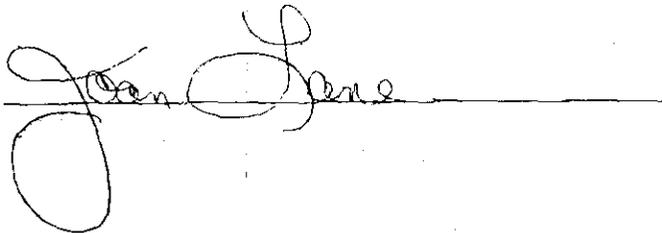
AFFIDAVIT OF SERVICE

STATE OF ILLINOIS
Pollution Control Board

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on February 23, 2007, she caused to be served a copy of the foregoing upon:

Via Facsimile and U.S. Regular Mail Mr. Christopher Grant Assistant Attorney General Environmental Bureau 188 W. Randolph St., 20th Fl. Chicago, IL 60601	Via Facsimile and U.S. Regular Mail Mark LaRose Clarissa Grayson LaRose & Bosco, Ltd. 200 N. LaSalle, Suite 2810 Chicago, IL 60601
Ms. Dorothy Gunn, Clerk Pollution Control Board 100 W. Randolph, Suite 11-500 Chicago, IL 60601	Via Facsimile and U.S. Regular Mail Bradley Halloran Hearing Officer Pollution Control Board 100 W. Randolph, Suite 11 Chicago, IL 60601

A copy of the same was enclosed in an envelope in the United States mail at Rockford, Illinois, proper postage prepaid, before the hour of 5:00 p.m., addressed as above.



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STATE OF ILLINOIS
Pollution Control Board

February 23, 2007

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TO:	COMPANY:	FAX NO.:	PHONE NO.:
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<u>Brad Halloran</u>	<u>Pollution Control Board</u>	<u>312-814-3669</u>	<u>312-814-8917</u>

FROM: Charles F. Helsten USER ID: 5263

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