

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUN 16 2003

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

PCB No. 03-191
(Enforcement)

COMMUNITY LANDFILL COMPANY,)
INC., an Illinois corporation, and)
the CITY OF MORRIS, an Illinois)
municipal corporation,)

Respondents.)

NOTICE OF FILING

TO: Mr. Christopher Grant, Assistant Attorney General, Environmental Bureau, 188 W. Randolph Street, 20th Floor, Chicago, IL 60601

PLEASE TAKE NOTICE that on June 16, 2003, the undersigned filed an original and nine copies of RESPONDENT COMMUNITY LANDFILL CO.'S ANSWER TO COMPLAINT with Ms. Dorothy Gunn, Clerk of the Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601, a copy of which is attached and hereby served upon you.


One of the Attorneys for Community Landfill Co.

Mark A. LaRose
Clarissa C. Grayson
LaRose & Bosco, Ltd.
Attorney No. 37346
734 N. Wells Street
Chicago, IL 60610
(312) 642-4414
Fax (312) 642-0434

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RESPONDENT COMMUNITY LANDFILL COMPANY'S ANSWER TO COMPLAINT

Respondent, Community Landfill Company, Inc., by its attorneys, LaRose & Bosco, Ltd., hereby answers Complainant's Complaint and in support hereof states as follows:

COUNT I

FAILURE TO PROVIDE ADEQUATE FINANCIAL ASSURANCE

1. This complaint is brought by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to Section 31 of the Environmental Protection Act, ("Act"), 415 ILCS 5/31 (2002).

ANSWER: Respondent Community Landfill Co. is without knowledge as to this complaint being brought by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency. Further answering, Respondent Community Landfill Co. denies any liability under Section 31 of the Act.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002), and is charged inter alia, with the duty of enforcing the Act.

ANSWER: Respondent Community Landfill Co. admits the allegations contained in paragraph 2.

3. Respondent CITY OF MORRIS ("City"), is an Illinois municipal corporation, organized and operating according to the laws of the State of Illinois, and located in Grundy County, Illinois. The City is the owner of the Morris Community Landfill, a special waste and municipal solid waste landfill located at 1501 Ashley Road, Morris, Grundy County, Illinois.

ANSWER: Respondent Community Landfill Co. admits the allegations contained in paragraph 3.

4. The Morris Community Landfill is approximately 119 acres in area, and is divided into two parcels, designated parcel "A", consisting of approximately 55 acres, and parcel "B", consisting of approximately 64 acres.

ANSWER: Respondent Community Landfill Co. admits the allegations contained in paragraph 4.

5. Respondent COMMUNITY LANDFILL COMPANY, INC. ("CLC") is an Illinois corporation, duly authorized to transact business in the State of Illinois. CLC is the operator of the Morris Community Landfill, and manages day-to-day operations of both parcels at that site.

ANSWER: Respondent Community Landfill Co. admits the allegations contained in paragraph 5.

6. From at least June 1, 2000 until the time of filing this Complaint, Respondents have arranged for and supervised the deposit of waste, including municipal solid waste, garbage, and special waste, into waste cells at the Morris Community Landfill.

ANSWER: Respondent Community Landfill Co. denies the allegations contained in paragraph 6.

7. As owners and operators of the Morris Community Landfill, the City and CLC are required by Section 21.1(d) of the Act, 415 ILCS 5/21.1(d) (2002), to apply for and obtain landfill permits, including operating, significant modification, and other municipal solid waste permits, from Illinois EPA.

ANSWER: Respondent Community Landfill Co. makes no answer to paragraph 7 as it states a legal conclusion.

8. On August 4, 2000, Respondents were issued Significant Modification Permit Numbers 2000-155-LFM, covering Parcel A, and 2000-156-LFM, covering Parcel B. On June 29, 2001, the Respondents were issued Permit Modification No. 2 for parcels A & B. On January 8, 2002, the Respondents were issued Permit Modification No. 3 for Parcel A.

ANSWER: Respondent Community Landfill Co. admits the allegations contained in paragraph 8.

9. From at least June 1, 2000 until the time of filing this Complaint, Respondents have conducted disposal operations on parcels "A" and "B" of the Morris Community Landfill. During this period, the sole assurance of closure and post closure costs provided by Respondents to Illinois EPA has been three separate performance bonds underwritten by the Frontier Insurance Company.

ANSWER: Respondent Community Landfill Co. denies the allegations contained in paragraph 9.

10. On June 1, 2000, the United States Treasury Department removed Frontier Insurance Company from the compilation of acceptable surety companies listed in the United States Department of Treasury publication "Circular 570".

ANSWER: Respondent Community Landfill Co. admits the allegations contained in paragraph 10.

11. At no time from June 1, 2000 until the filing of this complaint, has Frontier Insurance Company been added back to the "Circular 570" list of acceptable surety companies.

ANSWER: Respondent Community Landfill Co. is without sufficient knowledge to admit or deny the allegations contained in paragraph 11.

12. Section 21 of the Act, 415 ILCS 5/21 (2002) provides, in pertinent part, as follows:

No person Shall:

* * *

(d) Conduct any waste-storage, waste-treatment or waste-disposal operation:

* * *

(2) in violation of any regulations or standards adopted by the Board under this Act....

* * *

ANSWER: Respondent Community Landfill Co. makes no answer to paragraph 12 as it states a legal conclusion. To the extent that this paragraph requires an answer, Respondent Community Landfill Co. denies any liability under Section 21 of the Act.

13. Pursuant to authority granted by the Act, the Illinois Pollution Control Board has promulgated regulations requiring and regulating closure and post-closure financial assurance for

municipal solid waste landfills. These regulations are codified at 35 Ill. Adm. Code, Subtitle G, Subchapter I, Subpart G ("Board Financial Assurance Regulations").

ANSWER: Respondent Community Landfill Co. admits the allegations contained in paragraph 13.

14. Section 811.700 of the Board Financial Assurance Regulations, 35 Ill. Adm. Code 811.700, provides, in pertinent part, as follows:

* * *

(f) On or after April 9, 1997, no person, other than the State of Illinois, its agencies and institutions, shall conduct any disposal operations at an MSWLF unit that requires a permit under subsection (d) of section 21.1 of the Act, unless that person complies with the financial assurance requirements of this Part.

ANSWER: Respondent Community Landfill Co. makes no answer to paragraph 14 as it states a legal conclusion. To the extent that this paragraph requires an answer, Respondent Community Landfill Co. denies any liability under Section 811.700.

15. Section 811.712 of the of the Board Financial Assurance regulations, 35 Ill. Adm. Code 811.712, provides, in pertinent part, as follows:

* * *

(b) the surety company issuing the Bond shall be licenced to transact the business of insurance by the Department of Insurance, pursuant to the Illinois Insurance Code [215 ILCS 5], or at a minimum the insurer must be licensed to transact the business of insurance or approved to provide insurance as an excess or surplus lines insurer by the Insurance Department of one or more states, and approved by the U.S. Department of the Treasury as an acceptable surety. Section 21.1(a.5) of the Act, [415 ILCS 5/21.1(a.5)].

BOARD NOTE: The U.S. Department of the Treasury lists acceptable sureties in its Circular 570.

ANSWER: Respondent Community Landfill Co. makes no answer to paragraph 15 as it states a legal conclusion. To the extent that this paragraph requires an answer, Respondent Community Landfill Co. denies any liability under Section 811.712.

16. Section 3.26 of the Act, 415 ILCS 5/3.26 (2002), provides the following definition:

“PERSON” is an individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

ANSWER: Respondent Community Landfill Co. admits that Section 3.26 provides the above-referenced definition of “person.”

17. Respondent CLC, an Illinois corporation, and Respondent City of Morris, a political subdivision, are “person[s]” as that term is defined Section 3.26 of the Act, 415 ILCS 5/3.26 (2002).

ANSWER: Respondent Community Landfill Co. admits the allegations contained in paragraph 17.

18. Section 3.85 of the Act, 415 ILCS 5/3.85 (2002), provides, as follows:

“Municipal Solid Waste Landfill Unit” or MSWLF unit” means a contiguous area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or any pile of noncontainerized accumulations of solid, nonflowing waste that is used for treatment or storage. A MSWLF unit may also receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion. A sanitary landfill is subject to regulation as a MSWLF unit if it receives household waste.

ANSWER: Respondent Community Landfill Co. admits that Section 3.85 provides the above-referenced definition of “Municipal Solid Waste Landfill Unit.”

19. Parcels "A" and "B" of The Morris Community Landfill are "Municipal Solid Waste Landfill unit[s]", and "MSWLF unit[s]" as those terms are defined in Section 3.85 of the Act, 415 ILCS 5/3.85 (2002).

ANSWER: Respondent Community Landfill Co. admits the allegations contained in paragraph 19.

20. Section 3.53 of the Act, 415 ILCS 5/3.53 (2002), provides, in pertinent part, as follows:

"WASTE" means any garbage...or any other discarded material, including any solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities....

ANSWER: Respondent Community Landfill Co. admits that Section 3.53 of the Act provides the above-referenced definition for "waste."

21. Section 3.08 of the Act, 415 ILCS 5/3.08 (2002), provides, as follows:

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any

ANSWER: Respondent Community Landfill Co. admits that Section 3.08 of the Act provides the above-referenced definition for "disposal."

22. From at least June 1, 2000 until the time of filing this complaint, Respondents arranged for and supervised the deposit of special waste, municipal solid waste, garbage and other waste at the Morris Community Landfill. Respondents thereby conducted a "waste disposal operation" as those terms are defined in the Act.

ANSWER: Respondent Community Landfill Co. denies that from at least June 1, 2000 until the time of filing this complaint, Respondents arranged for and supervised the deposit of special

waste, municipal solid waste, garbage and other waste at the Morris Community Landfill. Respondent Community Landfill denies the remainder of paragraph 22 as it states a legal conclusion.

23. From June 1, 2000 until the time of filing this complaint, Respondents have conducted disposal operations at both parcel "A" and parcel "B" of the Morris Community Landfill, with closure and post-closure financial assurance solely in the form of three performance bonds from Frontier Insurance Company, a company not listed in United States Department of the Treasury "Circular 570", and therefore not meeting the requirements of 35 Ill. Adm. Code 811.712. Respondents have thereby violated Sections 811.700(f) and 811.712 of the Board Financial Assurance Regulations, 35 Ill. Adm. Code 811.700(f) and 811.712, and have thereby also violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2002).

ANSWER: Respondent Community Landfill Co. makes no answer to paragraph 23 as it states a legal conclusion. To the extent paragraph 23 requires an answer, Respondent Community Landfill Co. denies all liability.

WHEREFORE, Respondent Community Landfill Co. respectfully prays that the Board rule in favor of respondents on all matters.

ADDITIONAL DEFENSES

1. The complaint is barred by the doctrines of laches and estoppel since the Agency accepted the Frontier bonds and issued a significant modification permit on August 4, 2000 knowing that Frontier had been delisted.

2. The Frontier Insurance bonds complied with all applicable regulations at the time of their issuance, and were accepted as such by the Agency.

3. Respondent Community Landfill Co. did not act willfully, knowingly or repeatedly such that any award of cost and attorneys fees would be inappropriate.

4. The Board should consider all of the factors set forth in Section 42(H)(1)-(5) as factors in mitigation of any penalty that might be imposed.

Respectfully submitted,


COMMUNITY LANDFILL CO.

By: 
Its Attorneys

Mark A. LaRose
LaRose & Bosco, Ltd.
Attorney No. 37346
734 N. Wells Street
Chicago, IL 60610
(312) 642-4414
Fax (312) 642-0434

CERTIFICATE OF SERVICE

The undersigned, an attorney, on oath states that the foregoing **RESPONDENT**
COMMUNITY LANDFILL COMPANY'S ANSWER TO COMPLAINT was served to Mr.
Christopher Grant, Environmental Bureau, Assistant Attorney General, 188 West Randolph Street,
20th Floor, Chicago, IL 60601 by depositing in the U.S. Mail at 734 N. Wells Street, Chicago,
Illinois with proper postage prepaid this 16th day of June, 2003.

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

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APPEARANCE

LaRose & Bosco, Ltd. hereby enters an appearance on behalf of Respondent **COMMUNITY**

LANDFILL CO.

By: _____

Mark A. LaRose

Mark A. LaRose
Clarissa C. Grayson
LaRose & Bosco, Ltd.
Attorney No. 37346
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