

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY 18 2007

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.)

STATE OF ILLINOIS
PCB No. 03-191 Pollution Control Board
(Enforcement-Land)

**CITY'S RESPONSE TO STATE'S RENEWED MOTION TO SET
HEARING DATE OR ALTERNATIVELY TO SEVER CLAIMS**

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

INTRODUCTION

On May 3, 2007, the State renewed its motion seeking a hearing date or, in the alternative, a severance of claims. Interestingly enough, the State concedes in its Renewed Motion that it wants the hearing to proceed quickly, in no small part so that it can collect penalties and attorney's fees (presumably against both defendants, one of which is a unit of local government). (State's Motion, p. 2). The State's motion further asserts that the continuance due to the illness of an essential witness, Edward Pruim, is preventing the State from engaging in "effective enforcement." (*Id.*). In the alternative, the State argues that the claims against Community Landfill Corporation ("CLC") and the City of Morris ("the City") should be severed so the State can proceed, post-haste, in its efforts to impose penalties on the City, notwithstanding the temporary unavailability of critical evidence.

As at all times material in the past when the State has unsuccessfully raised this same motion, the City submits that the granting of a continuance until the medical condition of a crucial witness has stabilized will pose no imminent or substantial threat to human health or to the environment. (See Affidavit of Devin Moose, attached hereto as Exhibit A).¹ Contrary to the State's assertion that an expedited process is needed because otherwise there is no assurance the landfill will be properly closed and maintained, the fact is that CLC is presently engaged in efforts to upgrade both the gas collection system and the landfill facility as a whole. Moreover, no offsite gas migrations have been detected. (Exhibit A). Thus, preservation of the status quo until Edward Pruim can testify presents no danger to public health or the environment, and a rush to conduct a truncated hearing and impose penalties on the City without the availability of necessary evidence would do absolutely nothing whatsoever to further public health or safety.

Finally, the City adamantly objects to being subjected to a hearing which could potentially result in the imposition of millions of dollars in financial obligations upon City taxpayers, at a time when crucial evidence is temporarily unavailable. Forcing the City to defend itself at such a hearing would offend fundamental fairness, and cause material prejudice to the City. The City therefore strenuously opposes the State's motion.

Evidence shows conditions at the landfill are not deteriorating

In the Board's March 15, 2007 Order, the Board stated that:

[b]ased on the alleged and undisputed existence of deteriorating conditions, upon receipt of a renewed motion from the People the Board will consider directing the hearing officer to schedule a hearing, with or without the availability of Mr.

¹ The State previously asserted to this Board that an action alleging over thirty violations concerning the Landfill's gas collection system was pending against the City and CLC. Recently, the circuit court in that action refused to grant the injunctive relief requested by the State after the State admitted, mid-way through the hearing, that it could not proceed because it had concluded it was unable to prove its case.

Edward Pruim, as expeditiously as possible after the April 13, 2007 status conference.

Although the State filed a renewed motion on May 3, 2007 seeking a hearing without Pruim's testimony, notably absent from the State's motion is any reference to deteriorating conditions at the landfill, or to the existence of any imminent danger to human health or the environment. The absence of any such allegation is reflective of the fact that there is no such danger. Moreover, it reveals that the State's rush to conduct an immediate hearing without the presence of vital evidence is driven not by concerns for public health or safety, but, rather, among other things, by an attempt to quickly impose liability upon the City without a full presentation of all the facts.

Mr. Pruim's treating physician, Dr. Rowan, has opined that Pruim has not yet fully recovered from surgery, but Dr. Rowan recommended that Pruim be reevaluated in several months. Delaying the hearing for several months until Pruim is available to be examined poses no threat to public health or the environment, and will permit a full and efficient determination of all claims against all parties.

Notably, rather than including an additional count to the pending Complaint in this action, the State decided to try its hand in the Circuit Court, and last December filed an enforcement action against CLC and the City in Grundy County, seeking injunctive relief. After listening to the evidence presented at the April 11, 2007 hearing on the State's request for preliminary injunction, Circuit Court Judge Robert C. Marsaglia rejected the State's request, explaining:

I don't feel any sense of urgency to push the preliminary injunction. . . I'm looking at [trying the case] maybe, you know, this summer or fall. . . And I'm – you know, again, frankly I'm basing this decision based on what I have read and heard up to now, which doesn't tell me that this is a real emergency today or next week.

(See Exhibit B, Transcript of April 11, 2007 proceedings in Case No. 06 CH 184 before Judge Masaglia of the Circuit Court of the 13th Judicial Circuit, pp. 12-14).

Again, because the landfill in this case presents no imminent threat to human health or to the environment, the State's motion should be denied.

The testimony of Edward Pruim is vital to the fact-finding process, and a fair hearing cannot occur without it.

As has been acknowledged by the Board and the parties, Edward Pruim is a shareholder and financial official of CLC, and he participated in management decisions at the Landfill during the relevant timeframe. Mr. Pruim's testimony is therefore vitally necessary to illustrate which responsibilities were placed on CLC, what the City's role was with respect to Landfill operations, and why the parties found themselves in the present situation. In the Board's Order of October 3, 2006, the Board concluded that it is "imperative that Edward Pruim, as a financial officer of CLC, be present at the hearing and available to testify." (Board's Order of October 3, 2006 at 4). (Emphasis added). The City concurs with the Board that Mr. Pruim is a vital witness, and, likewise, asserts in the strongest terms that without this evidence the City cannot adequately defend itself against the State's allegations.

The necessity of Edward Pruim's testimony at the hearing has already been considered and decided by the Board, and the vital nature of his testimony has not changed. Inasmuch as a continuance to accommodate Pruim's recovery time poses no threat to human health or the environment, the Board should deny the State's motion, and continue this matter for several more months until Pruim is able to appear and testify.

Severance of the claims against the City and CLC would be inefficient and unfair to the Respondents

The Board has already rejected the idea of severing the claims against CLC and the City, and of holding two different hearings to separately consider the identical allegations the State has

lodged against each entity. In the Board's Order dated March 15, 2007, the Board observed that "conducting two hearings on the same violations concerning the same parties and same facility would waste the resources of the Board and all of the parties involved." (Board's Order of March 15, 2007 at 4) (Emphasis added). That conclusion is as true today as it was eight weeks ago. Moreover, and again, as the State has offered no tangible evidence of "deteriorating conditions" at the landfill, the Board should therefore deny the State's attempt to sever the claims on the grounds of administrative economy.

Depriving the City of an opportunity to examine Pruim would violate the principles of fundamental fairness.

It is axiomatic that the very essence of constitutional due process is based on the concept of fundamental fairness. At a minimum, fundamental fairness requires a fair hearing on all the facts before a fair tribunal. *See e.g. Van Harken v. City of Chicago*, 305 Ill.App.3d 972 (1st Dist. 1999). This standard is only met where the hearing is conducted in a manner that is "suitable and proper to the nature of the determination to be made and conforms to fundamental principles of justice." *Petersen v. Chicago Plan Comm'n of the City of Chicago*, 302 Ill.App.3d 461, 466 (1st Dist. 1998). (Emphasis added). A fair hearing includes the opportunity to be heard, the right to cross examine adverse witnesses, and impartial rulings on the evidence. *Daly v. Pollution Control Bd.*, 264 Ill.App.3d 968, 971 (1st Dist. 1994) (quoting *Abrahamson v. Illinois Dept. of Professional Regulation*, 153 Ill.2d 76 (1992)).

Here, the Board has already acknowledged that Pruim is a vital witness whose presence at the hearing is imperative. From the City's perspective, it cannot receive a fair hearing if it is prevented from adducing crucial evidence, and is unable to examine Pruim concerning the actions and responsibilities of CLC versus those of the City. Without such evidence, the City is severely handicapped in terms of defending against the State's allegations and, in addition, the

Board would be denied access to evidence that is needed to fairly and fully weigh the factors set forth in 33(c) and 42(h). The Board should therefore deny the State's motion and continue the hearing until such time as Pruim has fully recovered from his heart surgery.

CONCLUSION

The State's renewed motion is not brought in response to a threat to human health or the environment. Rather, the State's motion seeks to rush forward with a truncated hearing at which only part of the evidence could be presented. The necessity of Mr. Pruim's testimony in the evaluation of the factors set forth in 33(c) and 42(h); the City's right to examine Pruim and adduce evidence of his acts and omissions; and the waste of administrative resources that would attend severance of the claims against CLC and the City, has not changed during the eight weeks since the Board entered its March 15, 2007 Order. To move forward with a hearing absent needed material testimony from Edward Pruim, whether jointly against both CLC and the City, or separately against the City only based on severance of claims, would deprive the City of the right to present vital evidence this Board needs to properly apply and consider the factors set forth in 33(c) and 42(h).

This Board has consistently held 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 Board deny the State's Renewed Motion to Set matter for Hearing or Alternatively for the Severance of Claims.

Dated: 5/17/07

Respectfully submitted,

CITY OF MORRIS, an Illinois Municipal
Corporation, Defendant

By: HINSHAW & CULBERTSON LLP



Charles F. Helsten
One of its Attorneys

Charles F. Helsten
Hinshaw & Culbertson LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
Phone: 815-490-4900
Fax: 815-490-4901

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
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Defendants.

PCB No. 03-191
(Enforcement Land)

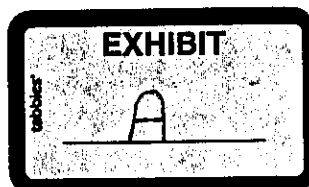
AFFIDAVIT OF DEVIN MOOSE

I, DEVIN A. MOOSE, being first duly sworn on oath, do depose and state as follows:

1. I Devin A. Moose, P.E., DEE, am office director for the St. Charles, Illinois of Shaw Environmental, Inc. ("Shaw") located at 1607 East Main Street, St. Charles, Illinois.

2. Since December 2004, the City of Morris has retained Shaw to review and monitor the status of the Morris Community Landfill site, the landfill facility which is the subject of this proceeding.

3. In that regard, I incorporate by this reference all sworn testimony previously submitted (including, but not limited to, my deposition taken by the State of Illinois in August of 2006), as well as all other sworn statements previously submitted in this matter. In addition, I incorporate certain affidavits which I have previously executed in Case No: 06-CH-184, entitled *People of the State of Illinois, ex rel. Lisa Madigan, Attorney General of the State of Illinois, Plaintiff v. Community Landfill Company, an Illinois corporation and the City of Morris, an Illinois Municipal Corporation*, Defendants, presently pending in the Circuit Court of the 13th Judicial Circuit, Grundy County, Illinois. Further, copies of those Affidavits I have previously executed in that cause are marked Group Exhibit A, attached hereto and incorporated herein by this reference.

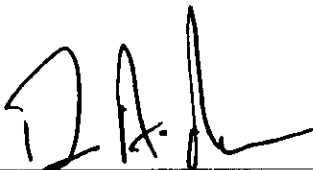


4. Since December of 2004 and to and including the present date, I have monitored the physical condition of the Morris Community Landfill facility. Based upon my investigation and observations, it is my opinion that the facility poses no immediate or substantial threat to the public health, safety, welfare or the environment.

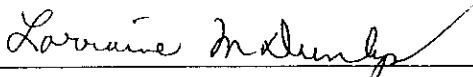
5. Further, upon information and belief, it appears that the operator of the facility continues to attempt to make repairs and/or upgrades to the gas collection system located upon the facility, as well as other ancillary improvements to the site.

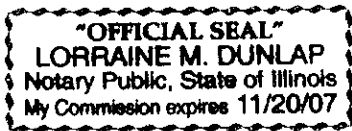
6. Further, the affiant sayeth not.

Dated: MAY 14th, 2007


DEVIN A. MOOSE

SUBSCRIBED and SWORN to
before me this 14th day of May, 2007.


Notary Public



STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE JUDICIAL CIRCUIT
COUNTY OF GRUNDY

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.

No. 06-CH-184

AFFIDAVIT OF DEVIN MOOSE

NOW COMES Devin A. Moose, being first duly sworn on oath, and does hereby
depose and state as follows:

1. My name is Devin A. Moose, P.E., I am Office Director for the St. Charles, Illinois office of Shaw Environmental, Inc. (Shaw), located at 1607 E. Main Street, St. Charles, Illinois 60174. Shaw Environmental is an international, multi-faceted engineering and consulting business.
2. As noted by my Curriculum Vitae, I am a Professional Engineer, as well as a Diplomat in the American Academy of Environmental Engineers, with over twenty years of experience in the area of geological, geotechnical and environmental engineering. Currently, my practice focuses on the siting, permitting, construction/development/operation and closure of pollution control facilities (most notably landfills), as well as on various remedial aspects of operation and closure of pollution control facilities (again, most notably landfills). In addition, I have been involved in the siting, permitting, and due diligence review of over forty (40) landfills across the country. I am a registered Professional Engineer in Illinois and nine other

states, and I have been awarded the level of Diplomat by the American Academy of Environmental Engineers (with emphasis in Solid Waste Engineering). In addition, I have participated in the development of various landfill regulations in the State of Illinois.

3. With respect to the present case, I was retained in December of 2004 by the City of Morris to undertake a comprehensive investigation and evaluation on an ongoing basis of conditions at the Morris Community Landfill in Morris, Illinois, the permitted operator of which is Community Landfill Company.
4. In my role as serving as Senior Project Manager for this site, I was responsible for supervising the review of the entire IEPA operating record (which consisted of over ten linear feet and thousands of pages of information). After that review was completed, Shaw personnel (including other professional engineers, professional geologist, geological engineers and other licensed experts in the area of solid waste management), working under my supervision performed site inspections based upon Shaw's review of the IEPA operating record and, based upon those site inspections, developed work plans for characterization and evaluation of site conditions and possible corrective action measures. This effort by Shaw consisted in excess of 1,000 man hours, along with performing over 10,000 groundwater and air monitoring tests over the past two years.
5. Based upon this review, Shaw began monthly monitoring of the perimeter below-grade landfill gas probes previously installed in the Landfill by CLC in July of 2003. Below-grade landfill gas probes are used to determine if landfill gas is leaving the facility below grade. Based upon Shaw's review of the IEPA regulatory file on this matter, field inspections and investigations, numerous analytical and test results, and my professional

- knowledge and experience, while the landfill gas being generated at the Morris Community Landfill is a concern that requires additional investigation and ongoing remedial attention, it does not present an immediate or substantial threat to the human health, welfare of safety, or to the environment.
6. Further, during the course of my in-depth, extensive involvement at this site over the course of the past two years, I have not been made aware of any complaints of headaches, nausea, increased asthmatic reactions, or other adverse health complaints received from residents in the vicinity of the Landfill.
 7. In addition, site access is restricted from non-landfill employees by a secured fence. This restriction prevents the public from directly contacting any landfill gas generated from the facility.
 8. I have reviewed in detail both the State's Verified Complaint and the State's Motion for Temporary Restraining Order and Preliminary Injunction, as well as all attachments thereto.
 9. While based upon a October 18, 2006 site inspection of the Morris Community Landfill, Mr. Matthew Cookingham, an IEPA Environmental Protection Engineer states in his affidavit that: "A strong, noxious odor characteristic of gas was present near the entrance to the Landfill, and within fifty yards of Ashley Road.", Mr. Cookingham fails to provide either the direction of wind, and the speed of wind at the date and time of his observations. Both of these factors are critical in determining the source of the odor in question. Moreover, within 1,000 feet of the entrance to the Morris Community Landfill site is the landfill gas treatment facility for the EnviroTech Landfill (an active regional landfill which is located directly North of Morris Community Landfill). Again, because

wind direction was not noted by Mr. Cookingham affidavit during his October 18, 2006 inspection, the odor characteristic of landfill gas which he notes could have emanated from the EnvrioTech Landfill.

10. In addition, there is a lack of residential, commercial and industrial development adjacent to the Landfill and, as such, landfill odor would not interfere with the enjoyment of life or property of the public in this area, or otherwise harm local businesses as the Complaint alleges. Moreover, based upon my two years of in-depth, extensive involvement at this site, I am unaware of any complaints made by any member of the public or any business as to the Landfill interfering with enjoyment of life, property or commercial endeavor in the area.
11. While submission of required records in accord with federal and state regulations is important to: 1) demonstrate ongoing compliance with all applicable environmental regulations, and 2) aid in the monitoring of conditions at sites such as the landfill in question, failure to submit these records does not constitute an immediate or substantial threat to the human health or the environment.
12. In addition, readings for landfill gas within parameter, below-grade landfill parameter probes has varied (both up and down) since June of 2005, indicating that the below-grade landfill gas concentrations are not increasing. Moreover, the most recent test results for landfill gas and parameter landfill gas probes (conducted on December 11, 2006) indicate that no probes have greater than 50% of the LEL (Lower Explosive Limit) for methane. This is significant because the LEL is the percentage of methane within the air that could cause explosion and thereby a potential threat to the human health and safety. A copy of these test results are attached hereto as Exhibit B.

13. In addition, the Complaint filed in this matter alleges that the Landfill has failed to operate each gas extraction while at a temperature below 131° F, and with nitrogen levels below 20% and oxygen levels below 5%. Shaw is not aware of any quantitative testing that has been performed by the operator, IEPA or any other entity to demonstrate this fact.
14. In addition, the Complaint alleges that the gas collection system has not been operated in a way so that surface methane concentrations remain below 500 ppm above background. Again, Shaw is not aware of any quantitative testing that has been performed by the landfill operator, IEPA or any other party to demonstrate the surface methane concentrations have ever exceeded 500 ppm above background.
15. Based upon all of the above, and, in summary, it is my professional opinion that the conditions noted by the State in its Complaint and Motion for Temporary Restraining Order and Preliminary Injunction do not constitute a present, and immediate or imminent and substantial or material threat to the human health or the environment, and that any such conditions can be more than adequately addressed by routine corrective action measures called for by state and federal regulations governing the landfill in question.

Dated: _____

By: _____
Devin A. Moose

SUBSCRIBED and SWORN to
before me this _____ day of December, 2006.

Notary Public

Devin A. Moose, P.E., DEE

Director
St. Charles, IL

Professional Qualifications

As Director, Mr. Moose is responsible for overall administration and technical review for all environmental permitting projects, planning studies and remediation projects for the St. Charles Office. He supervises the planning, design and permitting of solid waste disposal facilities, including landfills, transfer stations, recycling processing centers and composting facilities. Mr. Moose also directs the development and implementation of regional solid waste management plans and manages the engineering and hydrogeological analyses for design of remediation projects, solid waste landfills, containment features, UST and LUST projects, dry cleaner sites, brownfield redevelopment projects, groundwater monitoring systems, foundations, pavements, retaining walls, and slope stability analysis. Mr. Moose supervises the development of engineers' cost estimates, economic impact studies and facility business plans; provides contract negotiation expertise for host community agreements, solid waste facility development and operating contracts; performs public presentations for solid waste plans and solid waste facilities; and provides expert witness testimony.

Education

B.S., Civil Engineering, University of Missouri-Rolla

Registrations/Certifications

- Registered Professional Engineer, Illinois, Wisconsin, Iowa, Indiana, Arizona, Ohio, New Mexico, Minnesota, and Missouri
- Diplomat of the American Academy of Environmental Engineers

Experience and Background

Total years of related experience: 23
Joined Shaw in 1996

Key Experience

- Supervised the development, completion and initial implementation of solid waste management plans for over 50 counties representing more than 7 million people. The needs assessment components of the plans included determining existing and future waste generation and recycling rates, and conducting curbside weighing programs and waste composition studies. The solid waste management plans included extensive evaluation and design of waste minimization and recycling programs. Final reports included evaluation of alternate disposal technologies and recommendation of a final integrated system for future solid waste management. The plans have received awards from the American Planning Association and the Consulting Engineers Council.

- Directed development of economic performance studies for solid waste facilities including landfills, recycling centers, transfer stations, collection vehicles, construction demolition debris recycling facilities, and recycling drop-off facilities. Analyses included waste stream analyses, market area assessments, system construction cost estimates, operating cost estimates, and calculation of financing costs. System studies included review of existing solid waste facilities, analyses and recommendations for improvement as well as comprehensive waste audits.
- Preparation of supporting data and participation in contract negotiations for solid waste facilities. Scope of work included host community benefit agreements, negotiation of special conditions for landfill and transfer station siting approval, contracts for construction and operation of waste and recycling facilities, drafting local ordinances governing landfills and transfer stations, as well as other solid waste related facilities.
- Supervised development of comprehensive local, state and federal permit applications for construction of landfills, balefills, and compost facilities. Siting and permitting activities include facility design and analyses, preparation of operating and closure plans, and interaction with permitting agencies, elected officials and members of the public. Supervised development of engineering due diligence reports for landfill acquisitions. Provided expert witness testimony and assists units of local government reviewing facilities for compliance with applicable regulations, supervised remedial action plans for numerous landfill facilities.
- Supervised the development of comprehensive local, state and federal permit applications for construction of transfer stations, recycling facilities, and recycling drop-off centers. Siting and permitting activities included facility design, site layout, equipment specification, time-motion study, expert testimony, and preparation of operating and accident prevention plans. Assisted units of local government reviewing facilities for compliance with applicable regulations. The transfer station facilities have received awards from the Consulting Engineers Council, the American Public Works Association, and the American Society of Civil Engineers.
- Managed geotechnical and hydrogeological analyses for design of solid waste landfills, containment features, groundwater monitoring systems, foundations, pavements, retaining walls, dewatering systems, slope stability analysis, monitoring well construction, field permeability testing and groundwater modeling.
- Managed the development of site locations studies for regional solid waste facilities and recycling centers. Studies included transportation analyses, development of siting criteria, public consensus building and site identification.
- Expert testimony on solid waste related facilities and studies. Expert witness testimony experience at over 45 proceedings. Development of public education programs, including information booklets, videos, power point presentations, graphics, public presentations, and field trips.
- Overall division manager providing construction quality control/quality assurance and materials testing. Trained nuclear density device and windsor probe operator. Certified by Illinois Department of Transportation in bituminous and Portland cement concrete proportioning, documentation, bridge structure foundations and traffic safety in construction zones. Experienced in Subtitle D landfill QA/QC procedures, including geomembranes, test liners, bentonite and sealed double-ringed infiltrometers. Significant experience in dewatering and geotechnical related construction projects.

- Managed site investigations and regulatory compliance activities for numerous UST and LUST projects and over 35 drycleaner site investigations and site closures. Overall responsibility for over 12 municipal brownfield redevelopment projects.
- Project officer for development of Exelon Nuclear's Excellence Plans. Project included site inspections and evaluation to determine the gaps in the environmental compliance programs of all Exelon Nuclear facilities, as well as the Kennett Square and Warrenville Corporate offices. In addition, gap analyses and environmental excellence plans for each of these nuclear facilities and corporate offices, were developed.

Selected Project Experience

Solid Waste Management Planning

Boone County Iowa
Carroll County
Central Illinois Municipal Joint Action Agency
City of Freeport
Coles County Regional Planning Comm.
Crawford County
DeKalb County
DeWitt County
DuPage County
East Central Solid Waste Commission
Grundy County
Henry County
JoDaviess County

Kankakee County
Lawrence County
Lee County
Livingston County
Los Alamos County
Mason County
Menard County
Ogle County
Richland County
Solid Waste Agency of N. Cook County
West Central Illinois Regional Solid Waste Consortium
Will County

Landfill Design, Permitting and Due Diligence

Amoco Chemical Landfill
Belvidere Municipal Landfill No. 2
Benton County
Brickyard Disposal Landfill
CC Landfill
Clinton Landfill
Coles County Landfill
Congress Development Landfill
Community Landfill
Davis Junction Landfill
Five Oaks Landfill
Greene Valley Landfill
Herrin Municipal Landfill
H&L Landfill
Kankakee Regional Landfill
Lake County C & D
LandComp Corporation Landfill
Land & Lakes 122nd Street
Lawrence County Disposal Centre Inc.
Lee County Landfill
Livingston Landfill
Los Alamos County
Mallard Lake Landfill

Marathon Oil Landfill
Midway Landfill
Morris Community Landfill
Newton County Landfill
Northwest Cook County Bafefill
Pheasant Run Landfill
Prairie Hills Landfill
Rhodes Landfill
Rochelle Landfill
Rochelle Waste Disposal
Saline County Landfill
Sangamon Valley Landfill
Settlers Hill Landfill
Spoon Ridge Landfill
Streator Area Landfill
Taylor Ridge Landfill
Tazewell RDF Landfill
Various Permit Application Reviews for the City of Chicago
Department of Environment
Willow Ranch Landfill
Winnetka Landfill
Woodland II Landfill

Transfer Station/MRF Design/Permitting/Reviews

City of Batavia
Brooks Transfer
Calumet (Liberty) Transfer
Carroll Street Transfer Station
Chicago Disposal Transfer Station
Clearing Disposal Transfer Station
Cloverleaf Transfer Station
Crown Disposal MRF/Transfer Station
Crystal Lake Transfer Station
DuKane Transfer Station
DuPage Co. Recycling Drop-off Centers
DuPage Yard Waste Facility
City of Freeport Transfer Station
Ellis Street Station Transfer Station
Bluff City Transfer Facility
Evanston Material Recovery Center
Fullerton Station Transfer Station
Greenwood Transfer Facility
Northlake Transfer

Groot Industries MRF/Transfer Station
Homewood Disposal Transfer Station
Loop Transfer Station \ 64th Street
Loop Transfer Station \ Laflin
City of Metropolis Transfer Station
Midtown (Hoving) Transfer Station
Midwest Compost Transfer Station
Norton Mixed Waste Processing Facility
Onyx Batavia Transfer Station
Onyx Evanston Transfer Station
Planet Recovery (National)
Rolling Meadows Transfer Station
Speelman Transfer Station
West DuPage Transfer Station
Wheeling Township Transfer Station
Los Alamos
Various Permit Application Reviews for the City of Chicago
Department of Environment

Hydrogeologic/Geotechnical Investigations

Belvidere Municipal Landfill No. 2
Brickyard Disposal Landfill
Burr Ridge Park
CC Landfill
Chicago Deep Tunnel Project
Danville Landfill
Five Oaks Landfill
Herrin Municipal Landfill
Kankakee Regional Landfill
LandComp Corporation Landfill
Lee County Landfill

Little Calumet Borrow Area Investigation
Livingston Landfill
Marathon Oil Landfill
Newton County Landfill
New Milford Landfill
North-South Tollway
Northwest Cook County Balefill
Rhodes Landfill
Saline County Landfill
Streator Area Landfill

Regional Site Location Studies

Northern Cook County
DuPage County

Kane County
Will County

Economic and Performance Studies

Brickyard Disposal Pro Forma
Business Plan, Private Transfer Station
DuPage County Drop-off Centers
Essex Windsor
Evanston MRF Business Plan
Groot Industries Transfer Station/MRF
LandComp Corporation
Los Alamos County

Nord MRF Business Plan
Northwest Cook County Balefill
Regional Disposal Project
SWANCC Transfer Station No. 1
Solid Waste Authority Balefill Feasibility Analysis
West Cook County Solid Waste Agency
Wheeling Township Transfer Station
Will County Arsenal Site

Contract Negotiation and Procurement

Bond County Landfill Siting Review
City of Batavia Host Community Agreement
City of Chicago Dept. of Environment
Rules and Regulations
City of Freeport Contract Procurement
City of Freeport Hauling Lease and Host Agreements
Coles County Landfill Siting Review
Crystal Lake Transfer Station
DeWitt County Host Community Agreement
Douglas Co. Waste Disposal Agreement
Greenwood Transfer Facility
Henry County Host Community Agreement
Jackson Co. Host Community Agreement
Jackson Co. Landfill Siting Review
Land Purchase Negotiations for Wheeling
Township Transfer Station
Village of Lyons Annexation Agreement

LaSalle Co. Host Community Agreement
Lawrence Co. Host Community Agreement
Lawrence Co. Landfill Siting Review
Lee Co. Landfill Ordinance
Livingston Co. Host Community Agreement
Livingston Co. Landfill Siting Review
Livingston Co. Landfill Ordinance
Ogle Co. Host Community Agreement
Ogle Co. Landfill Siting Review
Ogle Co. Landfill Ordinance
Operating Contract for Wheeling Township
Transfer Station
Richland Co. Host Community Agreement
West Cook Co. Solid Waste Agency Regional
Disposal Project
Will County Landfill Siting Review

Expert Testimony and Public Education

BFI Davis Junction Landfill
Barrington Composting Facility
Belvidere/Boone County Newsletter
Benton County Landfill
City of Freeport
D&L Landfill
DuKane Transfer Station
Ellis Street Station
Bluff City Transfer Facility
Greenwood Transfer Facility
Groot Industries Transfer Station
Illinois Recycling Association Waste Audit
and Source Reduction Manual
Jackson County Landfill
and Source Reduction Manual
Kankakee Regional Landfill
Iowa DNR

Lake County C & D Facility
LandComp Corp. Information Booklet
Lawrence County Disposal Centre
Lee County Landfill
Newton County Landfill
Northwest Cook County Balfill Video
Onyx Batavia Transfer Station
SWANCC Transfer Station No. 1
SWANCC Waste Audit Manual
Streator Area Landfill
Bahamas Ministry of Health
West Cook Co. Regional Disposal Project Brochure
Wheeling Township Transfer Station
Will County Siting Study
Willow Ranch Landfill

Construction Oversight / Material Testing

Brickyard Disposal
Burr Ridge Office Park
Highland Green Subdivision
H.J. Thomas Memorial Hospital
Northwest Community Hospital
Pinebrook Subdivision
Rush, Presbyterian, St. Luke's Hospital

Sherman Hospital
St. Charles Road Improvements
St. Luke's Hospital
Swedish Covenant Hospital
Washington Street Improvements
Woodland II Landfill
York Road Improvements

Brownfield Projects

Alcoa
City of Chicago
City of St. Charles
City of Woodstock
Village of Broadview
Village of Crete
City of Dixon
City of Hoopston
Village of Justice

City of Mendota
Village of Palatine
Village of Skokie
Walsh Development
Will County
Village of Wheeling
Village of Lombard
Village of Roselle
Village of Bellwood

Yazoo Landfill
Village of Brookfield
Village of Schaumburg

Professional Affiliations

- American Academy of Environmental Engineers
- American Society of Civil Engineers
- Solid Waste Assoc. of North America
- National Society of Professional Engineers
- National Solid Waste Management Association
- Illinois Society of Professional Engineers
- Association of Engineering Geologists
- National Groundwater Association
- Illinois Recycling Association
- Illinois Counties Solid Waste Management Association

Publications & Professional Association Presentations

- "Effects of Sampling Disturbance on Shear Strength of Glacial Till and Compacted Fill," Dietzler, D. P., Moose, D.A., and Schuh, J. C., *Advanced Triaxial Testing of Soil and Rock, ASTM STP 977*, Robert T. Donaghe, Ronald C. Chaney, and Marshall L. Silver, Eds., American Society for Testing and Materials, Philadelphia, 1988, pp. 628-641.
- "Transfer Station Practices: Transfer Station Workshop Part 1: Pros & Cons of Building Your Own," Invited Session Speakers: Devin Moose, Envirogen; Steve Taylor, Republic Services, Inc. Waste Expo, 2003

**Morris Community Landfill
Gas Probe Monitoring**

Sample Date: December 11, 2008
Technician: R. Guzman

Probe ID	Pressure	CH ₄		CO ₂	O ₂	Balance	Inspection of Gas Probe
		(% by vol.)	(% LEL)	(% by vol.)	(% by vol.)	(% by vol.)	
X101	0.0	0.0	0.0	0.7	17.0	82.3	Yes
X102	0.0	0.0	0.0	0.0	18.6	81.4	Yes
X103	0.0	0.0	0.0	2.0	17.0	81.0	Yes
X104	0.0	0.0	0.0	2.6	15.9	81.5	Yes
X105	0.0	0.0	0.0	0.0	18.7	81.3	Yes
X106	0.0	0.0	0.0	0.0	18.5	81.5	Yes
X107	0.0	0.0	0.0	0.7	17.8	81.5	Yes
X108	0.0	0.0	0.0	0.0	18.6	81.4	Yes
X109	0.0	0.0	0.0	0.0	18.7	81.3	Yes
X110	0.0	0.0	0.0	0.9	17.4	81.7	Yes
X111	0.0	0.0	0.0	0.0	18.8	81.2	Yes
X112	0.0	0.0	0.0	0.0	18.8	81.2	Yes
X113	0.0	0.0	0.0	0.2	18.2	81.6	Yes
X114	0.0	0.0	0.0	0.0	18.8	81.2	Yes
X115	0.0	0.0	0.0	0.0	18.8	81.2	Yes
X116	0.4	1.0	20.0	6.4	9.2	83.4	Yes
X117	0.2	0.0	0.0	0.4	18.5	81.1	Yes
X118	0.0	0.0	0.0	10.9	12.9	78.2	Yes
X119	0.0	0.0	0.0	2.2	16.9	80.9	Yes
X120	0.0	0.0	0.0	3.5	16.9	79.6	Yes
X121	0.0	0.0	0.0	2.9	15.9	81.2	Yes
X122	0.0	0.0	0.0	0.0	18.8	81.2	Yes
X123	0.0	0.0	0.0	0.0	18.8	81.2	Yes
X124	0.0	0.0	0.0	0.0	18.8	81.2	Yes
X125	0.0	0.0	0.0	6.2	14.5	79.3	Yes
X126	0.0	0.0	0.0	0.0	18.8	81.2	Yes
X127	0.0	0.0	0.0	0.0	18.7	81.3	Yes
X128	6.6	0.0	0.0	3.2	15.1	81.7	Needs weep hole

Notes:

Gas probes are monitored on a monthly

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
GRUNDY COUNTY, ILLINOIS

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.

Case No. 06 CH 184

AFFIDAVIT OF DEVIN A. MOOSE

NOW COMES Devin A. Moose, being first duly sworn on oath, and do hereby depose
and state as follows:

1. I reassert and incorporate by this reference the matters contained in my Affidavit
of December 15, 2006.

2. That I have reviewed State's Motion to Compel Compliance with the December
15, 2006 Order of this Court.

3. While methane gas well testing is routinely performed at landfill gas extraction
well systems, that testing is not be performed until the system in question has been fully
evaluated and made fully functional and operative, so that: 1) no threat to the safety of workers,
or the public arises, and 2) meaningful test data can be gathered for further evaluation.

4. Based upon my knowledge of the present condition of the landfill gas extraction
well system located at the Morris Community Landfill, it appears as if the methane gas
extraction well system is only partially operational as described in Shaw's report "Landfill Gas
Collection System – Parcel B Evaluation Report," dated April 2006. Again, this being the case,
only marginal information could be derived from operation of the system and, moreover,

operation of the system in its present condition could present threats to the safety of those conducting such tests.

5. In my professional opinion, attempting to gather samples from the system prior to the system undergoing a complete evaluation (to ensure the system is not experiencing breaches, pressure gaps, etc.) would serve no meaningful purpose.

FURTHER the Affiant say not.

Dated: 2/13/07

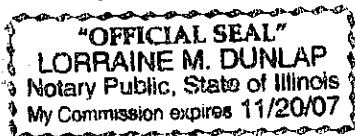
By: [Signature]

Devin A. Moose

SUBSCRIBED and SWORN to
before me this 13th day of February, 2007.

[Signature]

Notary Public



1 IN THE CIRCUIT COURT OF THE 13TH JUDICIAL CIRCUIT
2 GRUNDY COUNTY, ILLINOIS
NO. 06 CH 184

3 PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
4 General of the State of Illinois,)
Plaintiff,)
5)
6 COMMUNITY LANDFILL CO., an)
Illinois Corporation, and the)
7 CITY OF MORRIS, an Illinois)
Municipal Corporation,)
8)
Defendants.)

9
10 EXCERPT OF REPORT OF PROCEEDINGS had in
the above-entitled cause on April 11, 2007, in
11 the Circuit Court of Grundy County, before the
Honorable Robert C. Marsaglia, presiding Judge.

12 APPEARANCES:

13 Mr. Christopher J. Grant
14 Ms. Jennifer A. Tomas
Assistant Attorneys General
appearing on behalf of the Plaintiff;

15 Ms. Clarissa Cutler Grayson
16 Attorney at Law
appearing on behalf of Community
17 Landfill Co., one of the Defendants;

18 Mr. Scott M. Belt
19 Mr. Charles F. Helsten
Mr. Richard S. Porter
Attorneys at Law
20 appearing on behalf of the City of
Morris, one of the Defendants.
21

22
23 Connie J. Hillegass, CSR.
Official Court Reporter
24 Illinois License No. 084-001612

EXHIBIT

tabb

B

1 the immediacy is and really coming back down to
2 the practicality of it, what -- you know, when --
3 when would we be trying this case? If we could
4 do it this summer or fall, based on what I have
5 heard so far, I don't feel any sense of urgency
6 to push the preliminary injunction, frankly, if
7 we could get it done in a reasonable -- get the
8 whole case done in a reasonable amount of time.
9 And by reasonable amount of time, I'm looking at
10 maybe, you know, this summer or fall. And I
11 guess I'm not -- it sounds like I'm trying to
12 negotiate a ruling, and maybe I am a little. I
13 don't know.

14 MR. BELT: Judge, if I could just weigh in.

15 THE COURT: Sure.

16 MR. BELT: And I know Mr. Helsten touched on
17 this, but I just want to confirm and make sure
18 that it's in the record where we talked about the
19 City's -- City Council's willingness to
20 contribute funds to get the flare system
21 functional. There was an addendum that was
22 prepared that was presented to the City Council
23 on April 2nd to the underlying Shaw LFG CLC
24 agreement, and that was approved. And all that

1 really says is that the City agreed to provide
2 funding up to \$20,000 to get that flare system --

3 THE COURT: That portion of the flare
4 system --

5 MR. BELT: That portion of it functional.

6 THE COURT: And that's why I asked the
7 question, and I wasn't -- for the record, I'm
8 not trying to pin anybody down. I was just
9 trying to properly -- I should have asked
10 probably in chambers, but trying to properly
11 remember -- and I do recall now that is exactly
12 what you said back in January or December, so --

13 MR. BELT: And that was unanimously approved
14 by City Council on April 2nd.

15 THE COURT: Okay. Well, given all of that,
16 given everything I heard yesterday, given what's
17 happened here today, I am going to deny the
18 request for a preliminary injunction at this
19 point and ask that we do a case management
20 conference order -- a case management order now
21 on the remaining relief with an eye towards
22 getting this case tried late summer, early fall,
23 something like that.

24 And obviously, you know, if

1 something changes, if there's a change out there
2 and all of a sudden there's, you know,
3 complaints, neighbors' complaints of gas and all
4 of that, you can -- I don't think this would be
5 any -- hold any kind of prejudice to a new
6 petition, a new TRO or a -- if there's a new
7 problem or a sudden increase in problem. And
8 I'm -- you know, again, frankly I'm basing this
9 decision based on what I have read and heard up
10 to now, which doesn't tell me that this is a real
11 emergency today or next week. It's going to be
12 though. It sounds like maybe it's going to be.

13 MR. PORTER: Your Honor, do you want to give
14 counsel and I --

15 THE COURT: Yeah, I'll give you some time,
16 because I just don't have a handle on what you
17 need to do, so I don't want to force a case
18 management order down your throat. See if you
19 can, you know, come up with, you know, what you
20 need for your written discovery. You know who
21 you're going to have, who needs to be deposed.
22 And I have no idea whether you have out-of-area
23 witnesses or experts or anything like that.


24 MR. PORTER: Do you want to do it right now,

AFFIDAVIT OF SERVICE

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 May 17, 2007, she caused to be served a copy of the foregoing upon:

Mr. Christopher Grant Assistant Attorney General Environmental Bureau 100 W. Randolph St., 11th Fl. Chicago, IL 60601	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	Bradley Halloran Hearing Officer Pollution Control Board 100 W. Randolph, Suite 11 Chicago, IL 60601
Mr. Scott Belt 105 East Main Street Suite 206 Morris, Illinois 60450	

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.



HINSHAW & CULBERTSON
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
(815) 490-4900