

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.)	

RESPONSE IN OPPOSITION TO THE CITY OF MORRIS'S
MOTION TO STAY PENDING APPEAL

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and Responds in opposition to the City of Morris's ("City's " or "Morris's") Motion to Stay Pending Appeal. For the reasons set forth herein, Complainant requests that the Board deny the City's Motion for Stay.

I. BOARD STANDARD

The decision to grant or deny a request for stay is vested in the sound discretion of the Illinois Pollution Control Board ("Board"¹). The Board is naturally reluctant to stay its orders when a stay may result in harm to the public or the environment². Also, the Board generally denies motions to stay when the case is before the Appellate Court³. Complainant recognizes

¹*People v. John Prior et al*, PCB 02-177 (September 16, 2004).

²*Id.*, citing *Panhandle Eastern Pipeline Co. v. Illinois EPA*, PCB 98-102 (July 8, 1999).

³*Community Landfill Company & City of Morris v. Illinois EPA*, PCB 01-48/01-49 (August 9, 2001)

that the Board has granted stays where the only issue was the assessed civil penalty⁴. However, in most of these cases, the Complainant had not opposed the stay⁵.

In the present case, the State believes that an appeals bond must be supplied by both Community Landfill Company ("CLC") and the City in the amount of the assessed civil penalty (and possible post-judgment interest), as a condition of any stay. In addition, because of the continued deterioration of the Morris Community Landfill ("Landfill"), Complainant believes that Respondents should be required to guarantee maintenance and repair of Landfill during the pendency of the appeal⁶. Because the City has not agreed to provide these sureties, the Board should deny the City's request for a stay. A denial of the City's request would put the issue before the Appellate Court.

Appeals of Board orders proceed as provided in Supreme Court Rule 335, which allows for the requirement of a bond or other security as a condition of any stay. However, unlike the Appellate Court, the Board does not have procedures in place for determining the adequacy of such security. Because Complainant requests that the civil penalties assessed be secured by an appeal bond, the amount, type, and possible exemptions from the requirement of a bond may be

⁴*Illinois EPA v. Northern Illinois Service Company*, AC 05-40 (April 19, 2007)

⁵See: *Illinois EPA v. Piolet Bros. Trading, Inc.* (PCB 80-185, February 4, 1982) (Agency did not object to stay of civil penalty, but opposed stay of cease and desist provision); *People v. John Prior et al.* (PCB 02-177, September 16, 2004) (People did not object to stay); *People v. Blue Ridge Construction Co.* (PCB 02-115, December 17, 2004) (People did not file response to motion to stay).

⁶Complainant notes that the Respondents' last appeal of a Board ruling (in case PCB -01-170) involved an initial loss in the Appellate Court, a petition for rehearing, and an eventual appeal to the Illinois Supreme Court. Accordingly, the appeal of this case could extend over several years. The Landfill must not be abandoned by the Respondents during the pendency of the appeal.

more easily decided by the Appellate Court. Further, because Complainant believes that the future compliance provisions ordered by the Board are necessary to protect human health and the environment, stay of the Board's Final Order during appeal should be conditioned on regular monitoring and maintenance of the Landfill. The Appellate Court has established procedures for imposing conditions on the stay of "non-money judgments and other appealable orders"⁷. Thus, the City may still obtain a stay of execution of the Board's Order, if it is willing to undertake such steps as may be necessary to protect local residents during the pendency of the appeal.

II. A STAY OF THE BOARD'S FINAL ORDER WOULD THREATEN HARM TO THE PUBLIC

In its Final Order, the Board ordered the Respondents to correct the violations of the Act and Board regulations. First and foremost, the Board ordered the ongoing and illegal dumping at the Landfill to be stopped⁸. Second, the Board ordered that the Respondents provide closure and post-closure financial assurance in the amount required under the last approved cost estimate. The Board also ordered that a revised cost estimates be provided within 60 days⁹.

The City of Morris requests a stay of all these provisions, but fails to provide any assurance that illegal dumping will be stopped or that human health and the environment will be protected during the appeal. This is a fatal flaw: the illegal dumping cannot be allowed to

⁷Supreme Court Rule 305(b)

⁸The Evidence at hearing showed that Community Landfill Company had continued dumping construction and demolition debris, despite the absence of an operating permit and the failure to have financial assurance in place. The City of Morris had likewise continued to dump its water treatment plant sludge.

⁹The Respondents received violation notices from Illinois EPA in 2000, and were found in violation in 2006. The stay requested by the Respondents would only extend this nine year period of noncompliance.

continue. In response to the Board's requirement for the posting of financial assurance, the City merely states that it "would qualify to guarantee between \$8.5 and \$8.75 million"¹⁰. However its fails to offer to post this amount as financial assurance¹¹. Thus, the City asks the Board to accept continued violations of the Act by granting the requested stay.

Morris also trivializes the condition of the Landfill. It claims that "closure is not imminent," but ignores the fact that closure of Parcel B of the Landfill was due in 1996. The fact that the Respondents have not initiated closure during the past thirteen (13) years hardly supports the City's request for a stay. In fact it proves the risk to the public, while demonstrating a complete absence of diligence on the City's part.

Morris does not offer to undertake any oversight, maintenance, repair, or emergency response efforts during the pendency of its appeal of the Board's Final Order. Rather it requests a stay of all requirements, including the Board's requirement of a financial guarantee to protect State taxpayers¹². Morris's request for a stay of the Board's Order threatens the public welfare, and must be denied.

III. AN APPROPRIATE BOND WILL BE SET BY THE APPELLATE COURT

If the Board denies the City's request due to its obvious inadequacy, the City may then seek a stay in the Appellate Court. Supreme Court Rule 335 provides that this second request shall be made by motion, and supported by affidavit. Pertinent sections of the record are to be

¹⁰Motion to Stay, p.5

¹¹Since 2005, the City of Morris has claimed that it 'could' post a local government guarantee in various amounts. Despite being found in violation, it has posted nothing.

¹²The City's Motion also seeks to shield CLC from compliance. As of the date of filing this Response, CLC has not requested a stay.

included in the application. Any stay then granted may be conditioned on the filing of bond or other security. Although, pursuant to Supreme Court Rule 305(i), the Court may waive the bond requirement for a municipality, this waiver is not automatic. The City will have to make its case for an exemption in the forum which is to decide the appeal. As noted, the Appellate Court may also condition grant of a stay on proper maintenance of the Landfill.

IV. CONCLUSION

The City of Morris provides no valid basis for the Board's grant of a stay in this matter. The City's Motion to Stay Pending Appeal should be denied.


RESPECTFULLY SUBMITTED

People of the State of Illinois
by Lisa Madigan,
Attorney General of the State of Illinois

Matthew J. Dunn, Chief
Environmental Enforcement/Asbestos
Litigation Division

RoseMarie Cazeau, Chief
Environmental Bureau North

BY:



Christopher Grant
Jennifer Tomas
Assistant Attorneys General
69 W. Washington Street, #1800
Chicago, IL 60602
(312)814-5388
(312)814-0609

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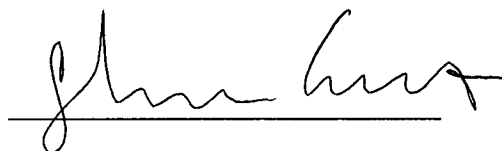
Respondents.

PCB No. 03-191

(Enforcement-Land)

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 20th day of October, 2009, the foregoing Response in Opposition to the City of Morris's Motion for Stay Pending Appeal, and Notice of Filing, upon the persons listed below by first class mail.



CHRISTOPHER GRANT

City of Morris
c/o Mr. Charles Helsten
Hinshaw & Culbertson
100 Park Avenue
Rockford, Illinois 61101

Mr. Scott Belt
Belt, Bates & Associates
105 E. Main Street
Suite 206
Morris, Illinois 60450

Community Landfill Co.
c/o Mr. Mark LaRose
LaRose & Bosco
200 N. La Salle Street, Suite 2810
Chicago, Illinois 60601

Community Landfill Co.
c/o Ms. Clarissa Cutler
Attorney at Law
155 North Michigan, Suite 375
Chicago, Illinois 60601

Mr. Bradley P. Halloran
Illinois Pollution Control Board
100 W. Randolph Street
Chicago, Illinois 60601 (by hand delivery)