BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, Complainant, v. The CITY OF MORRIS, an Illinois municipal corporation, and COMMUNITY LANDFILL COMPANY, INC., a dissolved Illinois corporation, Respondents.	)	PCB 11-050

REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS FOR WANT OF PROSECUTION

NOW COMES Respondent, City of Morris, an Illinois municipal corporation, by and through its attorneys, Hinshaw & Culbertson, LLP, and for its Reply Brief in Support of Motion to Dismiss for Want of Prosecution, states as follows:

I. SUMMARY

The State's response to the City's Motion to Dismiss for Want of Prosecution contains numerous misrepresentations of fact and an improper argument that the motion should denied based upon allegations and claims that are not in fact even at issue in this case. Specifically, the State makes the erroneous claim that the State allegedly first learned the City was denying that it was responsible for the closure of the landfill in the answer to the complaint filed in this case 9 years ago. That assertion is both untrue and irrelevant. Further, the State argues that the negotiations that have taken place concerning a Notice of Violation issued in 2013 related to closure of the Landfill is a basis of denying the motion when such allegations are, again, not even at issue in the case at bar.

II. ARGUMENT

The State of Illinois filed its original Complaint in the present case on February 18, 2011 asserting permit violations allegedly arising out of the failure of Community Landfill Company,

Inc. to perform or report groundwater monitoring results of a landfill operated by Community Landfill Company, Inc. on land owned by the City of Morris. On June 1, 2011 the City of Morris filed its Answer and Affirmative Defenses to that Complaint. Since that time the State of Illinois has conducted no discovery, filed no motions, requested no hearings, and taken no action whatsoever to prosecute the alleged claims. From June 22, 2011 through June 28, 2012, the State made representations to the Hearing Officer that it would be filing a summary judgment motion, which it never filed. Starting on September 13, 2012, the State informed the Respondents and Hearing Officer Halloran that it intended to dismiss this cause of action and pursue a claim seeking closure of the landfill in state court which would include the groundwater monitoring allegations asserted in this PCB action. The State has repeatedly made that same promise at almost every status call with the hearing officer since 2012.

Despite the State's repeated promise to dismiss this action, and supposedly to pursue the City in some other venue for different alleged violations, it now argues that dismissal for want of prosecution should not occur because the City denies that it is responsible for closure of the landfill which is somehow a new revelation to the State. The State has misrepresented that on June 1, 2011 Morris' Affirmative Defenses "For the first time before the Board, included a denial that Morris actually 'owned' or 'operated' the Landfill" which demonstrates Morris's "intention to abandon its statutory, regulatory and permitted responsibilities with respect to the Landfill." (State's Response Brief, pgs. 1-2, emphasis added). The State argues that "In 2013, during the pendency of this case, the Illinois EPA issued a new Violation Notice to the City of Morris that alleged numerous additional violations of the landfill, including Morris' failure: to close the landfill, construct final cover, collect and treat leachate, conduct groundwater monitoring, obtain a permit, keep records, [and] provide financial assurance…." The State's claim that it first became aware during this case that the City has asserted that it has no responsibility to close the

Landfill and that such a claim was first made to the Board in this case is patently false. In 2003 the State brought a PCB action against the City and the Community Landfill Company, Inc. related to the posting of financial assurances and at that time the City of Morris explicitly denied that it was the owner of the landfill and instead "affirmatively states that it is the title holder of certain property upon which Morris Community Landfill is located." (See Answer and Affirmative Defenses, PCB 03-191, para 3, attached hereto as Exhibit A). Furthermore, the position that one who merely owns the land beneath a landfill is not conducting the operation and not responsible for financially assuring closure was consistently taken throughout the course of that PCB litigation and the appeal that followed. As a matter of fact, the Third District Appellate Court explicitly held that "[t]he City transferred its interest in the landfill to CLC, but retained ownership of the land on which the landfill was situated." (See *City of Morris v. Community Landfill Company*, 2011 Ill.App.3d 090847, attached hereto as Exhibit B). Ultimately the Third District Appellate Court held that the City was neither operating a landfill nor conducting a waste disposal operation, and had no responsibility to post financial assurance for the closure of the landfill and reversed the PCB's determination against the City in its entirety. Therefore, not only has the State known since at least 2003 that the City denies that it is conducting a landfill disposal operation, but the Third District explicitly held such, and the State was made aware of that fact 9 years before this litigation was commenced in another PCB action over 17 years ago.

Further, the State's current, new-found reliance upon the 2013 Violation Notice (upon which the State has taken no action) and the negotiations related to such are irrelevant to the present cause of action. The Complaint in this case solely alleges permit violations concerning groundwater monitoring and reporting (which allegations the City denies), nothing more. The Notice of Violation letter sent by the State in 2013 which asserts that the City is responsible for closure of the CLC facility was responded to and denied by the City, and no further action or

lawsuit was ever filed by the State concerning those allegations. In summary then, the 2013 Violation Notice letter is not the subject of the current PCB action, and never has been.

The Illinois Code of Civil Procedure explicitly provides a five (5) year statute of limitations applies for "all civil actions not otherwise provided for." 735 ILCS 5/13-205. Further, the Board's procedural rules provide that "The Board may look to the Code of Civil Procedure…where the Board's procedural rules are silent." 35 Ill.Admin.Code 101.100(b)". The Board has previously indicated the five (5) year statute of limitations is applicable to enforcement cases. *Union Oil Company of California v. Barge-Way Oil Company, Inc.,* PCB 98-169 (January 7, 1999). Further, 415 ILCS 5/31 expressly provides the process for initiation of an enforcement action by IEPA for alleged violations of the Act, and no action was ever timely commenced concerning the 2013 allegations. Despite the failure of the State to ever bring a cause of action of any kind against the City for failure to close the landfill; the City, in the interest of concluding any adversarial action with the State, and wishing to determine the total extent of the breach of the Community Landfill Company's duty to indemnify the City, has voluntarily negotiated to resolve the claims of the State and offered no less than nine (9) different versions of a possible consent decree to bring the 2013 allegations to resolution. The State has taken the position that it will not enter an administrative settlement agreement, nor even a consent decree to resolve the 2013 allegations, and instead is now requiring the City to file a significant modification permit application and initiate various actions with the IPCB seeking adjusted standards as a purported owner of the landfill, despite the fact that the Third District Appellate Court has already ruled that the City has no such responsibility. Obviously, the City has rejected such demand. Regardless, any settlement discussions had between the City of Morris and the State of Illinois concerning the 2013 claims do not in any way foreclose the dismissal of this case for want of prosecution, particularly where the State has long admitted it

does not intend to pursue this action, and instead intends to bring a circuit court action that will seek closure and also resolve the purported groundwater monitoring and reporting violations asserted in this case.

The State concedes that Morris and only Morris has conducted discovery by issuing interrogatories, document requests and requests for admissions of fact in the present action, and at no time did the State ever issue any discovery. Furthermore, the State admits that it never filed any summary judgment motion or other motions in this case. While the City of Morris has offered to resolve the State's 2013 claims; conducting voluntary good faith negotiations in another matter is irrelevant to the State's failure to prosecute this action.

Finally, the State argues that the dismissal should not be with prejudice and sites *Dick Lashbrook Corp. v. Pinebrook Foundations, Inc.,* 134 Ill.App.3d 56, 62 (3rd Dist. 1985). The City hereby withdraws its request that the dismissal order provide language that it is "with prejudice". If the State attempts to refile a cause of action it has elected not to pursue for over nine (9) years, the City will address such at that time.

III. CONCLUSION

There can be no clearer example of a failure to prosecute a claim than where a Petitioner has not issued one interrogatory, not taken one deposition, not issued one production request, not filed one motion and never even requested a hearing date. Further, the Petitioner has repeatedly informed the Hearing Officer and the Parties it does not intend to ever prosecute this matter and instead intends to bring a completely different case in front of a different tribunal. The State's total lack of interest in conducting any activity in this case is a distinct "admission by conduct" on its part that this action was never intended to be anything more than a symbolic marker or placeholder to perhaps pursue some other action elsewhere. Accordingly, this PCB case should be dismissed for want of prosecution.

WHEREFORE, The City of Morris prays the Hearing Officer or the Illinois Pollution Control Board issue an order dismissing this cause of action for want of prosecution.

Dated: April 1, 2020

Respectfully submitted,

On behalf of CITY OF MORRIS

/s/ Richard S. Porter
One of Its Attorneys

Richard S. Porter
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AFFIDAVIT OF SERVICE

The undersigned certifies that on April 1, 2020 she served a copy of the foregoing Reply Brief in Support of Motion to Dismiss for Want of Prosecution upon the following:

Christopher Grant
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Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
Brad.Halloran@illinois.gov

by e-mailing at or about the hour of 12:00 p.m., addressed as above.

/s/ Danita M. Heaney

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, Complainant, vs. COMMUNITY LANDFILL COMPANY, INC., an Illinois Corporation, and the CITY OF MORRIS, an Illinois Municipal Corporation, Respondents.	)	PCB No. 03-191

APPEARANCE

NOW COMES, CHARLES F. HELSTEN law firm of HINSHAW & CULBERTSON does hereby enter his Appearance in the above-captioned matter on behalf of the CITY OF MORRIS, an Illinois Municipal Corporation.

Dated: 6/12/03

Respectfully Submitted,

On behalf of the CITY OF MORRIS, an Illinois Municipal Corporation

By: Hinshaw & Culbertson

Charles F. Helsten
One of Its Attorneys

HINSHAW AND CULBERTSON
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EXHIBIT A

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 June 12, 2003, she served a copy of the foregoing upon:

Mr. Christopher Grant
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Fl.
Chicago, IL 60601

Scott Belt
Scott Belt and Associates
105½ West Washington St.
Morris, IL 60450

Mark A. LaRose
LaRose & Bosco, Ltd.
734 N. Wells Street
Chicago, IL 60610

Ms. Dorothy Gunn, Clerk
Pollution Control Board
100 W. Randolph, Suite 11-500
Chicago, IL 60601

By depositing a copy thereof, enclosed in an envelope in the United States Mail at Rockford, Illinois, proper postage prepaid, before the hour of 5:00 P.M., addressed as above.

Joan Jane

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100 Park Avenue
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(815) 490-4900

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
vs.	)	
	)	PCB No. 03-191
COMMUNITY LANDFILL COMPANY, INC., an Illinois Corporation, and the CITY OF MORRIS, an Illinois Municipal Corporation,	)	
	)	
Respondents.	)	

ANSWER AND AFFIRMATIVE DEFENSES

NOW COMES the City of Morris, an Illinois Municipal Corporation, and for Answer and Affirmative Defense to the Complaint filed by the State of Illinois herein, states as follows:

COUNT I

1. The Respondent City of Morris denies the allegations set forth in ¶ 1 of Count I for lack of information and belief, and demands strict proof thereof.

2. The Respondent City of Morris admits the allegations set forth in ¶ 2 of Count I of the Complaint.

3. The Respondent City of Morris admits so much of ¶ 3 of Count I which alleges it 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 further affirmatively states that it is the title holder of certain property upon which the Morris Community Landfill is located.

4. The Respondent City of Morris admits the allegations set forth in ¶ 4 of Count I of the Complaint.

5. The Respondent City of Morris admits the allegations set forth in ¶ 5 of Count I of the Complaint.

6. The Respondent City of Morris denies the allegations set forth in ¶ 6 of Count I of the Complaint, and further affirmatively states that (as alleged by the State in ¶ 5 of Count I of its Complaint) the Respondent Community Landfill Company, Inc. is the operator of such landfill, and manages the day to day operations of both parcels at that site. Accordingly, the Respondent City of Morris further affirmatively states that, as such, all arrangements for activities conducted with respect to the deposit of waste at the landfill have been conducted by the Respondent Community Landfill Company, Inc.

7. The Respondent City of Morris is unable to either admit or answer the allegations set forth in ¶ 7 of Count I of the Complaint, as such allegations are ambiguous, vague and overly broad. Accordingly, and based upon the same, for lack of information and belief, the Respondent denies the same.

8. The Respondent City of Morris admits so much of ¶ 8 as alleges that various permits (as detailed in such paragraph) were issued with respect to the facility in question, and denies the balance of the allegations set forth in such paragraph.

9. The Respondent City of Morris denies so much of ¶ 9 of Count I of the Complaint which alleges that both Respondents conducted disposal operations at parcels A and B of the Morris Community Landfill, and again based upon the allegations set forth in ¶ 5 of the Complaint that CLC is the operator of the Morris Community Landfill and manages day to day operations of both parcels of the site, the Respondent City of Morris affirmatively states that any and all activities conducted at the site were undertaken by

Respondent Community Landfill, Inc. The Respondent City of Morris further affirmatively states that financial assurance of closure/post closure costs were provided to IEPA in the form of three separate performance bonds underwritten by Frontier Insurance Company.

10. The Respondent City of Morris denies the allegations set forth in ¶ 10 of Count I of the Complaint for lack of specific information and belief.

11. The Respondent City of Morris denies the allegations set forth in ¶ 11 of Count I of the Complaint for lack of specific information and belief.

12. The Respondent City of Morris admits the allegations set forth in ¶ 12 of Count I of the Complaint.

13. The Respondent City of Morris admits the allegations set forth in ¶ 13 of Count I of the Complaint.

14. The Respondent City of Morris admits the allegations set forth in ¶ 14 of Count I of the Complaint.

15. The Respondent City of Morris admits the allegations set forth in ¶ 15 of Count I of the Complaint.

16. The Respondent City of Morris admits the allegations set forth in ¶ 16 of Count I of the Complaint.

17. The Respondent City of Morris denies the allegations set forth in ¶ 17 of Count I of said Complaint, and further affirmatively states that the only "person(s)" as defined by

Section 3.26 of the Act that may have potentially violated the statutory provisions set forth in Count I of the Complaint are the Respondent, Community Landfill, Inc., and possibly those officers, agents, representatives or employees of the company who may have assisted in decisions concerning the day-to-day management of Community Landfill Company.

18. The Respondent City of Morris admits the allegations set forth in ¶ 18 of Count I of the Complaint.

19. The Respondent City of Morris admits the allegations set forth in ¶ 19 of Count I of the Complaint.

20. The Respondent City of Morris admits the allegations set forth in ¶ 20 of Count I of the Complaint.

21. The Respondent City of Morris admits the allegations set forth in ¶ 21 of Count I of the Complaint.

22. For answer to ¶ 22 of Count I of the Complaint, the Respondent City of Morris realleges its answer to ¶ 6 of Count I of the Complaint as if fully and completely set forth herein. Further, the Respondent City of Morris denies the balance of the allegations set forth in ¶ 22 concerning the conducting of a "waste disposal operation" (as that term is defined in the Act) and further affirmatively states that it has not arranged for or supervised the deposit of special waste, municipal solid waste, garbage and other waste at the Morris Community Landfill. (The State again having already alleged in Paragraph 5

of Count I of said Complaint that: "CLC is the operator of the Morris Community Landfill, and manages day-to-day operations at both parcels at that site.").

23. To the extent that ¶ 23 of Count I of the Complaint alleges that the Respondent City of Morris has conducted waste disposal operations at the facility in question, the Respondent City of Morris realleges and incorporates herein its answer to ¶ 22 above as if fully and completely set forth herein. With respect to the balance of the allegations set forth in such paragraph, the Respondent City of Morris accordingly denies the same.

WHEREFORE, and for all the reasons stated herein, the Respondent City of Morris respectfully requests that the Board enter an Order dismissing this Complaint, all at the cost of the Complainant, the People of the State of Illinois, and for such other and further relief as the Board deems appropriate and just.

Dated: 6/12/03

Respectfully Submitted,

On behalf of the CITY OF MORRIS, an Illinois Municipal Corporation

By: Hinshaw & Culbertson

Charles F. Helsten
One of Its Attorneys

HINSHAW AND CULBERTSON
100 Park Avenue
P.O. Box 1389
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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 June 12, 2003, she served a copy of the foregoing upon:

Mr. Christopher Grant
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Chicago, IL 60610

Ms. Dorothy Gunn, Clerk
Pollution Control Board
100 W. Randolph, Suite 11-500
Chicago, IL 60601

By depositing a copy thereof, enclosed in an envelope in the United States Mail at Rockford, Illinois, proper postage prepaid, before the hour of 5:00 P.M., addressed as above.

Joan Lane

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City of Morris v. Cmty. Landfill Co., 2011 IL App (3d) 090847

Appellate Court of Illinois, Third District

August 5, 2011, Opinion Filed

Appeal No. 3-09-0847 (cons. with No. 3-09-0864)

Reporter

2011 IL App (3d) 090847 * | 957 N.E.2d 476 ** | 2011 Ill. App. LEXIS 814 *** | 354 Ill. Dec. 160 ****

THE CITY OF MORRIS, an Illinois Municipal Corporation, Petitioner-Appellant, v. COMMUNITY LANDFILL COMPANY, an Illinois Corporation, THE PEOPLE ex. rel. LISA MADIGAN, Attorney General of the State of Illinois, the ILLINOIS POLLUTION CONTROL BOARD, and The STATE Of ILLINOIS, Respondents-Appellees.COMMUNITY LANDFILL COMPANY, an Illinois Corporation, Petitioner-Appellant, v. ILLINOIS POLLUTION CONTROL BOARD, THE PEOPLE ex rel. LISA MADIGAN, Attorney General of the State of Illinois, THE CITY OF MORRIS, an Illinois Municipal Corporation, and The STATE Of ILLINOIS, Respondents-Appellees.THE CITY OF MORRIS, an Illinois Municipal Corporation, Petitioner-Appellant, v. COMMUNITY LANDFILL COMPANY, an Illinois Corporation, THE PEOPLE ex. rel. LISA MADIGAN, Attorney General of the State of Illinois, the ILLINOIS POLLUTION CONTROL BOARD, and The STATE Of ILLINOIS, Respondents-Appellees.COMMUNITY LANDFILL COMPANY, an Illinois Corporation, Petitioner-Appellant, v. ILLINOIS POLLUTION CONTROL BOARD, THE PEOPLE ex rel. LISA MADIGAN, Attorney General of the State of Illinois, THE CITY OF MORRIS, an Illinois Municipal Corporation, and The STATE Of ILLINOIS, Respondents-Appellees.

Subsequent History: As Corrected September 26, 2011. Released for Publication October 5, 2011.

Prior History: [***1] Appeal from the Illinois Pollution Control Board. PCB No. 03-191.Appeal from the Illinois Pollution Control Board. PCB No. 03-191.Appeal from the Illinois Pollution Control Board. PCB No. 03-191.Appeal from the Illinois Pollution Control Board. PCB No. 03-191.
Cmty. Landfill Co. v. Pollution Control Bd., 331 Ill. App. 3d 1056, 772 N.E.2d 231, 2002 Ill. App. LEXIS 386, 265 Ill. Dec. 193 (Ill. App. Ct. 3d Dist., 2002)

Disposition: Confirmed in part and set aside in part; cause remanded.

Core Terms

landfill, assurance, bonds, regulations, disposal, leachate, premiums, closure, costs, summary judgment, waste disposal, postclosure, conducting, accepting, sureties, paying, site, impose a penalty, modification, violations, revised, argues, desist, cease, time of hearing, cost estimate, compliance, day-to-day, estimated, confirm

Case Summary

Procedural Posture
Appellants, city and landfill, challenged the order entered by the Illinois Pollution Control Board (the Board), in the proceeding with appellee State of Illinois, holding appellants jointly and severally liable for posting financial assurance of $17,427,366, prohibiting appellants from accepting additional waste at the landfill, and imposing penalties against appellants.

Overview
The State filed a complaint against appellants, alleging that they were conducting disposal operations without adequate financial assurance. The State filed a motion for summary judgment, which the Board granted. The Board then entered its order. The court ruled that the Board properly granted summary judgment against the landfill. The landfill never obtained any financial assurance in addition to or in lieu of the bonds, which were removed from the list of acceptable sureties, and stopped paying premiums on the bonds. Nevertheless, the landfill continued to conduct waste disposal operations. Also, the Board's penalty was not arbitrary, capricious or unreasonable. The landfill benefited financially by not paying premiums on bonds for many years. Furthermore, summary judgment in favor of the State and against the city was improper, because the Board erred in finding that the city was conducting a waste disposal operation and responsible for obtaining financial assurance. Since the city was not conducting disposal operations, it had no obligation

EXHIBIT B

to obtain financial assurance.

Outcome

Court confirmed landfill violated the Environmental Protection Act's financial assurance obligation, requirement that landfill obtain $17.4 million in financial assurance, penalty against landfill, and cease and desist order. The court set aside the rulings against city and found city did not violate the Act or regulations, was not responsible for obtaining financial assurance, and was not liable for any civil penalty. The case was remanded.

LexisNexis® Headnotes

Environmental Law > Solid Wastes > Municipal Landfills

HN1 **Solid Wastes, Municipal Landfills**

Section 21 of the Environmental Protection Act provides that no person shall conduct any waste-storage, waste-treatment, or waste-disposal operation in violation of any regulations or standards adopted by the Illinois Pollution Control Board under the Act. 415 ILCS 5/21(d)(2) (2008). Section 811.700 of the Board's Financial Assurance Regulations states that no person shall conduct any disposal operations at an municipal solid waste landfill facility unit unless that person complies with the financial assurance requirements of this Part. Ill. Admin. Code tit. 35, § 811.700(f) (2011). Financial assurance may be provided by a bond guaranteeing payment or performance. Admin. Code tit. 35, § 811.700(b) (2011). The surety company issuing bonds must be approved by the U.S. Department of the Treasury as an acceptable surety. Admin. Code tit. 35, § 811.712(b) (2011). The Department of the Treasury lists acceptable sureties in its Circular 570. Admin. Code tit. 35, § 811.712(b) (2011). More like this Headnote

Shepardize - Narrow by this Headnote (2)

Environmental Law > Solid Wastes > Municipal Landfills

HN2 **Solid Wastes, Municipal Landfills**

An entity is responsible for obtaining financial assurance for a landfill if it conducts any disposal operation at an municipal solid waste landfill facility unit. Admin. Code tit. 35, § 811.700 (2011). The Environmental Protection Act defines "disposal" as 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. 415 ILCS 5/3.185 (2008). More like this Headnote

Shepardize - Narrow by this Headnote (0)

Environmental Law > Solid Wastes > Municipal Landfills

HN3 **Solid Wastes, Municipal Landfills**

The Illinois Pollution Control Board's regulations define "operator" as a person is responsible for the operation and maintenance of a solid waste disposal facility. Admin. Code tit. 35, § 810.103 (2011). A court may look beyond permits to determine who is involved in the day-to-day operations of a landfill to determine who is an operator. An entity will be regarded as an operator if it is involved in the day-to-day operations of the site. An owner will be considered an operator when it pays for all site operations, directs and supervises the operator on an ongoing basis and limits the discretion of the operator. More like this Headnote

Shepardize - Narrow by this Headnote (0)

Environmental Law > Solid Wastes > Municipal Landfills

HN4 **Solid Wastes, Municipal Landfills**

Admin. Code tit. 35, § 811.309(e)(1)(c) (2011) provides that treatment works are considered part of a landfill only if more than 50% of the average daily influent flow is attributable to leachate from the landfill. More like this Headnote

Shepardize - Narrow by this Headnote (0)

Environmental Law > Solid Wastes > General Overview

HN5 **Environmental Law, Solid Wastes**

Section 33 of the Environmental Protection Act provides that after due consideration of the written and oral statements, the testimony and arguments that shall be submitted at the hearing, the Illinois Pollution Control Board shall issue and enter such final order, or make such final determination, as it shall deem appropriate under the circumstances. 415 ILCS 5/33 (2008). More like this Headnote

Shepardize - Narrow by this Headnote (0)

Environmental Law > Solid Wastes > Municipal Landfills

HN6 **Solid Wastes, Municipal Landfills**

An entity is responsible for obtaining financial assurance for a landfill if it conducts any disposal operation at an municipal solid waste

landfill facility unit. Admin. Code tit. 35, § 811.700(f) (2011). More like this Headnote

Shepardize - Narrow by this Headnote (0)

Environmental Law > Solid Wastes > General Overview

HN7 **Environmental Law, Solid Wastes**

Section 42 of the Environmental Protection Act authorizes the Illinois Pollution Control Board to impose a civil penalty of up to $10,000 per day against any person who violates a provision of the Act or regulation adopted by the Board. 415 ILCS 5/42(a) (2008). More like this Headnote

Shepardize - Narrow by this Headnote (0)

Environmental Law > Solid Wastes > General Overview

HN8 **Environmental Law, Solid Wastes**

Section 42(h) of the Environmental Protection Act lists a number of factors that the Illinois Pollution Control Board is to consider when determining the appropriate penalty, including: (1) the duration and gravity of the violation; (2) the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of the Act and regulations thereunder; (3) any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefit shall be determined by the lowest cost alternative for achieving compliance; (4) the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with the Act by the respondent and other persons similarly subject to the Act; (5) the number, proximity in time, and gravity of previously adjudicated violations of the Act by the respondent. 415 ILCS 5/42(h) (2008). More like this Headnote

Shepardize - Narrow by this Headnote (0)

Environmental Law > Solid Wastes > General Overview

HN9 **Environmental Law, Solid Wastes**

See 415 ILCS 5/42(h) (2008). More like this Headnote

Shepardize - Narrow by this Headnote (0)

Administrative Law > Judicial Review > Standards of Review > Arbitrary & Capricious Standard of Review
Environmental Law > Solid Wastes > General Overview

HN10 **Standards of Review, Arbitrary & Capricious Standard of Review**

The Illinois Pollution Control Board is vested with broad discretionary powers in imposing penalties. A penalty will be set aside only if it is clearly arbitrary, capricious or unreasonable. More like this Headnote

Shepardize - Narrow by this Headnote (2)

Environmental Law > Solid Wastes > General Overview

HN11 **Environmental Law, Solid Wastes**

A penalty is authorized under the Environmental Protection Act against any person who violates a provision of the Act or a regulation adopted by the Illinois Pollution Control Board. 415 ILCS 5/42(a) (2008). More like this Headnote

Shepardize - Narrow by this Headnote (0)

Environmental Law > Solid Wastes > General Overview

HN12 **Environmental Law, Solid Wastes**

Section 33 of the Environmental Protection Act authorizes the Illinois Pollution Control Board to issue orders and provides that such orders may include a direction to cease and desist from violations of the Act or any rule or regulation adopted under the Act. 415 ILCS 5/33(b) (2008). More like this Headnote

Shepardize - Narrow by this Headnote (0)

Environmental Law > Solid Wastes > Municipal Landfills

HN13 **Solid Wastes, Municipal Landfills**

Section 21 of the Environmental Protection Act lists prohibited acts and states that no person shall conduct any waste disposal operation in violation of any regulations or standards adopted by the Illinois Pollution Control Board under the Act. 415 ILCS 5/21(d)(2) (2008). Admin. Code tit. 35, § 811.700 of the Board's regulations provides that no person shall conduct any disposal operation at an municipal solid waste landfill facility unit unless that person complies with the financial assurance requirements of this Part. Admin. Code tit. 35, § 811.700(f) (2011). The Act defines "disposal" as 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. 415 ILCS 5/3.185 (2008). More like this Headnote

Shepardize - Narrow by this Headnote (2)

Environmental Law > Solid Wastes > Municipal Landfills

HN14 **Solid Wastes, Municipal Landfills**

A landfill conducts "disposal operations" by accepting waste at the landfill. 415 ILCS 5/3.185 (2008). Such disposal operations are authorized by the Environmental Protection Act and its regulations only if adequate financial assurance is in place. Admin. Code tit. 35, § 811.700(f) (2011). Accepting waste without proper financial assurance is prohibited by the Act and its regulations. 415 ILCS 5/21(d)(2) (2002); Admin. Code tit. 35, § 811.700(f) (2011). More like this Headnote

Shepardize - Narrow by this Headnote (0)

Environmental Law > Solid Wastes > Municipal Landfills

HN15 **Solid Wastes, Municipal Landfills**

A landfill violates the Environmental Protection Act and its regulations by accepting waste without proper financial assurance. 415 ILCS 5/21(d)(2) (2008); Admin. Code tit. 35, § 811.700(f) (2011). The Illinois Pollution Control Board has the power to direct a landfill to cease and desist from violating the Act and its regulations. 415 ILCS 5/33(b) (2008). More like this Headnote

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Syllabus

In an action alleging violations of the Environmental Protection Act and regulations adopted by the Pollution Control Board arising from a landfill company's operation of a waste disposal facility on land owned by a city, the appellate court confirmed the Board's findings that the landfill company violated the Act's financial assurance obligation, and its imposition of a penalty and issuance of a cease and desist order, but the appellate court set aside rulings against the city based on findings that the city did not violate the Act or its regulations, that it was not responsible for obtaining financial assurance for the landfill, and that it was not liable for any civil penalty.

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For Illinois Pollution Control Board, Appellee: Hon. Lisa Madigan, Attorney General, Chicago, IL; Ms. Laura M. Wunder, Assistant Attorney General, Chicago, IL; Mr. Michael A. Scodro, Solicitor General, Chicago, IL.

Judges: JUSTICE LYTTON delivered the judgment of the court, with opinion. Justices Schmidt and Wright concurred in the judgment and opinion.

Opinion by: LYTTON

Opinion

[*P1] [****162] [**478] The State filed a complaint with the Illinois Pollution Control Board (Board) against Community Landfill Co. (CLC) and the City of Morris, alleging that CLC and the City were conducting disposal operations in violation of the financial assurance requirements of the Environmental Protection Act (Act) (415 ILCS 5/21 (West 2008)) and regulations promulgated thereunder by the Board. The State filed a motion for summary judgment, which the Board granted. The Board then entered an order (1) holding CLC and the City jointly and severally liable for posting financial assurance of $17,427,366, (2) prohibiting CLC and the City from accepting additional waste at the landfill, and (3) imposing penalties of $399,308.98 against the City and $1,059,534.70 against CLC. CLC and the City appeal the Board's rulings. We confirm in part and set aside in part.

[*P2] In the 1970s, the City of Morris operated the Morris Community Landfill. The landfill consists of two parcels, [***2] A and B. In 1982, the City transferred its interest in the landfill to CLC, but retained ownership of the land on which the landfill was situated. CLC began operating the landfill. CLC paid the City dumping-related royalties for its use of the landfill.

[*P3] In 1996, CLC secured financial assurance from bonds issued by Frontier Insurance for closure/postclosure care costs for the landfill. Prior to 1999, CLC carried $1.4 million in bonds from Frontier, the estimated closure costs at that time.

[*P4] In 1999, the City and CLC entered into an agreement that required CLC to give leachate from the landfill to the City, which the City then treated at its publicly owned treatment works at no cost to CLC. The leachate from the landfill made up less than 1% of what was treated at the City's publicly owned treatment works.

[*P5] In 1999, CLC submitted an application to the Illinois Environmental Protection Agency (IEPA) for a significant modification permit requesting the closure of parcel B and the continued operation of parcel A. The permit estimated that closure costs for CLC would be $7

million and the costs for the City would be $10 million for leachate treatment. CLC sought to post a $7 million bond, [***3] while the City would commit to leachate treatment costing $10 million. IEPA rejected CLC's application and required CLC to post a bond for the entire $17 million. CLC and the City appealed that decision to the Board and then to this court, both of which upheld the $17 million financial assurance amount. See *Community Landfill Co.*, Ill. Pollution Control Bd. Op. 01-48, 01-49 (cons.), 2001 Ill. ENV LEXIS 161 (April 5, 2001); *Community Landfill Co. v. Pollution Control Board*, 334 Ill. App. 3d 1125 (2002) (unpublished Order under Supreme Court Rule 23).

[*P6] In 2000, IEPA issued a modification permit supported by financial assurance of $17,427,366, which was guaranteed by three bonds issued by Frontier. One of the bonds, with a value of $10,081,630, listed the City as principal. The remaining bonds listed CLC as the principal. CLC was responsible for the premiums on all of the bonds.

[*P7] A few months later, IEPA notified CLC and the City that they were in violation of the Act because Frontier Insurance Company had been taken off the list of approved government sureties. Two weeks later, CLC filed its supplemental permit application for parcel A. IEPA denied the application because Board regulations required acceptable sureties [***4] to be [****163] [**479] listed in the United States Department of Treasury's Circular 570, and Frontier was stricken from the list. CLC and the City appealed IEPA's decision. The Board affirmed IEPA's denial of CLC's permit. *Community Landfill Co.*, Ill. Pollution Control Bd. Op. 01--170, at 22, 2001 Ill. ENV LEXIS 553 (Dec. 6, 2001). CLC and the City then appealed to this court. We confirmed, holding:

> "[T]he supplemental permit application in this case was appropriately denied because the company failed to satisfy *** requirements of the Act and Code when seeking the permit. Although the parties do not dispute that the bonds were valid and enforceable or that the Agency accepted the company's bonds for a different permit after Frontier was removed from the Circular 570 list, Frontier did not meet the statutory financial assurance requirements for the supplemental permit here as it was not on the list of approved sureties when this application was submitted and ruled on." *Community Landfill Co. v. Pollution Control Board*, 331 Ill. App. 3d 1056, 1061, 772 N.E.2d 231, 265 Ill. Dec. 193 (2002).

[*P8] In 2003, the State filed a complaint against CLC and the City, alleging that they were conducting disposal operations at the Morris Community Landfill without adequate financial [***5] assurance. The State filed a motion for summary judgment against CLC and the City. CLC filed a response arguing that there was an issue of fact as to whether it had adequate financial assurance in place. The City filed a cross-motion for summary judgment, arguing that it had no responsibility to post financial assurance because it did not conduct or manage operations at the landfill. In 2006, the Board issued an opinion and order granting the State's motion for summary judgment and denying the City's motion for summary judgment.

[*P9] In September 2007, a penalty hearing was held. Evidence at the hearing established that CLC paid the City $399,208.98 in dumping royalties from 2001 to 2005. The evidence also showed that CLC's premium payment for the Frontier bonds was $217,842 in 2001, which amounted to $596.83 per day. CLC stopped making payments on the Frontier bonds in 2001. Neither CLC nor the City provided any financial assurance to IEPA for the landfill after 2001.

[*P10] Brian White, IEPA Bureau of Land Compliance unit manager, testified that IEPA has made a claim on the Frontier bonds obtained by the City and CLC in 2000. Frontier offered to pay IEPA $400,000 on those bonds. At the time [***6] of the hearing, Frontier had paid nothing.

[*P11] Christine Roque, IEPA Bureau of Land engineer, testified that financial assurance amounts may be reduced by seeking and obtaining a permit modification from IEPA. CLC and the City did not seek a permit modification for the Morris Community Landfill until July 2007. That permit modification was under review by IEPA at the time of the hearing.

[*P12] Devin Moose, a licensed professional engineer, was hired by the City in 2005 to evaluate the landfill. Moose prepared revised cost estimates for closure/post-closure care and found them to be $10 million. The revised figures were submitted to IEPA in July 2007, but IEPA had not yet responded to them.

[*P13] Edward Pruim, secretary/treasurer of CLC, testified that the cost of the Frontier bonds in 2000 was $200,000 in collateral and premium payments of slightly over $200,000 per year. CLC paid the premium on the Frontier bonds for two years. CLC then began looking for another bonding company and found that it did not have enough money to purchase other bonds.

[*P14] [****164] [**480] Following the hearing, each party filed posthearing briefs. In its brief, the State argued that the Board should impose a penalty against CLC in the amount [***7] of $1,059,534.70, reflecting the amount it saved on bond premiums by not paying for any bonds after 2001. The State argued that the penalty against the City should be $399,308.98, the amount of dumping royalties it received from CLC from 2001 to 2005, when no financial assurance was in place for the landfill.

[*P15] In 2009, the Board issued an order in which it found CLC and the City jointly and severally obligated to post financial assurance in the amount of $17,427,366, to be reduced by any amount IEPA has or will receive from Frontier. *Community Landfill Co.*, Ill. Pollution Control Bd. Op. 03-191, at 3, 35, 2009 Ill. ENV LEXIS 228 (June 18, 2009). The Board also ordered both CLC and the City to (1) submit revised cost estimates and update financial assurance in accordance with the revised estimates, and (2) cease and desist from accepting any additional waste at the landfill. *Id.* at 3, 2009 Ill. ENV LEXIS 228. The Board imposed penalties of $399,308.98 against the City and $1,059,534.70 against CLC. *Id.*

[*P16] I. VIOLATION OF ACT AND REGULATIONS

[*P17] A. CLC's Liability

[*P18] CLC argues that the Board erred in finding that it violated the Act and its regulations by not obtaining adequate financial assurance because the Frontier bonds were valid and enforceable, [***8] as evidenced by IEPA's attempt to collect on them.

[*P19] ***HN1*** Section 21 of the Act provides that "[n]o person shall *** [c]onduct any waste-storage, waste-treatment, or waste-disposal operation *** in violation of any regulations or standards adopted by the Board under this Act." 415 ILCS 5/21(d)(2) (West 2008). Section 811.700 of the Board's Financial Assurance Regulations states that "no person *** shall conduct any disposal operations at an MSWLF [municipal solid waste landfill facility] unit *** unless that person complies with the financial assurance requirements of this Part." 35 Ill. Adm. Code 811.700(f) (2011). Financial assurance may be provided by a bond guaranteeing payment or performance. 35 Ill. Adm. Code 811.700(b) (2011). The surety company issuing bonds must be "approved by the U.S. Department of the Treasury as an acceptable surety." 35 Ill. Adm. Code. 811.712(b) (2011). The Department of the Treasury lists acceptable sureties in its Circular 570. 35 Ill. Adm. Code 811.712(b) (2011).

[*P20] In 1999, IEPA determined that CLC was required to post over $17 million in financial assurance for the Morris Community Landfill. In May 2000, CLC and the City purchased $17.1 million in bonds from [***9] Frontier. On June 1, 2000, Frontier was removed from the Circular 570 list. See *Community Landfill Co. v. Pollution Control Board*, 331 Ill. App. 3d at 1059. CLC never obtained any financial assurance in addition to or in lieu of the Frontier bonds and stopped paying premiums on the Frontier bonds in 2001. Nevertheless, CLC continued to conduct waste disposal operations at the landfill.

[*P21] As we explained in *Community Landfill Co.*, the Frontier bonds were valid and enforceable. *Community Landfill Co.*, 331 Ill. App. 3d at 1061. Nevertheless, they did not satisfy the requirements of the Act or the Code because Frontier was removed from the list of approved sureties. *Id.* Moreover, CLC stopped paying premiums on the Frontier bonds in 2001. In 2003, when the State filed its complaint, CLC [****165] [**481] was already in substantial violation of the Board's financial assurance regulations and section 21 of the Act. Thus, the Board properly granted summary judgment against CLC.

[*P22] B. The City's Liability

[*P23] The City argues that the Board should not have found it liable for providing financial assurance for the landfill because the City did not "conduct disposal operations."

[*P24] ***HN2*** An entity is responsible for obtaining financial [***10] assurance for a landfill if it "conduct[s] any disposal operation at an MSWLF unit." 35 Ill. Adm. Code 811.700 (2011). The Act defines "disposal" as "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." 415 ILCS 5/3.185 (West 2008). The parties do not dispute that parcels A and B of Morris Community Landfill qualify as MSWLF units.

[*P25] Here, the Board found that while the City did not "conduct the day-to-day operations at the landfill," the City was an operator of the landfill and, thus, responsible for financial assurance:

> "While Morris may not actively conduct the day-to-day operations at the landfill, Morris also does not 'passively own land upon which waste disposal operations are (or have been) conducted.' [Citation.] Morris financed the operation, litigated in conjunction with CLC, as well as profited from and treated the leachate from the Morris Community Landfill. While these activities alone may not constitute "operating" a waste disposal site, Morris also had discretion regarding the decisions at the site and took responsibility for some of the ancillary site operations such as [***11] the treatment of leachate from the landfill. The Board finds that the grand sum of Morris' conduct rises to the level of 'operation ***'". (Internal quotation marks omitted.) *Community Landfill Co., Inc.*, Ill. Pollution Control Bd. Op. 03-191, 2006 Ill. ENV LEXIS 89, *31 (Feb. 16, 2006).

[*P26] ***HN3*** The PCB's regulations define "operator" as "a person who is responsible for the operation and maintenance of a solid waste disposal facility." 35 Ill. Adm. Code 810.103 (2011). A court may look beyond permits to determine who is involved in the day-to-day operations of a landfill to determine who is an operator. *People ex rel. Ryan v. Bishop*, 315 Ill. App. 3d 976, 979-80, 735 N.E.2d 754, 249 Ill. Dec. 150 (2000). An entity will be regarded as an operator if it is involved in the day-to-day operations of the site. *Poland*, Ill. Pollution Control Bd. 98--148, at 8-9, 2001 Ill. ENV LEXIS 407 (Sept. 6, 2001). An owner will be considered an operator when it pays for all site operations, directs and supervises the "operator" on an ongoing basis and limits the discretion of the "operator." See *Termaat*, Ill. Pollution Control Bd. 85--129, 1986 Ill. ENV LEXIS 444, *8 (Oct. 23, 1986).

[*P27] Here, there was no evidence that the City oversaw, directed or supervised CLC in its waste disposal operations. While the City helped CLC obtain financial assurance, litigated [***12] alongside CLC on various issues and treated leachate from the landfill, those activities were separate and distinct from CLC's "waste disposal operation" at the landfill. Moreover, the leachate the City received from CLC amounted to a very small percentage of the total leachate the City treated at its publicly owned treatment works. Thus, the City's treatment of the leachate did not amount to an ancillary site operation of the landfill. See ***HN4*** 35 Ill. Adm. Code 811.309(e)(1)(c) (2011) (treatment works considered part of a landfill only if more than 50% of the average daily influent flow is attributable to leachate from the landfill).

[*P28] [****166] [**482] The Board specifically found that the City was not involved in day-to-day operations of the landfill. *Community Landfill Co.*, Ill. Pollution Control Bd. Op. 03--191, at 13, 2006 Ill. ENV LEXIS 89 (Feb. 16, 2006); *Community Landfill Co.*, Ill. Pollution Control Bd. Op. 03--191 at 3, 4, 28, 2009 Ill. ENV LEXIS 228 (June 18, 2009). That finding is the test for determining if an entity is "conducting waste operations," not litigation activities, financial support or minor amounts of leachate treatment. The Board erred in finding that the City was conducting a waste disposal operation and responsible for obtaining [***13] financial assurance. The Board's order granting summary judgment in favor of the State and against the City was improper.

[*P29] II. FINANCIAL ASSURANCE

[*P30] A. CLC's Liability

[*P31] CLC argues that the Board's order requiring it to obtain $17.4 million in financial assurance was improper because (1) it already had financial assurance in place by way of the Frontier bonds, and (2) the appropriate amount of financial assurance necessary for closure/postclosure costs was still in dispute.

[*P32] ***HN5*** Section 33 of the Act provides: "After due consideration of the written and oral statements, the testimony and arguments that shall be submitted at the hearing, *** the Board shall issue and enter such final order, or make such final determination, as it shall deem appropriate under the circumstances." 415 ILCS 5/33 (West 2008).

[*P33] CLC's first argument that it had adequate financial assurance in place through the Frontier bonds is not supported by the evidence. The evidence at the hearing established that the Frontier bonds purchased in 2000 did not comply with the Act or regulations and that CLC stopped paying premiums on those bonds in 2001. Thus, from 2000 to the time of the hearing, CLC did not have proper financial [***14] assurance in place. The Board's order requiring CLC to obtain compliant financial assurance was proper.

[*P34] Moreover, the amount of financial assurance ordered by the Board was supported by the evidence. In 2000, CLC estimated that closure/postclosure care of the landfill would cost $17.4 million, and IEPA issued a modification permit to CLC based on that cost estimate. At the hearing in September 2007, CLC presented testimony that only $10 million was necessary to cover closure/postclosure costs at the landfill. While CLC could have provided IEPA with revised estimates of closure/postclosure costs at any time, CLC did not present its revised cost estimates to IEPA until July 2007. At the time of the hearing, IEPA had not yet determined if CLC's modified cost estimates were proper and could be accepted. Because the only amount of closure/postclosure costs approved by IEPA at the time of the hearing was $17.4 million, the Board did not err in requiring CLC to obtain financial assurance in that amount, less [***15] any amount tendered by Frontier to IEPA.

[*P35] B. The City's Liability

[*P36] The City argues that the Board should not have found it jointly and severally liable for obtaining $17.4 million in financial assurance for the Morris Community Landfill since it is not "conducting waste disposal operations." We agree.

[*P37] ***HN6*** An entity is responsible for obtaining financial assurance for a landfill if it "conduct[s] any disposal operation at an [****167] [**483] MSWLF unit." 35 Ill. Adm. Code 811.700(f) (2011). Since we have found that the City is not conducting disposal operations, it had no obligation to obtain financial assurance. The Board's order finding the City jointly and severally liable for obtaining financial assurance for the landfill was improper.

[*P38] III. PENALTIES

[*P39] A. CLC

[*P40] CLC argues that the Board abused its discretion in imposing a penalty of $1,059,534.70 against it because it acted reasonably in purchasing the Frontier bonds and did not benefit from noncompliance.

[*P41] ***HN7*** Section 42 of the Act authorizes the Board to impose a civil penalty of up to $10,000 per day against any person who violates a provision of the Act or regulation adopted by the Board. 415 ILCS 5/42(a) (West 2008). ***HN8*** Section 42(h) lists a number of factors [***16] that the Board is to consider when determining the appropriate penalty, including:

> "(1) the duration and gravity of the violation;
>
> (2) the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder ***;
>
> (3) any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefit shall be determined by the lowest cost alternative for achieving compliance;
>
> (4) the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
>
> (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent[.]" 415 ILCS 5/42(h) (West 2008).

Section 42(h) also states:

> ***HN9*** "In determining the appropriate civil penalty to be imposed ***, the Board shall ensure, in all cases that the penalty is at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result [***17] in an arbitrary or unreasonable financial hardship." 415 ILCS 5/42(h) (West 2008).

[*P42] ***HN10*** The Board is vested with broad discretionary powers in imposing penalties. *ESG Watts, Inc. v. Pollution Control Board*, 282 Ill. App. 3d 43, 50-51, 668 N.E.2d 1015, 218 Ill. Dec. 183 (1996). A penalty will be set aside only if it is clearly arbitrary, capricious or unreasonable. *Id.* at 51.

[*P43] Here, the Board considered the section 42(h) factors and found only one mitigating factor in CLC's favor -- no prior adjudicated administrative citation violations. *Community Landfill Co.*, Ill. Pollution Control Bd. 03-191, at 39, 2009 Ill. ENV LEXIS 228 (June 18, 2009). On the other hand, the Board found the aggravating factors to be "many and severe." *Id.* The Board explained that "the on-going, grave financial assurance violations in this case [that] have persisted since 2000, leaving unresolved problems at the Landfill," required that it impose a significant penalty against CLC. 2009 Ill. ENV LEXIS 228, [slip op.] at 40. The Board found that the appropriate measure of the

civil penalty against CLC was the amount of money CLC saved by not paying premiums for the noncompliant Frontier bonds from 2001 to 2007. *Id*. Thus, the Board assessed a penalty against CLC for that amount: $1,059,534.70. *Id*.

[*P44] [****168] [**484] We find that [***18] the Board's penalty was not arbitrary, capricious or unreasonable. The penalty was supported by section 42(h), including the mandate that penalties be at least as great as the economic benefits accrued by the respondent as a result of the violation. Here, CLC benefited financially by not paying premiums on bonds for many years. Thus, the penalty imposed by the Board, which was equal to the premiums CLC should have paid for those bonds, was appropriate.

[*P45] B. The City

[*P46] ***HN11*** A penalty is authorized under the Act against any person who violates a provision of the Act or a regulation adopted by the Board. 415 ILCS 5/42(a) (West 2008). Because the City did not violate the Act or regulations, the Board erred in imposing a penalty against the City.

[*P47] IV. CEASE AND DESIST ORDER

[*P48] CLC argues that the Board had no authority to order it to cease and desist from accepting any additional waste at the site because the only issue before the Board was CLC's compliance with statutory and regulatory financial assurance requirements.

[*P49] ***HN12*** Section 33 of the Act authorizes the Board to issue orders and provides that "[s]uch order[s] may include a direction to cease and desist from violations of this Act [or] any rule or [***19] regulation adopted under this Act." 415 ILCS 5/33(b) (West 2008).

[*P50] ***HN13*** Section 21 of the Act lists "[p]rohibited acts" and states that "[n]o person shall *** [c]onduct any *** waste disposal operation *** in violation of any regulations or standards adopted by the Board under this Act." 415 ILCS 5/21(d)(2) (West 2008). Section 811.700 of the Board's regulations provides that "no person *** shall conduct any disposal operation at an MSWLF unit *** unless that person complies with the financial assurance requirements of this Part." 35 Ill. Adm. Code 811.700(f) (2011). The Act defines "disposal" as "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." 415 ILCS 5/3.185 (West 2008).

[*P51] ***HN14*** CLC conducts "disposal operations" by accepting waste at the Morris Community Landfill. See 415 ILCS 5/3.185 (West 2008). Such disposal operations are authorized by the Act and its regulations only if adequate financial assurance is in place. See 35 Ill. Adm. Code 811.700(f) (2011). Accepting waste without proper financial assurance is prohibited by the Act and its regulations. See 415 ILCS 5/21(d)(2) (West 2002); 35 Ill. Adm. Code 811.700(f) [***20] (2011).

[*P52] Here, ***HN15*** CLC violated the Act and its regulations by accepting waste without proper financial assurance. See 415 ILCS 5/21(d)(2) (West 2008); 35 Ill. Adm. Code 811.700(f) (2011). The Board had the power to direct CLC to cease and desist from violating the Act and its regulations. See 415 ILCS 5/33(b) (West 2008). Thus, the Board acted properly when it prohibited CLC from accepting waste.

[*P53] CONCLUSION

[*P54] We confirm the Board's (1) finding that CLC violated the Act's financial assurance obligation, (2) requirement that CLC obtain $17.4 million in financial assurance, (3) penalty of $1,059,534.70 against CLC, and (4) cease and desist order. However, we set aside the Board's rulings against the City and find that the City (1) did not violate the Act or its regulations, (2) is not responsible for obtaining financial assurance for the landfill, and (3) is not liable for any civil penalty.

[*P55] [****169] [**485] The order of the Illinois Pollution Control Board is confirmed in part and set aside in part.

[*P56] Confirmed in part and set aside in part; cause remanded.

Footnotes

1 While IEPA has attempted to collect from Frontier on the noncompliant bonds, the $400,000 offered by Frontier was far less than $17.4 million. Frontier has yet to pay IEPA any amount.