BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that we have today, August 5, 2009, filed with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing, Complainant's Response to The City of Morris's Motion for Reconsideration

Respectfully Submitted,

BY: _____

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RESPONSE TO CITY OF MORRIS'S MOTION FOR RECONSIDERATION

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and Responds to the City of Morris's ("Morris's") Motion for Reconsideration.

I. INTRODUCTION

The City of Morris ("Morris" or "City") requests both revision and reconsideration of the Board's June 18, 2009 Opinion and Order. However, the Board's Order should stand as issued. Morris's argued basis for revision is based on false representations, for which it should be sanctioned. Morris' requests for reconsideration are based on argument of the same unique and self-serving interpretations of the Board regulations that were considered and rejected in the Board's grant of Summary Judgment, denial of Morris's Motion to Reconsider Summary Judgment, and the June 18, 2009 Order.

II. ILLINOIS EPA REJECTED MORRIS'S PROPOSED COST REVISIONS IN OCTOBER, 2007

Morris's request that the Board modify its Order to allow it to submit its revised cost estimate, and its request that the Board delay the provision of financial assurance is entirely based on its representation that Illinois EPA never acted on its 2005 and 2007 revised closure/post-closure cost estimates. This representation is absolutely false. As is well known to Morris and its counsel, Illinois EPA clearly and unequivocally rejected these estimates in October, 2007.

At hearing in this case, Morris expert witness Devin Moose stated that Shaw Environmental had prepared cost estimates and Sig-Mod permit renewal submissions in 2005 and July, 2007[1], and that as the time of hearing, Illinois EPA was still reviewing the applications[2]. However, on October 22, 2007, only six weeks after hearing, Illinois EPA rejected the proposed cost revisions (See: Complainant's Exhibit 1).

Illinois EPA's rejection of the 2005 and 2007 proposed cost estimates was communicated in a draft permit denial, and could not possibly be more clear[3]. The draft denial acknowledges Shaw's proposed permit revisions from 2005 and 2007[4], and was sent by Christine Roque, whom

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[1]Tr., 9/12/07, p. 115

[2]As the Board noted in its decision, Shaw had prepared these estimates in 2006, but did not submit them to Illinois EPA until two months before the scheduled hearing. June 18, 2009 Order, p.13.

[3]Illinois EPA permit conditions are negotiated through the use of 'draft denial' letters, which point out the changes and additions in an application necessary to obtain approval.

[4]Complainants Exhibit 1, p. 2

Mr. Moose previously acknowledged as the appropriate Illinois EPA permit contact[5]. On Exhibit 1, p. 5, Illinois EPA advises Morris' consultant that the revised cost estimates were defective because groundwater treatment cost were not included, and because the cost estimate did not include 100 years of leachate treatment.

The Respondents have known of the "100 year leachate third party cost" requirement for years. In fact, their initial permit application had been rejected after they left this factor out of their cost estimate. Following the Respondents appeal in case No. PCB 01-48/01-49[6], the Board upheld Illinois EPA's requirement that 100 years of leachate treatment be secured. Thus, having totally ignored Illinois EPA's prior rejection, and also having ignored the Board's April 5, 2001 opinion affirming Illinois EPA's position, Morris cannot have been surprised at th Illinois EPA's October 22, 2007 denial.

The City of Morris's request for a change in the Board-ordered timetable for providing financial assurance in the approved amount, and the timetable for providing a revised cost estimate must be rejected. The Board's requirement of a revised cost estimate submission within 120 days is reasonable and should be affirmed. Further, the Board should sanction Morris for their blatant misrepresentation of a material issue in this case.

III. STANDARD FOR RECONSIDERATION

Motions to reconsider are limited to newly discovered evidence, not available at the time of hearing, changes in law, or pointing out errors in the Board's previous application of existing

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[5]Tr., 7/12/07, p. 94. The court reporter misspelled "Roque" using the phonetic spelling "Rokay)

[6]PCB 01-48/01-49 (4/5/01). Three days of hearing were held on this issue and other permit conditions.

law[7]. Newly discovered evidence is evidence that was not available at the first hearing[8]. A Motion to Reconsider is not an opportunity to re-try a case: litigants should not be allowed to lose, and only then gather evidence to show that a court erred in its ruling[9]. The reasons for this are clear; as explained by one Court: *"[c]ivil proceedings already suffer from too many delays, and the interests of finality and efficiency require that the trial courts not consider such late-tendered evidentiary material, no matter what the contents thereof may be"*[10]. In no event should 'newly discovered' evidence be allowed without a reasonable explanation of why it was not available at the time of the original hearing[11]. Moreover, reconsideration on the basis of new evidence is not warranted unless the newly discovered evidence is of such a conclusive or decisive character as to make it probable that a different result would be reached[12].

IV. THE "FACTS" CONTAINED IN THE MORRIS'S EXHIBITS ARE NOT NEWLY DISCOVERED EVIDENCE AND SHOULD NOT BE CONSIDERED BY THE BOARD

Morris attempts to supplement the record with six new exhibits, which include new opinion testimony from Shaw Engineering representative Jesse Varsho and City Auditor William Crawford, and statements by persons who were named as witnesses by Morris but never called.

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[7]*People v. Community Landfill Company, Inc. And the City of Morris*, PCB 03-191 (June 1, 2006).

[8]*Compton v. Country Mut. Ins. Co.*, 382 Ill. App. 3d 323, 331 (1st Dist. 2008)

[9]*Garnder v. Navistar International Transportation Corp.*, 213 Ill. App. 3d 242, 248 (4th Dist. 1991).

[10]Id., at pp.248-249

[11]*Delgatto v. Brandon Associates, Ltd.*, 131 Ill. 2d 183, 195 (1989).

[12]*Patrick Media Group v. City of Chicago*, 255 Ill. App. 3d 1, 8 (1st Dist. 1993)

Morris provides no reasonable explanation why this information was 'unavailable' at trial. This 'evidence is improper and should not be considered by the Board.

The Board should also note the fundamental unfairness of all of the 'newly discovered' testimony. None of this information has been subject to discovery or tested by cross examination. Thus, this information in inherently unreliable.

1. Morris Exhibit A: Affidavit of John Enger

Morris City Clerk John Enger was named by Morris as a witness in this case in its Witness & Exhibit List filed with the Board on September 28, 2006. After the original hearing was delayed, Morris submitted its second Witness and Exhibit List on August 29, 2007. This second list did not include Mr. Enger, and he was not called as a witness at hearing. There is no explanation whatsoever as to why his testimony was unavailable, and Exhibit A (and Morris's arguments related thereto) should be stricken.

2. Morris Exhibit B: Affidavit of Larry D. Good

Morris provides no explanation whatsoever regarding their failure to call Mr. Good at hearing in this matter, but his testimony relates to cost information between 2001 and 2005, well before the hearing. Exhibit B (and Morris's arguments related thereto) cannot be considered 'newly discovered evidence', and should be stricken.

3. Morris Exhibit C: Affidavit of Jesse Varsho

Mr. Varsho was named as a witness by the City of Morris in its second witness disclosure, but was not called as a witness at hearing. His statements include his 'professional opinion" that current conditions do not constitute an 'immediate and imminent and substantial or material threat'. This opinion was obviously not disclosed prior to hearing, or at any time until

the filing of the Motion to Reconsider.

Use of Exhibit C in reconsideration is an unfair surprise. However, the information is also not relevant to this case. Nothing in the State's case is dependent on an 'imminent and substantial endangerment'.

4. Exhibit D: Affidavit of William J. Crawford

Mr. Crawford testified extensively at hearing, both on direct and cross examination. The only thing 'newly discovered' is the changes in various funds since the September, 2007 hearing. Complainant does not believe that this should be considered as appropriate 'newly discovered evidence'. Moreover, Crawford's 'opinions' are based on the hearing testimony of Edward Pruim, one of the owners of Respondent Community Landfill Company. The State is denied the opportunity of discovery or cross examination on this new testimony, and is therefore prejudiced. Mr. Crawford's affidavit should be stricken as improper and not considered by the Board[13].

5. Exhibit E: 2002 Memorandum

Exhibit E is clearly improper. This document was not previously disclosed, despite extensive discovery between the parties. Moreover, there is no explanation as to why this 2002 document was 'newly discovered', or why it was unavailable for use at hearing. Exhibit E, and all arguments based on this document, should be stricken.

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[13]Most of the costs of litigating this enforcement case are being born by taxpayers: either of the State or the City of Morris. Because Mr. Crawford's overlate testimony is improper, and to avoid a complete re-hearing on new evidence, Complainant will not stop this case to take additional deposition testimony on Mr. Crawford's 'new opinions'. If Morris honestly believes that providing the required amount of financial assurance is impossible or unreasonable, it should have filed a petition for adjusted standard. In such instance, it would appropriately have the burden of proof in demonstrating impossibility through competent evidence.

Complainant also notes that testimony at hearing from Illinois EPA inspectors showed that the City of Morris was dumping its water treatment sludge (illegally) at the Landfill in the summer of 2007. Complainant's Exhibit 2[14], shows continued dumping of sludge into 2009. Obviously the 2002 memo, if genuine, has no probative value whatsoever, and is therefore improper.

6. Exhibit F: Resolution No. R-99-6

Exhibit F is part of a 1999 resolution by the City of Morris. There is no explanation as to its 'unavailability' prior to hearing, or as to why a reasonable effort could not have resulted in its production at hearing. It is also incomplete, although a full version of this resolution was entered into evidence in one of the Permit Appeals filed by the City of Morris and Community Landfill Company (PCB 01-48/01-49). Complainant therefore believes that the Board can take notice of this late-filed document, although it hardly supports Morris's claims.

V. MORRIS'S SUBSTANTIAL INVOLVEMENT IN LANDFILL OPERATIONS HAS ALREADY BEEN DECIDED BY THE BOARD

Throughout this case, Morris has attempted to portray itself as a passive actor in Landfill operations[15]. It has so argued in its 2005 Cross Motion for Summary judgment, in its 2006 Motion to Reconsider the grant of summary judgment in favor of the State, and in its Post-

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[14]Affidavit of Mark Retzlaff. This affidavit, which shows continued dumping as late as April, 2009, is offered to counter Morris' continued arguments that it was not 'conducting a waste disposal operation'.

[15]In the two permit appeals related to financial assurance, the City of Morris took a much more aggressive position, promising to (jointly with Community Landfill Company) "file an appeal with the Pollution Control Board and prosecute the same through the Illinois court [sic], if necessary....*See:* PCB 01-48/01-49 (April 5, 2001, slip op. at 28). Morris' denial of involvement came only after losing in the Appellate and Supreme Court in 2002.

Hearing Brief. The Board has consistently rejected Morris' arguments, finding that the Morris's "...decision making authority, financial involvement, history of litigation and responsibility for at least one aspect of the site operations, the treatment of leachate, collectively qualifies as 'conducting a waste disposal operation' "[16].

In its Motion, Morris continues to reargue the same points over again. Morris does not provide any "newly discovered evidence" and has not pointed to any errors of interpretation of the law. Complainant does not need to remind the Board of the substantial evidence of Morris's involvement in Landfill operation, but will briefly respond to the gist of Morris argument.

1. Morris Financially Supported Continued Operations

Besides treating leachate at the Landfill at no cost to Community Landfill Company, the City of Morris provided, in its own name, a closure/post-closure surety for 58% of the total financial assurance at the Landfill[17]. The City attempts to downplay this action, claiming that it "...lent its name as principal on a $10.0 million bond"[18]. Morris also claims that "[i]n exchange for the increased bond amount the IEPA agreed to give CLC the SigMod Permit"[19].

The facts show that the City didn't just 'lend its name', it took out a bond for over ten million dollars, incurring the same amount of potential liability on its own behalf. And Illinois EPA did not just "give CLC a permit", it issued a permit to the City of Morris, as owner, and Community Landfill Company, as operator. The permit was issued on application by *both*

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[16]Board order denying Morris's first Motion to Reconsider (June 1, 2006, slip op. at 4)

[17]$10,081,630 out of a required total of $17,427,366

[18]Morris Motion to Reconsider, p. 24

[19]Id.

parties. Without Morris taking on this Bond liability, the SigMod Permit would never have been issued, and the Landfill would have had to shut down. Instead, Morris stepped forward and assumed 58% of the potential liability to keep operations going. Morris's involvement in the financial assurance obligations was substantial, and in accordance with their status as an 'operator' of the Landfill.

2. Involvement In Permit-Related Litigation

Beginning in October, 1999, Morris began challenging Illinois EPA decisions. Eventually, it joined in four Landfill permit appeals filed with the Board[20]. Each of these permit appeals were filed by the City of Morris and Community Landfill Co. for the purpose of establishing the conditions under which they would be allowed to conduct waste disposal operations at the Landfill.

Morris was not being 'lead' by Community Landfill Company in these appeals. In each instance, Morris was represented by their own attorneys. In each case, Morris was taking an independent legal position as to the applicability of the regulations to Landfill operations. There is no evidence that Morris was 'compelled' to defend CLC's position: in every instance it had the opportunity to stake out its own position, based on its evaluation of its own interests.

Two appeals, PCB 01-48/01-49 and PCB 01-170 proceeded to Board hearings, each of three full days. In both cases, Morris filed motions to reconsider the Board's decision. In both cases, its motions were denied. Following denial of its Motion to Reconsider in PCB 01-170, CLC and Morris appealed to the Appellate Court, 3d District, and subsequently to the Illinois

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[20]PCB 00-065/00-66 (filed October 5, 1999); PCB 00-118 (filed March 8, 2000); PCB 01-48/01-49 (filed September 7, 2000); PCB 01-170 (filed August 16, 2001).

Supreme Court. Throughout, Morris was represented by its own counsel.

In these four permit appeals, Morris sought to establish the conditions under which it, and CLC, would conduct waste disposal operations at the Landfill. The Board correctly recognized that the City of Morris is an 'operator' of the Landfill.

3. Morris's Continued Waste Disposal Activities

In addition to its extensive involvement in financial, permitting and litigation, Morris has *literally* 'conducted a waste disposal operation' by continuing to dump its waste in Parcel A. Morris has done so despite the complete absence of financial assurance, and despite the fact that there is no operating permit in place[21].

At the 2007 hearing, Illinois EPA inspector Mark Retzlaff testified to fresh dumping of Morris's wastewater treatment sludge on Parcel A of the Landfill. This was observed during an inspection on June 26, 2007[22]. As shown by Complainant's Exhibit 2, he also observed waste water treatment sludge at Parcel A on April 29, 2009, and personally witnessed a City of Morris truck dumping material on Parcel B[23].

Morris tacitly admits this continued dumping in its Motion. On page 16, it states that "...the Order effectively closes the landfill for operations" and on the following page states that "[i]f the landfill is permitted to operate, the majority of those funds will go to

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[21]In PCB 01-170 the Respondents unsuccessfully appealed the denial of an operating permit for Parcel A. As testified to by Christine Roque, Illinois EPA has issued no operating permit for Parcel A since that time. Tr., 9/11/07, p. 219.

[22]Tr., 9/11/07, p. 58

[23]Complainant's Exhibit 2, paragraphs 10-13. Exhibit 2 is offered as newly discovered evidence, but also to counter Morris' repeated claim of passive land ownership.

CLC....". Unbelievably, Morris argues for continued operations, despite the fact that:

1) Parcel B is overheight and 13 years overdue for closure;

2) There is no financial assurance for closure or post-closure care; and

3) No operating permit is in place for dumping of any waste whatsoever.

Clearly the Board's findings that Morris conducted waste disposal operations, and was in fact an 'operator' of the Landfill, were correct.

VI. THE BOARD'S REMEDY IS NECESSARY AND APPROPRIATE

1. The Board Correctly Ordered Dumping to Cease Immediately

The Respondents were notified by Illinois EPA of the absence of compliant financial assurance in November, 2000, but still have not complied with the financial assurance regulations. Instead they make frivolous arguments about the Bonds 'continued validity' and false statements regarding Illinois EPA's rejection of their 2005 and 2007 cost estimates. There is no operating permit for the disposal of waste at the Landfill. However, the Respondents have continued dumping illegally through at least April 29, 2009. The Board's direction that dumping stop immediately is necessary to keep a bad situation from getting worse, and was required to correct ongoing violations. The relief granted by the Board is therefore appropriate.

2. The Penalty Assessed Against Morris is Necessary to Accomplish the Purposes of the Act

The Board awarded Complainant only 27% of the civil penalty it had requested against Morris. Complainant had argued that, because owners and operators are jointly liable for providing financial assurance, the economic benefit of noncompliance ("BEN") from failure to provide financial assurance should also be recovered against Morris. In recognition of the City's

municipal status, the Board only assessed a penalty in the amount of $399,308.98, representing recovery of dumping royalties from 2001 through 2005, a period when the Respondents were in knowing violation, and should not have been accepting waste.

Using 'newly discovered evidence' (to which Complainant has objected), Morris claims that it spent more money on engineering fees and leachate treatment than it gained in royalties, and therefore did not make a "profit"[24]. This argument is frivolous, and totally misrepresents the policy behind the recovery of BEN in enforcement cases.

First, the claimed engineering costs and the leachate treatment costs are not related to the ongoing violations. Since 1974, the City of Morris has applied for and obtained at least 50 Illinois EPA Permits for the Landfill[25]. All of these permits contained requirements and conditions. The City's current permit contains numerous testing, monitoring, and maintenance requirements, which would certainly require the expenditure of funds on engineering and maintenance [26].

Also, both the SigMod permits and Board regulations require that leachate from the Landfill be treated. The SigMod Permit for the Landfill requires leachate treatment for 100 years after closure. In an effort to secure approval of the SigMod application, Morris and CLC agreed that the City would treat this leachate at no cost.

The requirements of testing, maintenance, reporting, and leachate treatment (and the

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[24]Morris Motion, p. 26

[25]Tr., 9/11/07, p. 214

[26]See: Complainant's Hearing Exhibit No. 12, (2000 SigMod Permits issued to Morris and CLC for Parcels A & B of the Landfill).

associated costs) would have been the same whether or not Morris continued to cause and allow dumping after November, 2000. However, had Morris not allowed dumping to continue, it would not have received $399,308.98 in dumping royalties. By causing and allowing dumping to continue in violation of the financial assurance regulations, Morris conducted dumping operations in violation of Board regulations, and thereby violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2008). Recovery of the economic benefit of noncompliance requires recovery from Morris of at least $399,308.98 through civil penalty[27].

Recovery of the economic benefit of noncompliance is required under the Act. However, in this case, it also serves to deter violations by other landfill owners. There would be no deterrence if landfill owners were allowed to keep royalties generated while continuing to operate in knowing noncompliance.

In his concurring opinion, Board Member Blankenship expressed concern on the hardship imposed on City taxpayers by imposition of the Civil Penalty. This concern is understandable, and large penalties against municipalities are, thankfully, rare. Unfortunately, Morris has long demonstrated a disregard for the requirements of the Board landfill regulations and the Act which now threatens to impact the resources of all Illinois taxpayers.

When landfill regulations were significantly strengthened in the early 1990's, Morris had the opportunity to close the Landfill under the less stringent regulations then in place. It decided to continue operations. Instead of working with the State to address the serious problems which later arose, it joined forces with CLC in opposition to permit conditions which had been required

[27]The Board should note that Complainant only requested recovery of royalties through 2005. Morris' arguments complaining of the Board's order stopping waste disposal suggests that royalties continued after that date.

by Illinois EPA for the protection of local residents and the environment. Morris litigated in concert with CLC in four Permit appeals, seeking review to and through the Illinois Supreme Court. After losing on these issues, it did nothing to correct the financial assurance violations. However, it continued to allow illegal dumping at its landfill, and continued to accept dumping royalties.

Through four permit appeals and six years of this enforcement case, the State of Illinois has expended considerable resources in litigation. However, the State is not seeking recovery of these costs, despite its right to do so pursuant to 415 ILCS 5/42(f) (2008). Nor is it seeking recovery of all royalties, only those from 2001 through 2005. However, the State continues to believe that recovery of at least this measure of the economic benefit of noncompliance from Morris is both appropriate and necessary to accomplish the purposes of the Act.

3. Correcting the Violations Requires that the Respondents Post $17,427,366 in Financial Assurance, and Update their Cost Estimate Without Further Delay

The Board properly ordered the Respondents, jointly and severally to post financial assurance according to the most recent approved cost estimate: $17,427,366.00, and in a form compliant with 35 Ill. Adm. Code 811.700 *et seq.* Posting at least this much financial assurance is a necessary first step to correct the ongoing violations.

There is currently no financial assurance of any kind for closure and post-closure of the Landfill. At hearing Morris argued that it 'could have' put up a local government guarantee for at least part of the required amount. However, it has never done so. Without the Board's order, enforceable in court, Morris is unlikely to either post financial assurance in any amount, or accept its responsibilities as Landfill owner.

Morris and CLC were found in violation on February 16, 2006, but have taken no steps to provide any assurance that the Landfill will ever be properly closed, or any assurance that Illinois taxpayers will not be stuck with closure and long-term care. The Board's order that financial assurance be provided within 60 days is the minimum necessary to assign this responsibility where it is due: on the owners and operators who profited from Landfill operations over many years.

Equally reasonable is the Board's requirement that the financial assurance be updated within 120 days. The original cost estimate from the Respondent's SigMod application has not been effectively updated since 1999. Annual updates are required by 35 Ill. Adm. Code Sections 811.701 and 811.705. Annual updates are also required under Section X of the Respondents' Sigmod Permits. The Board's June 18, 2009 Order did nothing but enforce the law as it stands.

4. John Enger's and William Crawford's "Newly Discovered Evidence" are Baseless and Unreliable

As already noted, the State objects to argument based on Morris's Exhibit's C & D, the Affidavits of John Enger and William Crawford. Mr. Enger, though originally named, did not testify at hearing. Mr. Crawford testified that the City was in a strong financial position[28]. As reported it their 2006 audit, the City had net assets of $35 Million[29].

Despite having been found in violation for failure to provide financial assurance in early 2006, at hearing Mr. Crawford testified that the City planned to go forward with land acquisition

[28]Tr., 9/12/07, p. 54

[29]Tr., 9/12/07, p. 56

and capital project expenditures totaling approximately $30 Million[30]. The City had a legal debt margin limit of over $18 Million, but was well below its limit[31].

Mr. Crawford's new "opinion" that the City cannot afford to provide financial assurance, is totally based on his "assumption" that surety bonds would require "80-100% collateralization". He provided no such testimony at hearing. And he provides no facts to support this opinion is his Affidavit. He does not state that the City has contacted any bonding companies, or sought surety bonds or any other type of financial assurance. Obviously, the City *never even checked.*

As Morris admits in its Motion, this "assumption" is totally based on the hearing testimony of Edward Pruim, co-owner of CLC, in which he testifies about what it would have taken to replace the Frontier Bonds[32]. However, Edward Pruim was not seeking bonds on behalf of the City, or using the City's credit position, but on behalf of CLC. By that time, CLC had been decapitalized by its owners. As a Subchapter S corporation with long term liabilities, Edward Pruim and Robert Pruim had allowed the financial condition of CLC to worsen substantially. Mr. Pruim stated that "there was minimal income...there was a little revenue, but that was..it was hard making our payments"[33]. They had numerous outstanding bills that they

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[30]Tr., 9/12/07, pp. 32-33

[31]The 2006 year end report showed only $1.6 MM in debt, but Mr. Crawford reported that another $7.4MM had been used up in 2007, resulting in a debt of approximately $10MM as of the date of hearing. Tr., 9/12/07, pp. 59-60.

[32]Morris Motion, p.17. Morris also cites the testimony of their engineer witness, who agreed that full collateralization might be required if bonds were going to be called 'immediately'. This testimony is complete speculation, and accordingly, worthless.

[33]Tr., 9/12/07, p. 163.

could not pay, and there was nothing "left over" for financial assurance[34]. The company had gone from 150 operators to only seven or eight employees[35]. It is unsurprising, based on the financial condition of CLC, that surety companies would refuse to expose themselves to millions of dollars of CLC's liability without substantial collateral[36].

Incredibly, Morris used this testimony regarding CLC's attempts as the sole basis for Enger and Crawford's 'newly discovered evidence' that the City of Morris would also be required post almost all of the financial assurance amount as collateral to obtain bonds[37]. It is impossible to believe that the City of Morris, with the full faith and credit of Morris's assets and all of its statutory taxing authority, would also be required to post "80-100% collateral"[38]. Crawford's conclusions are clearly an invention. Neither Enger nor Crawford checked on financial assurance bonds on behalf of the City. Neither reviewed all the possible alternatives for financial assurance. They simply relied on the testimony of an officer of a company they now claim is 'insolvent'—the least reliable and least credit-worthy source possible--- as a benchmark for their opinions on the potential bonding requirements to the City of Morris. These opinions, though convenient for the City's argument, are totally unreliable.

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[34]Tr., 9/12/07, p. 164

[35]Tr., 9/12/07, p. 163

[36]Complainant also notes that CLC had been able to secure more than $17MM of Frontier bonds in 1999 and 2000 using 'cash collateral' of only $200,000, or 1.2% of the principal amount [Tr., 9/12/07, p. 166], and paid premiums of about $200,000 annually for this coverage [Tr., 9/12/07, p. 161].

[37]Morris Motion, p. 17

[38]It seems more logical that the City's collateral requirements would be at or less than the 1.2% *previously* obtained by CLC.

Fortunately, Illinois law provides a statutory remedy to ensure that the City will be able to comply with the Board's June 18, 2009 Order. There is no evidence that the City of Morris has reached its taxing limit (in fact all the evidence shows that the City is in very good financial condition). But even if it has reached its limit, Illinois Law allows for a local government to issue an additional tax levy to pay the costs of "insurance and risk-management programs"[39]. Therefore, there is no question that the City of Morris will be able to provide compliant financial assurance, in the form of an insurance policy or surety, to satisfy the requirements of the Act, regulations, and the requirements of the Board's June 18, 2009 Order.

Finally, if, after diligently checking on all the options for providing financial assurance in the amount required by the regulations and the Board's June 18, 2009, Morris reasonably believes that it is unable to meet the requirements of the financial assurance regulations, it can take advantage of the regulatory relief mechanisms contained in 35 Ill. Adm. Code Part 104. It can provide such evidence as it believes supports its position, subject to appropriate scrutiny by Illinois EPA and the Board. This relief has been available the Morris throughout the nine year period of its noncompliance, and will continue to be available. However, Morris will have to decide that it wants to work 'within the system' instead of continuing to deny its responsibilities.

VII. MORRIS'S REQUEST TO FREEZE COLLECTION OF FRONTIER BONDS

The Board should summarily reject Morris's request that the State be prohibited from prosecuting its claim against Frontier Insurance Company in Rehabilitation. The Board has already directed that funds recovered (if any are ever recovered) be credited against the required

[39]745 ILCS 10/9-107 (Copy attached as Exhibit 3)

amount of financial assurance. Pursuant to 415 ILCS 5/21.1(c) (2008), funds recovered on these claims are to be deposited into the Landfill Closure and Post-Closure Fund for use in closure of this Landfill. Moreover, it is questionable whether the Board has the authority to order the State to stop its action on the bond claims. However, the Act ensures that any funds recovered will be used for the appropriate purpose. Since no financial assurance is now in place, anything recovered will be very helpful.

VIII. CONCLUSION

Morris has failed to satisfy the standards necessary for a Motion to Reconsider, and the Board must deny Morris' request. Morris fails to point out errors in the Board's previous application of the law, and simply continues to repeat the arguments rejected by the Board during the Summary Judgment phase of this case, and after hearing on remedy.

Nor has Morris brought forward any "newly discovered evidence" that would justify a modification of the Board's June 18, 2009 Order. Morris Motion for Reconsideration of the Pollution Control Board's Order of June 18, 2009 must be denied.

RESPECTFULLY SUBMITTED

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FROM: Christine Roque

SENDER'S PHONE NUMBER: 217-524-3299

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EXHIBIT
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1

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ELGIN – 595 South State, Elgin, IL 60123 – (847) 608-3131 • PEORIA – 5415 N. University St., Peoria, IL 61614 – (309) 693-5463
BUREAU OF LAND - PEORIA – 7620 N. University St., Peoria, IL 61614 – (309) 693-5462 • CHAMPAIGN – 2125 South First Street, Champaign, IL 61820 – (217) 278-5800
SPRINGFIELD – 4500 S. Sixth Street Rd., Springfield, IL 62706 – (217) 786-6892 • COLLINSVILLE – 2009 Mall Street, Collinsville, IL 62234

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 – (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 – (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

OWNER
City of Morris
Attn: Mayor Richard Kopczick
320 Wauponsee Street
Morris, Illinois 60450

OPERATOR
Community Landfill Company
Attn: Mr. Robert J. Pruim
1501 S. Ashley Road
Morris, Illinois 60450

DRAFT

Re: 0630600001 -- Grundy County
Community Landfill – Parcel A
Log No. 2005-157
Permit File

Dear Mayor Kopczick and Mr. Pruim:

This will acknowledge receipt of your application for a significant modification of the above referenced solid waste management site dated April 28, 2005 and May 26, 2005 and received by the Illinois EPA on April 29, 2005 and May 27, 2005, respectively. Also, additional information dated November 22, 2005 and July 12, 2007received by the Illinois EPA on November 23, 2005 and July 13, 2007, respectively.

Your permit application, referenced as Application Log No. 2005-157 is denied. Application Log No. 2005-157 requests the renewal of Permit No. 2000-155-LFM.

You have failed to provide proof that granting this permit would not result in violations of the Illinois Environmental Protection Act (Act). Section 39(a) of the Act [415 ILCS 5/39(a)] requires the Illinois EPA to provide the applicant with specific reasons for the denial of permit. The following reason(s) are given:

(Denial points 1-8 are outstanding deficiencies from the November 22, 2005 addendum that had not been met.)

1) No operational plan expected during the next permit term was submitted to support the cost estimates.

2) Section 811.104 (c) and special condition I.11 requires all stakes and monument marking property boundaries and permit areas be inspected annually and surveyed no less than once per 5 years by a professional land surveyor. No 5- year monument survey submitted with the application.

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3) Cost estimate on leachate monitoring needs to be updated to reflect the current numbers of monitoring points and sampling frequency approved by Modification No. 5 to Permit No. 2000-155-LFM.

4) As of review date of 7/26/06, the following outstanding permit special conditions have not been met.:

a. Condition I.11 requires all stakes and monument marking property boundaries and permit areas be inspected annually and surveyed no less than once per 5 years by a professional land surveyor. No 5- year monument survey submitted with the application.

b. Condition VII.6 requires quarterly and annual leachate monitoring in accordance with the schedule in VIII.17. No leachate data submitted since 4th qtr of 2001.

c. Condition VII.7 requires CQA report on the construction of the leachate extraction system (E-W lateral trench and 2 vertical extraction wells L117 and L118 and other related leachate management and collection appurtenances, force main and storage tank) in accordance with condition I.2 and I.9 to be submitted to the IEPA no later than Feb. 26, 2002. (per PCB 01-48). No CQA report has been filed.

d. Condition VII.9 requires significant modification application for the evaluation of the adequacy of the approved leachate extraction system (N-S lateral trench and 2 vertical extraction wells) to be submitted no later than August 1, 2002. No application has been filed.

e. Condition VIII.22 requires the permittee to submit well construction reports for the Remedial Action Wells T2 and T4 no later than April 15, 2002. No report could be found in Agency files. These must be submitted.

f. Condition VIII.23 (a-f) requires the permittee to test the wells T2 and T4 and submit the results of that testing to the Agency as an application no later than May 1, 2003. No application has been received. These results must be submitted.

g. Condition IX.9 results from gas monitoring to be submitted with the annual report. The last annual report was 2001 data submitted in May 2002.

h. Condition XI.1 requires annual certification be submitted by May 1 of each year. The last certification was 2001 data submitted in May 2002.

i. Condition XI.2 requires annual report be submitted by May 1 of each year. The last annual report was 2001 data submitted in May 2002.

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5. The November 22, 2005 addendum states an assessment will be made following collection and analyses of data for four (4) consecutive quarters, specifically following the 2nd Quarter 2006 event. At such time, an annual report will be prepared as required by Conditions VIII.19, VIII.24, and IX.9 of Permit No. 2000-155-LFM, and will be submitted to the Illinois EPA on or before July 15, 2006. The annual report will include a summary of groundwater and leachate monitoring data for the four (4) consecutive quarters; the results of the landfill gas monitoring data for corresponding twelve (12) consecutive months; groundwater potentiometric flow maps and calculated hydraulic gradients for the four (4) quarters; an assessment of seasonal and/or temporal variation in groundwater quality; statistical summaries; and analysis of any trends. The Illinois EPA is not in receipt of this report.

6. 35 Ill. Adm. Code 813.304 states:

a) The applicant shall conduct a new groundwater impact assessment in accordance with 35 Ill. Adm. Code 811.317 if any of the following changes in the facility or its operation will result in an increase in the probability of exceeding a groundwater standard beyond the zone of attenuation.

1) New or changed operating conditions;
2) Change in the design and operation of the liner and leachate collection systems;
3) Changes due to more accurate geological data;
4) Changes due to modified groundwater conditions due to offsite activity;
5) Changes due to leachate characteristics

These requirements must be addressed with recent and representative groundwater and leachate data. The addendum, dated November 22, 2005, states a new groundwater impact assessment will be performed in accordance with 35 Ill. Adm. Code 811.317 following the collection and analyses of groundwater and leachate monitoring data for four (4) consecutive quarters. A report will be prepared documenting the analysis and findings of the new groundwater impact assessment and will be submitted on or before July 15, 2006. The Illinois EPA has not received this report. This data should be submitted as an addendum to Application Log No. 2005-157.

7. The proposed work plan provided in the May 26, 2005 addendum did not provide an adequate assessment of groundwater and leachate conditions at the facility. At a minimum, the work plan should include the following:

- One (1) year of List G1 groundwater monitoring encompassing four (4) consecutive quarters
- Two (2) quarters (semi-annual) of List G2 parameters

(b) Groundwater treatment costs for the remediation plan were not provided in the revised cost estimates. Groundwater treatment operation and maintenance costs were not provided.

(c) Condition VIII.25 states the deep well system as part of the Remediation Plan as referenced in Condition VIII.23 must be maintained for the 100 year post-closure care period as proposed on pages 15-16 of Attachment 15 (Closure Plan, Post-Closure Care Plan and Cost Estimates) of the May 8, 2000 Application Log No. 2000-155. Cost estimates for post-closure care should include the requirements of this Condition.

Within 35 days after the date of mailing of the Illinois EPA's final decision, the applicant may petition for a hearing before the Illinois Pollution Control Board to contest the decision of the Illinois EPA, however, the 35-day period for petitioning for a hearing may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Illinois EPA within the 35-day initial appeal period.

Should you wish to reapply or have any questions regarding this application, please contact Christine Roque or Joshua Rilying of my staff at 217/524-3300.

Sincerely,

DRAFT

Steve F. Nightingale, P.E.
Manager, Permit Section
Bureau of Land

SFN:CMR:morrisA\2005-157 draft denial 3: 10/22/07

cc: Devin A. Moose, P.E.- Shaw Environmental, Inc.
Mr. Robert J. Pruim - Community Landfill Company

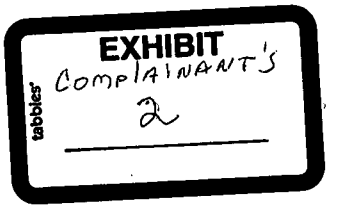
AFFIDAVIT

I, MARK RETZLAFF, being first duly sworn upon oath, depose and state:

1. I am employed by the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, ("Illinois EPA") as an Environmental Protection Specialist in the Field Operations Section, Bureau of Land. My office is located at 9511 W. Harrison Street, Des Plaines, Illinois. Under the direction of my supervisors, I am responsible for the investigation of potential land pollution violations.

2. One of my duties in the Field Operations Section is to conduct inspections of sanitary landfills to determine compliance with the Illinois Environmental Protection Act ("Act"), Illinois EPA and Illinois Pollution Control Board regulations, and the terms and conditions of Illinois EPA-issued landfill permits.

3. Community Landfill Company is the permitted operator of the Morris Community Landfill, located in Morris, Grundy County, Illinois("Landfill"). The Landfill is divided into two parts, with "Parcel A", on the east side of Ashley Road, and "Parcel B" on the west side of Ashley Road. The permitted owner of the Landfill is the City of Morris.



4. Since 2002, I have been responsible for inspecting the Morris Community Landfill. I have personally inspected the Landfill on at least 15 occasions.

5. On September 11, 2007, I testified at hearing in this matter. Included in my testimony were my observations of continued dumping of general refuse and sludge from the City of Morris water treatment plant on June 26, 2007, and additional general refuse observed on August 29, 2007.

6. On June 24, 2008, I inspected the Landfill and observed freshly dumped waste on parcel A. The waste consisted of asphalt shingles, street sweepings, and assorted debris.

7. On April 29, 2009, I again inspected the Landfill. Upon arriving I met with James Pelnarsh, Site Manager for Community Landfill Company.

8. On April 29, 2009, Mr. Pelnarsh told me that the Landfill was accepting contaminated soils from an excavation project at Columbia College in Chicago. I reviewed the records for this dumping and noted that between February 17, 2009 and April 23, 2009, the Landfill had accepted at least 194 truckloads of contaminated soil from this project.

9. Mr. Pelnarsh showed me a copy of a manifest for loads from the Columbia College excavation project which had been

disposed at the Landfill on April 23, 2009. I was able to determine from the manifest that the material being dumped was "special waste" as that term is defined in the Board's waste disposal regulations.

10. On April 29, 2009, Mr. Pelnarsh told me that the City of Morris was continuing to dump waste at the Landfill. He described the City waste as consisting of wastewater treatment sludge, ditch cleanout waste, and street sweepings.

11. On April 29, 2009, I inspected Parcel A of the Landfill, and observed that the elevation was substantially higher than I had observed on June 24, 2008. I also observed an active dumping area with approximate dimensions 150' by 100'. In this area I observed a variety of waste, including wastewater treatment sludge, wood demolition debris, shingles, carpeting, tires, plastic, and other waste which appeared to be partially burned and was consistent with fire-related debris.

12. On April 29, 2009, I observed a City of Morris truck (No. 329) come to Parcel B and dump a load of material.

13. I have personal and direct knowledge of the facts stated herein, and if called as a witness at a hearing in this matter, could competently testify thereto.

FURTHER AFFIANT SAYETH NOT.

MARK RETZLAFF

Subscribed and sworn before me
this 1st day of June, 2009

Notary Public

NOTARY PUBLIC OFFICIAL SEAL STATE OF ILLINOIS
DARLENE F. ARMSTRONG-BARNES
MY COMMISSION EXPIRES
NOVEMBER 15, 2010

C
Formerly cited as IL ST CH 85 ¶ 9-107

Effective: June 23, 2008

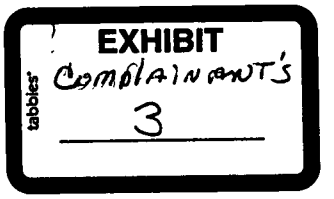
West's Smith-Hurd Illinois Compiled Statutes Annotated Currentness
Chapter 745. Civil Immunities
Act 10. Local Governmental and Governmental Employees Tort Immunity Act (Refs & Annos)
Article IX. Payment of Claims and Judgment (Refs & Annos)
→ **10/9-107. Policy; tax levy**

§ 9-107. Policy; tax levy.

(a) The General Assembly finds that the purpose of this Section is to provide an extraordinary tax for funding expenses relating to (i) tort liability, (ii) liability relating to actions brought under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or the Environmental Protection Act, but only until December 31, 2010, (iii) insurance, and (iv) risk management programs. Thus, the tax has been excluded from various limitations otherwise applicable to tax levies. Notwithstanding the extraordinary nature of the tax authorized by this Section, however, it has become apparent that some units of local government are using the tax revenue to fund expenses more properly paid from general operating funds. These uses of the revenue are inconsistent with the limited purpose of the tax authorization.

Therefore, the General Assembly declares, as a matter of policy, that (i) the use of the tax revenue authorized by this Section for purposes not expressly authorized under this Act is improper and (ii) the provisions of this Section shall be strictly construed consistent with this declaration and the Act's express purposes.

(b) A local public entity may annually levy or have levied on its behalf taxes upon all taxable property within its territory at a rate that will produce a sum that will be sufficient to: (i) pay the cost of insurance, individual or joint self-insurance (including reserves thereon), including all operating and administrative costs and expenses directly associated therewith, claims services and risk management directly attributable to loss prevention and loss reduction, legal services directly attributable to the insurance, self-insurance, or joint self-insurance program, and educational, inspectional, and supervisory services directly relating to loss prevention and loss reduction, participation in a reciprocal insurer as provided in Sections 72, 76, and 81 of the Illinois Insurance Code, or participation in a reciprocal insurer, all as provided in settlements or judgments under Section 9-102, including all costs and reserves directly attributable to being a member of an insurance pool, under Section 9-103; (ii) pay the costs of and principal and interest on bonds issued under Section 9-105; (iii) pay judgments and settlements under Section 9-104 of this Act; (iv) discharge obligations under Section 34-18.1 of the School Code; (v) pay judgments and settlements under the federal Comprehensive Environmental Response, Compensation, and Liab-



ility Act of 1980 and the Environmental Protection Act, but only until December 31, 2010; (vi) pay the costs authorized by the Metro-East Sanitary District Act of 1974 as provided in subsection (a) of Section 5-1 of that Act (70 ILCS 2905/5-1); and (vii) pay the cost of risk management programs. Provided it complies with any other applicable statutory requirements, the local public entity may self-insure and establish reserves for expected losses for any property damage or for any liability or loss for which the local public entity is authorized to levy or have levied on its behalf taxes for the purchase of insurance or the payment of judgments or settlements under this Section. The decision of the board to establish a reserve shall be based on reasonable actuarial or insurance underwriting evidence and subject to the limits and reporting provisions in Section 9-103.

If a school district was a member of a joint-self-health-insurance cooperative that had more liability in outstanding claims than revenue to pay those claims, the school board of that district may by resolution make a one-time transfer from any fund in which tort immunity moneys are maintained to the fund or funds from which payments to a joint-self-health-insurance cooperative can be or have been made of an amount not to exceed the amount of the liability claim that the school district owes to the joint-self-health-insurance cooperative or that the school district paid within the 2 years immediately preceding the effective date of this amendatory Act of the 92nd General Assembly.

Funds raised pursuant to this Section shall only be used for the purposes specified in this Act, including protection against and reduction of any liability or loss described hereinabove and under Federal or State common or statutory law, the Workers' Compensation Act, the Workers' Occupational Diseases Act and the Unemployment Insurance Act. Funds raised pursuant to this Section may be invested in any manner in which other funds of local public entities may be invested under Section 2 of the Public Funds Investment Act. Interest on such funds shall be used only for purposes for which the funds can be used or, if surplus, must be used for abatement of property taxes levied by the local taxing entity.

A local public entity may enter into intergovernmental contracts with a term of not to exceed 12 years for the provision of joint self-insurance which contracts may include an obligation to pay a proportional share of a general obligation or revenue bond or other debt instrument issued by a local public entity which is a party to the intergovernmental contract and is authorized by the terms of the contract to issue the bond or other debt instrument. Funds due under such contracts shall not be considered debt under any constitutional or statutory limitation and the local public entity may levy or have levied on its behalf taxes to pay for its proportional share under the contract. Funds raised pursuant to intergovernmental contracts for the provision of joint self-insurance may only be used for the payment of any cost, liability or loss against which a local public entity may protect itself or self-insure pursuant to Section 9-103 or for the payment of which such entity may levy a tax pursuant to this Section, including tort judgments or settlements, costs associated with the issuance, retirement or refinancing of the bonds or other debt instruments, the repayment of the principal or interest of the bonds or other debt instruments, the costs of the administration of the joint self-insurance fund, consultant, and risk care management programs or the costs of insurance. Any surplus returned to the local public entity under the terms of the intergovernmental contract shall be used only for purposes set forth in subsection (a) of Section 9-103 and Section 9-107 or for abatement of property taxes levied by the local taxing entity.

Any tax levied under this Section shall be levied and collected in like manner with the general taxes of the entity and shall be exclusive of and in addition to the amount of tax that entity is now or may hereafter be authorized to levy for general purposes under any statute which may limit the amount of tax which that entity may levy for general purposes. The county clerk of the county in which any part of the territory of the local taxing entity is located, in reducing tax levies under the provisions of any Act concerning the levy and extension of taxes, shall not consider any tax provided for by this Section as a part of the general tax levy for the purposes of the entity nor include such tax within any limitation of the percent of the assessed valuation upon which taxes are required to be extended for such entity.

With respect to taxes levied under this Section, either before, on, or after the effective date of this amendatory Act of 1994:

(1) Those taxes are excepted from and shall not be included within the rate limitation imposed by law on taxes levied for general corporate purposes by the local public entity authorized to levy a tax under this Section.

(2) Those taxes that a local public entity has levied in reliance on this Section and that are excepted under paragraph (1) from the rate limitation imposed by law on taxes levied for general corporate purposes by the local public entity are not invalid because of any provision of the law authorizing the local public entity's tax levy for general corporate purposes that may be construed or may have been construed to restrict or limit those taxes levied, and those taxes are hereby validated. This validation of taxes levied applies to all cases pending on or after the effective date of this amendatory Act of 1994.

(3) Paragraphs (1) and (2) do not apply to a hospital organized under Article 170 or 175 of the Township Code, under the Town Hospital Act, or under the Township Non-Sectarian Hospital Act and do not give any authority to levy taxes on behalf of such a hospital in excess of the rate limitation imposed by law on taxes levied for general corporate purposes. A hospital organized under Article 170 or 175 of the Township Code, under the Town Hospital Act, or under the Township Non-Sectarian Hospital Act is not prohibited from levying taxes in support of tort liability bonds if the taxes do not cause the hospital's aggregate tax rate from exceeding the rate limitation imposed by law on taxes levied for general corporate purposes.

Revenues derived from such tax shall be paid to the treasurer of the local taxing entity as collected and used for the purposes of this Section and of Section 9-102, 9-103, 9-104 or 9-105, as the case may be. If payments on account of such taxes are insufficient during any year to meet such purposes, the entity may issue tax anticipation warrants against the current tax levy in the manner provided by statute.

CREDIT(S)

Laws 1965, p. 2983, § 9-107, eff. Aug. 13, 1965. Amended by P.A. 80-1341, § 1, eff. Aug. 11, 1978; P.A. 81-164, § 1, eff. Jan. 1, 1980; P.A. 82-783, Art. IV, § 20, eff. July 13, 1982; P.A. 83-718, § 1, eff. Sept. 23,

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 5th day of August, 2009, the foregoing Response to the City of Morris's Motion for Reconsideration, and Notice of Filing, upon the persons listed below by first class mail.

CHRISTOPHER GRANT

City of Morris
c/o Mr. Charles Helsten
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Rockford, Illinois 61101

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Morris, Illinois 60450

Community Landfill Co.
c/o Mr. Mark LaRose
LaRose & Bosco
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Chicago, Illinois 60601

Community Landfill Co.
c/o Ms. Clarissa Cutler
Attorney at Law
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Chicago, Illinois 60601

Mr. Bradley P. Halloran
Illinois Pollution Control Board
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Chicago, Illinois 60601