

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB NO. 03-191
) (Enforcement – Land)
COMMUNITY LANDFILL COMPANY, INC.,)
an Illinois corporation, and)
the CITY OF MORRIS, an Illinois)
municipal corporation,)
)
Respondent.)

NOTICE OF FILING

TO: See Attached Service List
(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following COMPLAINANT'S MOTION TO STRIKE OR DISMISS THE AFFIDAVIT OF THE CITY OF MORRIS' MAYOR, RICHARD KOPCZICK, a copy of which is attached and hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY: 
Jennifer A. Tomas
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Environmental Bureau
188 W. Randolph St., 20th Floor
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DATE: October 12, 2007

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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**COMPLAINANT'S MOTION TO STRIKE OR DISMISS THE AFFIDAVIT OF THE
CITY OF MORRIS' MAYOR, RICHARD KOPCZICK**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, pursuant to Section 101.500 of the Board's Procedural Regulations, now moves for an order striking or dismissing the affidavit of the City of Morris' Mayor, Richard Kopczick, as public comment. In support of its motion, Complainant states as follows:

I. BACKGROUND

1. On September 10, 11 and 12, 2007, a hearing was held in the above-captioned matter in Morris, Grundy County, Illinois, for Respondents' alleged violations of Section 21(d)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/21(d)(2) (2002), and Sections 811.700(f) and 811.712 of the Board's Financial Assurance Regulations, 35 Ill. Adm. Code 811.700(f) and 811.712.

2. On October 5, 2007, the Hearing Officer, Bradley Halloran, issued his Hearing Report for the hearing held on September 10, 11 and 12. Included in the Hearing Report was a public comment deadline of October 9, 2007.

3. On October 8, 2007, Respondent, City of Morris, mailed to be filed with the Board the affidavit of the City of Morris' Mayor, Richard Kopczick, as public comment.

II. BOARD GENERAL RULES FOR PUBLIC COMMENT

4. Section 101.628 of the Board General Rules, 35 Ill. Adm. Code 101.628, provides as follows:

Statements from Participants

- a) Oral Statements. The hearing officer may permit a participant to make oral statements on the record when time, facilities, and concerns for a clear and concise hearing record so allow. The oral statements must be made under oath and are subject to cross-examination. (See Sections 101.110 and 101.114 of this Part.)
- b) Written Statements. Any participant may submit written statements relevant to the subject matter at any time prior to hearing or at hearing. Participants submitting such a statement will be subject to cross-examination by any party. Written statements submitted without the availability of cross-examination will be treated as public comment in accordance with subsection (c) of this Section and will be afforded lesser weight than evidence subject to cross-examination.
- c) Public Comments or Amicus Curiae Briefs. Participants may file public comments subject to the requirements of this Section and the hearing officer's schedule for completion of the record. The Board also allows for the filing of amicus curiae briefs by non-party participants. Amicus curiae briefs will be allowed in accordance with Section 101.110 of this Part.
 - 1) Public comments must be filed within 14 days after the close of the last hearing unless the hearing officer specifies a different date for submission of post-hearing comments. However, all public comments must be filed with the Board no later than 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. Consistent with the burden of proof in a proceeding, the hearing officer may provide for differing filing deadlines with respect to post-hearing comments by different persons. Pursuant to hearing officer order, rebuttal public comments may be submitted.
 - 2) All public comments must present arguments or comments based on evidence contained in the record. The comments may also present legal argument citing legal authorities.

- 3) Comments must be filed with the Board. Comments will be distributed to parties and the hearing officer by the Clerk's office.

5. Section 101.202 of the Board General Rules, 35 Ill. Adm. Code 101.202, provides, in pertinent part, the following definitions:

"Participant" means any person, not including the Board or its staff, who takes part in an adjudicatory proceeding who is not a party, or a person who takes part in a regulatory or other quasi-legislative proceeding before the Board. A person becomes a participant in any of several ways, including filing a comment, being added to the notice list of a particular proceeding, or testifying at hearing.

"Party" means the person by or against whom a proceeding is brought.

"Person" means any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns. [415 ILCS 5/3.315]

III. MAYOR RICHARD KOPCZICK IS A PARTY TO THIS PROCEEDING AND THEREFORE CANNOT SUBMIT PUBLIC COMMENT

6. The Board General Rules very clearly lay out who may submit public comment and what the content of that public comment can include.

7. Section 101.628(c) of the Board General Rules, 35 Ill. Adm. Code 101.628(b), provides that a "participant" may file public comments by a deadline provided by the hearing officer. The definition of "participant" is "any person ...who is not a party". 35 Ill. Adm. Code 101.202. The Board's definition of "person" includes the "legal representative, agent or assigns" of a "political subdivision". *Id.* Finally, the Board's definition of "party" means "the person by or against whom a proceeding is brought". *Id.*

8. As Mayor of the City of Morris, Mayor Kopczick is an agent of the City of Morris and therefore a "person" pursuant to the Board's General Rules. As an agent of the City of Morris, Mayor Kopczick is a "party" to this action. As a party to this proceeding, Mayor

Kopczick does not meet the definition of "participant" and therefore cannot submit public comment. See *American Bottom Conservancy, et al. v. Village of Fairmont City, et al.*, PCB No. 01-159, p. 7 (2001) ("Petitioners cannot file public comments because they are a party to the proceeding. Public comments are reserved for members of the public that are not a party, who wish to submit information concerning the proceeding.") (citing 35 Ill. Adm. Code 101.202, 101.628(c).)

IV. IN THE ALTERNATIVE, IF THE BOARD DOES FIND THAT MAYOR KOPCZICK'S AFFIDAVIT IS APPROPRIATE PUBLIC COMMENT, HIS AFFIDAVIT PRESENTS ARGUMENTS AND COMMENTS OUTSIDE EVIDENCE CONTAINED IN THE RECORD

9. Section 101.628(c)(2) of the Board's General Rules, 35 Ill. Adm. Code 101.628(c)(2), provides as follows:

- 2) All public comments must present arguments or comments based on evidence contained in the record. The comments may also present legal argument citing legal authorities.

10. No arguments or comments in Mayor Kopczick's affidavit make reference to the record of this proceeding or present legal argument citing legal authorities. In fact, the affidavit seems only to attempt to explain the transfer of an operation and development permit that occurred between the City of Morris and Community Landfill Co. ("CLC") in 1982 and the intent behind City Council Resolution No. R-99-6. Neither of these issues were part of the record created at the hearing of this action nor present a legal argument with citing authorities.

V. CONCLUSION

11. Complainant requests that the Board see Mayor Kopczick's affidavit for what it is – an inappropriate attempt by Respondent City of Morris to interject improper comment into this proceeding without affording the Complainant the right to cross-examine Mayor Kopczick on his statements. As Mayor of the City of Morris, Mayor Kopczick is a party to this proceeding and

not a "participant" who may legally submit public comment. In the alternative, if Mayor Kopczick's affidavit is deemed appropriate public comment, it still must fail because the affidavit presents no argument or comment relevant to the record or legal argument citing legal authority.

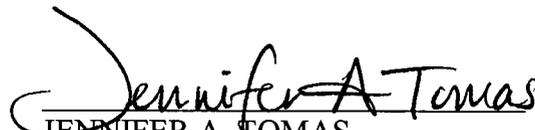
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board Strike or Dismiss the Affidavit of Mayor Richard Kopczick for the reasons stated above.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN, Attorney General
State of Illinois

BY:



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Dated: October 12, 2007

CERTIFICATE OF SERVICE

I, JENNIFER A. TOMAS, an Assistant Attorney General, certify that I caused to be served by First Class United States Mail, the foregoing Notice of Filing and Complainant's Motion to Strike or Dismiss the Affidavit of the City of Morris' Mayor, Richard Kopczick, to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601 on October 12, 2007.


JENNIFER A. TOMAS