

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,,)

Complainant,)

v.)

PCB No. 03-191

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

Respondents.)

NOTICE OF FILING

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

Please take notice that on August 13, 2009, the undersigned electronically filed the

**CITY'S MOTION FOR AN EXTENSION OF TIME TO REPLY TO THE
STATE'S RESPONSE TO THE CITY'S MOTION FOR
RECONSIDERATION**

with the Illinois Pollution Control Board, 100 West Randolph Street, Chicago, Illinois 60601.

Dated: August 13, 2009

Respectfully submitted,

On behalf of the CITY OF MORRIS

/s/ Charles F. Helsten

One of Its Attorneys

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

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

Respondents.

PCB No. 03-191

**CITY'S MOTION FOR AN EXTENSION OF TIME TO REPLY TO THE STATE'S
RESPONSE TO THE CITY'S MOTION FOR RECONSIDERATION**

NOW COMES the Respondent, CITY OF MORRIS, by and through its attorneys, HINSHAW & CULBERTSON, LLP, pursuant to 35 Ill.Adm.Code 101. 500(e) and 35 Ill.Adm.Code 101.522, and requests a short extension of time in which to reply to the Response that was filed by the Attorney General's office (hereinafter "the State") in opposition to the City's Motion for Reconsideration, stating as follows:

1. The City filed a Motion for Reconsideration on July 22, 2009, seeking reconsideration of the Board's June 18, 2009 Order.
2. On August 5, 2009, the State filed a 19-page Response brief that requests the imposition of sanctions against the City and levels new allegations of purported illegal conduct by the City.
3. In addition to raising new allegations of illegal conduct by the City, and requesting sanctions, the State's Response brief tenders the affidavit of State employee Mark Retzlaff, in which Retzlaff offers hearsay accusations against the City which are attributed to an agent of a hostile entity, Community Landfill Company, whose

interests are adverse to those of the City, and against whom the City has filed a complaint in litigation before the Thirteenth Judicial Circuit (Case No. 06 CH 184).

4. The Retzlaff affidavit also offers testimony that is contrary to the sworn testimony Retzlaff gave in the proceedings before this Board.

5. The City will suffer material prejudice if it is prevented from filing a Reply to the State's Response brief, including the Retzlaff affidavit, and the City will accordingly, pursuant to 35 Ill.Adm.Code 101.500(e), seek leave to file a Reply. With the instant motion, the City requests an extension of time in which to prepare and file its Request for Leave to File a Reply.

6. On the day the State filed its Response to the City's Motion for Reconsideration, the State also filed a motion requesting a two week extension of time in which to file its Response to the Motion for Reconsideration filed by CLC, citing attorney vacation conflicts and the need for additional time to review the issues raised in CLC's 19 page memorandum of law.

7. Like the State, counsel for the City also faces vacation conflicts this month (August).

8. Lead counsel for the City, Attorney Charles F. Helsten, left for a previously scheduled vacation on August 6, 2009, prior to receiving a copy of the State's 19-page Response brief (plus 12 pages of exhibits), and did not return to the office until August 13, 2009. Accordingly, Attorney Helsten was unavailable to provide meaningful input in the preparation of a reply during the first seven (7) days of the fourteen (14)

days available under 35 Ill.Adm.Code 101.500(e) to file a Request for Leave to File a Reply. Attorney Helsten's Affidavit is attached hereto as Exhibit A.

9. Attorney Nicola Nelson, who was the co-author of the City's Motion for Reconsideration, was out of state on a previously scheduled vacation from August 6, 2009 to August 10, 2009, and so was also unavailable for a substantial portion of the time allowed under the Rules for preparation of a reply. Attorney Nelson's Affidavit is attached hereto as Exhibit B.

10. Appellate co-counsel Nancy G. Lischer, who co-authored the Motion for Reconsideration, and whose comprehensive knowledge of the record in this matter makes her indispensable, is engaged in work on other pressing matters, which has left her largely unavailable to assist with preparation of a reply to the State's Response. Attorney Lischer's Affidavit is attached hereto as Exhibit C.

11. This request by the City for an extension of ten (10) days in which to file its Section 811.500(e) Motion for Leave to File a Reply will result in no delay in the Board's adjudication of the Respondents' Motions for Reconsideration, because if the Board grants the State's pending motion for an extension of time, the City's Reply will then be due within three days of the date on which the State will file its own brief.

WHEREFORE, the City of Morris respectfully requests an extension of ten (10) days in which to file its reply to the State's Response brief opposing the City's Motion for Reconsideration.

Dated: August 13, 2009

Respectfully submitted,

On behalf of the CITY OF MORRIS

/s/ Charles F. Helsten

One of Its Attorneys

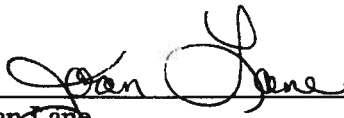
Charles F. Helsten
Nicola Nelson
Nancy Lischer
Hinshaw & Culbertson LLP
100 Park Avenue, P.O. Box 1389
Rockford, IL 61105-1389
815-490-4900

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 August 13, 2009, she caused to be served a copy of the foregoing upon:

Mr. Christopher Grant Assistant Attorney General Environmental Bureau 69 W. Washington St., Suite 1800 Chicago, IL 60602	Mark LaRose LaRose & Bosco, Ltd. 200 N. LaSalle, Suite 2810 Chicago, IL 60601
Mr. John T. Therriault, Assistant Clerk Illinois Pollution Control Board 100 W. Randolph, Suite 11-500 Chicago, IL 60601 (via electronic filing)	Bradley Halloran Hearing Officer Illinois Pollution Control Board 100 W. Randolph, Suite 11-500 Chicago, IL 60601
Mr. Scott Belt Scott M. Belt & Associates, P.C. 105 East Main Street Suite 206 Morris, IL 60450	Clarissa Y. Cutler Attorney at Law 155 N. Michigan Ave., Suite 375 Chicago, IL 60601

Via E-Mail and regular U.S. mail.



Joan Lane

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, ex)
rel. LISA MADIGAN, Attorney General of)
the State of Illinois,)
Complainant,)
v.)
COMMUNITY LANDFILL CO., an Illinois)
Corporation, and the CITY OF MORRIS, an)
Illinois Municipal Corporation,)
Respondents.)

PCB No. 03-191
(Enforcement-Land)

AFFIDAVIT OF CHARLES F. HELSTEN

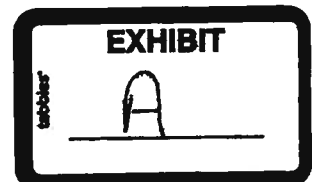
I, CHARLES F. HELSTEN, being first duly sworn upon oath, depose and state as follows:

1. I am the lead attorney representing the City of Morris, an Illinois Municipal corporation, regarding the above referenced action before the Illinois Pollution Control Board.

2. On August 5, 2009, the Attorney General's office filed a Response brief opposing the City's Motion for Reconsideration.

3. On August 6, 2009, prior to receiving a copy of the Response sent by the Attorney General, I left for a previously scheduled vacation out of state. I did not return to the office until August 13, 2009.

4. Upon my return to the office on August 13, 2009, I was able to review the State's Response brief. I have concluded, along with co-counsel, that in order to avoid material prejudice to the City, it is vitally important that the City reply to the State's Response.

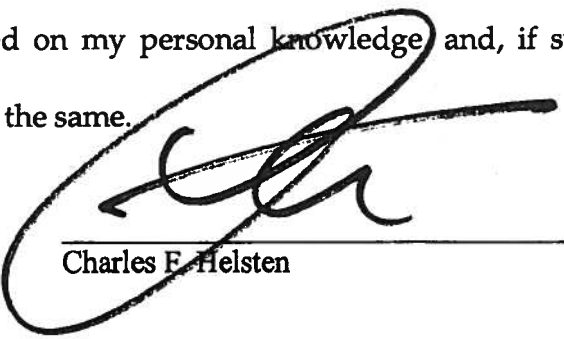


5. Appellate co-counsel and co-author of the City's Motion for Reconsideration and brief in support, Attorney Nancy Lischer, whose familiarity with the record in this matter makes her indispensable, has scheduling conflicts which have temporarily compromised her ability to provide meaningful input in the preparation of a Reply.

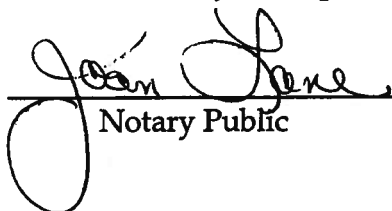
6. Up to this point, Attorney Nicola Nelson, who co-authored the City's Motion for Reconsideration and brief in support, has been out of the office on vacation and otherwise engaged in responding to the press of other matters, including the need to respond to issues among clients that have arisen during my absence.

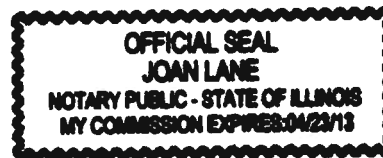
7. As set forth above, the attorneys for the City of Morris have had very little time in which to confer and prepare an adequate Reply to the State's Response brief, but they are agreed that filing a reply is crucial to avoid material prejudice to the City.

8. The foregoing is based on my personal knowledge and, if sworn as a witness, I can testify competently to the same.


Charles F. Helsten

SUBSCRIBED and SWORN to before
me this 13th day of August, 2009.


Notary Public



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Plaintiff,

v.

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

Defendants.

PCB 03-191
(Enforcement - Land)

AFFIDAVIT OF NANCY G. LISCHER

I, Nancy G. Lischer, being duly sworn upon oath, depose and state as follows:

1. I am an attorney and partner in the appellate department at Hinshaw & Culbertson LLP. I have worked on various landfill cases, and I was requested by Charles Helsten to assist in filing the motion for reconsideration in the case of *People of the State of Illinois v. Community Landfill Co.*, PCB No. 03-191 because of his conflicts with other work, or he was otherwise out of the office on other matters. With a Rockford attorney, Nicola Nelson, I drafted the motion for reconsideration subject to the approval of both Mr. Helsten and the client.
2. The State's response was filed on August 5, 2009. Under the PCB rules, leave to file a reply brief is due within 14 days, or by August 19, 2009. Because of my research and work on the motion to reconsider, and because I personally reviewed the record, I am well-situated to research and prepare the reply brief.
3. Because of my conflicting matters, along with conflicts in the schedules of Ms. Nelson and Mr. Helsten, an extension to file a reply is sought. The conflicts in my schedule include, but are not limited to:
 - a. Research and preparation of an appellate brief in the case of *Bullock v. Dart*, Seventh Circuit Nos. 08-3471, 09-1734. This brief has already been extended once and is currently due on August 21, 2009. This appeal includes complicated issues of pendent jurisdiction, interlocutory orders, whether a Rule 54(b) motion extends the time to appeal a collateral order, sovereign immunity, when a sheriff operates as an arm of the state, and Equal Protection claims (premised on the fact that women are treated differently than men because of a prior class action brought by women that

EXHIBIT

tabular

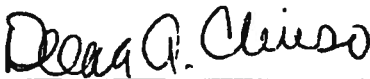
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settled. In addition, there are Fourth Amendment claims based on visual strip searches conducted in groups. This case has an enormous record and has required vast amounts of research and a multitude of issues. While a draft is currently being revised and edited for word limitations, the work left is substantial. Once the draft is distributed to the State's Attorney's Office and the client, further revisions are anticipated.

- b. The second major conflict is the case of *Michigan First Credit Union v. Cumis Insurance Society Inc.*, Sixth Circuit Nos. 09-1925, 09-1970. A settlement conference is scheduled for September 3, 2009. As the counsel of record admitted to the Sixth Circuit, I am required to attend and negotiate in good faith regarding a possible settlement. Because I did not try this case, preparation for this conference includes evaluating the merits of the appeal. It requires reading over 1,600 pages of transcript plus approximately two boxes of exhibits. In addition, I will be required to research the law of Michigan as well as the Sixth Circuit in order to adequately evaluate the case for review and negotiate in good faith. This review will be exceedingly time-consuming given the length of the record, required research, and the jurisdiction.
4. These two cases will require virtually all of my time until September 3, including most or all weekends.
5. The foregoing is based on my personal knowledge, and, if sworn as a witness, I can testify competently to the same.


NANCY G. LISCHER

SUBSCRIBED and SWORN to before
me this 13th day of August, 2009.



Notary Public



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, ex
rel. LISA MADIGAN, Attorney General of
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(Enforcement-Land)

AFFIDAVIT OF NICOLA A. NELSON

I, NICOLA A. NELSON, being first duly sworn upon oath, depose and state as follows:

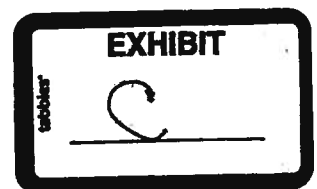
1. I am an attorney representing the City of Morris, an Illinois Municipal corporation, regarding the above referenced action before the Illinois Pollution Control Board.

2. I was the co-author of the City's Motion for Reconsideration and Memorandum of Law in Support of the Motion for Reconsideration, filed with the Board on July 22, 2009.

3. On August 5, 2009, the Attorney General's office filed a Response brief opposing the City's Motion for Reconsideration.

4. On the afternoon of August 6, 2009, I left for a previously scheduled vacation out of state. I did not return to the office until August 10, 2009.

5. Upon my return to the office on August 10, 2009, I had preexisting commitments that included but were not limited to the finalization of an opinion letter




that had been promised to a client for delivery on August 10, 2009, and the preparation of a CLE presentation for my law firm's Labor and Employment Specialty Group, which I presented on August 11, 2009.

6. Appellate co-counsel and co-author of the City's Motion for Reconsideration, Attorney Nancy Lischer, whose familiarity with the record in this matter makes her indispensable, has scheduling conflicts which have temporarily compromised her ability to provide meaningful input in the preparation of a Reply.

7. Lead counsel for the City, Charles F. Helsten, was out of the office on a previously scheduled vacation from August 6, 2009 through August 13, 2009, and has therefore, up to this point, been unavailable to provide meaningful input in the preparation of a Reply.

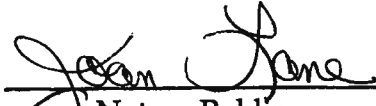
8. For the reasons set forth herein, the attorneys for the City of Morris have had very little time in which to confer and prepare an adequate Reply to the State's Response brief, however they have concluded that filing a Reply is crucial to avoid material prejudice to the City.

9. The foregoing is based on my personal knowledge, and, if sworn as a witness, I can testify competently to the same.



Nicola A. Nelson

SUBSCRIBED and SWORN to before
me this 13th day of August, 2009.



Notary Public

