BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13-28
	)	
ATKINSON LANDFILL CO.,	)	
	)	
Respondents.	)	

MOTION TO STRIKE AND DISMISS FIRST
AMENDED COMPLAINT AND SUPPORTING MEMORANDUM

Respondent, ATKINSON LANDFILL CO. ("ALC"), by its attorney, Kenneth Anspach, pursuant to § 2-615 of the Code of Civil Procedure, 735 ILCS 2-615(a), § 2-619((a)(9) of the Code of Civil Procedure, 735 ILCS 2-619((a)(9), and §§ 101.100, 101.500 and 101.506 of the General Rules of the Pollution Control Board, 35 Ill. Adm. Code 101.100, 101.500 and 101.506, hereby moves the Pollution Control Board (the "Board") to strike and dismiss the First Amended Complaint (the "Complaint") of complainant, PEOPLE OF THE STATE OF ILLINOIS ("the STATE"), and in support thereof states as follows:

ALC is moving the Board to strike and dismiss the Complaint on the basis that it is substantially insufficient in law. For purposes of ruling on a motion to dismiss, all well-pled facts contained in the pleading must be taken as true, and all inferences from them must be drawn in favor of the non-movant. *People v. Stein Steel Mills Services, Inc.*, PCB 02-1 (Nov. 15, 2001). It is well settled in this state that, although pleadings are to be liberally construed, and a defendant's motion to dismiss admits all facts well pleaded, nonetheless, in considering a motion to dismiss, the pleadings are to be construed strictly against the pleader. *Knox College v. Celotex Corporation*, 88 Ill. 2d 407, 422 (1981). The purpose of requiring that defects in pleadings be attacked by motion is to point out the defects in the pleadings so that the pleader will have an

opportunity to cure them before trial. *Id.* Notice pleading, which prevails under the federal rules is not sufficient under the Illinois Code of Civil Procedure, formerly the Illinois Civil Practice Act. *Knox College*, 88 Ill. 2d at 424. The pleader must state the facts essential to his cause of action. *Id.* A pleading which merely paraphrases the law, as though to say that the pleader's case will meet the legal requirements, without stating the facts, is insufficient. *Id.* Construing the Complaint strictly against the STATE, the Board must find that the Complaint is insufficient in law and must be stricken and dismissed.

I. COUNTS I-II RELATING TO ALLEGED DISCHARGES INTO THE VILLAGE STP ARE SUBSTANTIALLY INSUFFICIENT IN LAW AND MUST BE DISMISSED PURSUANT TO § 2-615 OF THE CODE OF CIVIL PROCEDURE, 735 ILCS 5/2-615.

A. Counts I and II Each Fail to State a Cause of Action and Must Be Dismissed Pursuant to § 2-615 of the Code of Civil Procedure, 735 ILCS 5/2-615, Because No Permit Was Required for the Alleged Discharges That Purportedly Violated Permit No. 2008-E0-0331.

As set forth more fully below, Counts I and II of the Complaint allege that ALC allegedly disposed of leachate at the Village of Atkinson sewage treatment plant (the "Village STP") in purported excess of the purported limits imposed by Permit No. 2008-E0-0331 ("Permit No. 2008-E0-0331"), a copy of which is attached to the Complaint as Exhibit 1, and thereby allegedly violated §§ 12(a) and (b) of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/12(a) and (b). At the outset, it is important to note that Counts I and II fail to allege a violation of §§ 12(a) and (b) of the Act, 415 ILCS 5/12(a) and (b), because *no permit was required* for that alleged disposal of leachate.

Section 12(f) of the Act, 415 ILCS 5/12(f), provides in pertinent part:

> No permit shall be required under this subsection and under Section 39(h) of this Act for any discharge for which a permit is not required under the Federal Water Pollution Control Act, as now or hereafter amended [33 U.S.C. § 1251 et seq.], and regulations pursuant thereto.

Thus, no permit is required under the Act for which a permit is *not* required under the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. § 1251 et seq. ("CWA"). Under the CWA, a permit, known as a National Pollution Discharge Elimination System ("NPDES") permit, *is* required under for any discharge of a pollutant from a point source to waters of the United States.[1] However, an NPDES permit is *not* required discharges directly into a wastewater treatment system, also known as a publicly owned treatment works ("POTW"),[2] which is excluded from the definition of "waters of the United States".[3] Accordingly, no permit is required for a discharge into a POTW pursuant to §12(f) of the Act, 415 ILCS 5/12(f).

The Village STP is a POTW. Thus, no permit was required for any discharge into the Village STP. The issuance of Permit No. 2008-E0-0331 to ALC was, at best, superfluous. Given that no permit was required for any discharge into the Village STP, there could not have been any permit violation for any discharge into the Village STP under §§ 12(a) and (b) of the Act, 415 ILCS 5/12(a) and (b).

Despite the requirements of §12(f) of the Act, 415 ILCS 5/12(f), the Complaint alleges in Count II, paragraphs 17-23, that a permit *is required* for discharges into a treatment works pursuant to 35 Ill. Adm. Code 309.204(a). That regulation states that "an operating permit issued

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[1] CWA, §402, 33 U.S.C. §1342.

[2] 40 CFR § 403.3(q) and 9 VAC 25-31-10[2] provide as follows:
(q) The term Publicly Owned Treatment Works or POTW means a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by § 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works. Thus, under 40 CFR 403.3(q), the Village of Atkinson STP, referred to in the Permit, is a Publicly Owned Treatment Works or POTW. Under § 502(4) of the Clean Water Act, 33 U.S.C. § 1362(4), the term "municipality" includes "town...or other public body having jurisdiction over disposal of sewage, industrial wastes, or other wastes," and would, accordingly, include the Village of Atkinson.

[3] CWA, § 212(2)(A), 33 U.S.C. § 1292(2)(A); 40 C.F.R. 403.3(q); 40 C.F.R. 122.3(c); D.K. McCall, III, *Clean Water Act*, in Environmental Law Handbook (T. Sullivan ed. 2011) ("McCall") at 323-324.

by the Agency" is required for the "operation of any…wastewater source." Yet, 35 Ill. Adm. Code 309.204 directly contradicts §12(f) of the Act, 415 ILCS 5/12(f). Specifically, 35 Ill. Adm. Code 309.204(b)(1) provides that:

> No operating permit is required under this Section for any discharge…[f]or which an NPDES permit is required.

So, § 12(f) of the Act, 415 ILCS 5/12(f), provides that, "No permit shall be required… for any discharge for which a [NPDES] permit is *not required*," while 35 Ill. Adm. Code 309.204(b)(1) provides that, "No operating permit is required…for any discharge…[f]or which an NPDES permit *is required*![4]

This contradiction between the statute and the regulation is exactly what the Illinois legislature was trying to avoid when it adopted § 12(f) of the Act, 415 ILCS 5/12(f). The intention of the General Assembly was set forth in *EPA v. Culligan DuPage Soft Water Service*, PCB No. 74-376, 1975 Ill. ENV LEXIS 54 (1975), which states:

> When the new legislation did become effective in September 1973 it became apparent that the Illinois Legislature wished to avoid a dual permit system. The Statute said: "It is in the interest of the people of the State of Illinois for the State to authorize such NPDES program and secure Federal approval thereof, and thereby to avoid the existance [sic] of duplicative, overlapping or conflicting State and Federal statutory permit systems;" [EPA Section 11(a)(5)]. It was further provided: "No permit shall be required under this subsection and under Section 39(b) of this Act for any discharge for which a permit is not required under the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500) and Regulations pursuant thereto …

To the extent that 35 Ill. Adm. Code 309.204 creates a "dual permit system" in contradiction to the intention of the legislature and to § 12(f) of the Act, 415 ILCS 5/12(f), it is unlawful. Given that no cause of action can therefore be stated under Counts I and II for violation of §§ 12(a) and (b) of the Act, 415 ILCS 5/12(a) and (b), the entirety of Counts I and II must be dismissed for

[4] Emphasis added.

failure to state a cause of action. Additional insufficiencies in Counts I and II are set forth below.

B. The Complaint Fails to Allege Any Statutory Basis for the Issuance of Permit No. 2008-E0-0331 or for its Attempted Restriction on the Disposal of Leachate.

Paragraph 4 of Counts I and II alleges that ALC is operating a municipal solid waste landfill under a permit issued by the Illinois Environmental Protection Agency ("Illinois EPA"), as follows:

> At all times relevant to this Complaint, Respondent owned and operated, and continues to own and operate, an active municipal solid waste landfill located at 1378 Commercial Drive, Atkinson, Henry County, Illinois. Respondent operates the landfill under Permit No. 2001-021-LFM, Modification No. 5, Log No. 2010-068, issued by the Illinois EPA on April21, 2010.

Thus, paragraph 4 alleges that ALC operates under authority of Illinois EPA Permit No. 2001-021-LFM, Modification No. 5, Log No. 2010-068 (the "Operating Permit"). While not set forth in the Complaint, presumably the Operating Permit was issued under authority of 35 Ill. Adm. Code 309.204(a), which states, in pertinent part, as follows:

> No person shall cause or allow the use or operation of any...wastewater source without an operating permit issued by the Agency.

No allegation is made that ALC is operating in violation of the Operating Permit.

Paragraph 5 of Counts I and II alleges that Permit No. 2008-E0-0331 was also issued to ALC by Illinois EPA. No allegation is made either in Count I or Count II setting forth the statutory basis for the purported issuance of Permit No. 2008-E0-0331, or why it was even necessary, given that ALC was already operating under the Operating Permit. As set forth in Part I(A) of this motion, no such permit was required.

Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) requires that any complaint filed by the Attorney General thereunder "shall specify the provision of the Act, rule, regulation, permit, or term or condition thereof under which such person is said to be in violation and a statement of the manner in and the extent to which such person is said to violate the Act, rule, regulation, permit, or term or condition thereof." By failing to allege the provision of the Act authorizing the issuance of this seemingly superfluous permit, the Complaint cannot be deemed to have met the requirement of § 31(c)(1) of the Act, 415 ILCS 5/31(c)(1), that the "provision of the Act...under which such person is said to be in violation" be specified. Charges in an administrative proceeding need not be drawn with the same refinements as pleadings in a court of law, but the charges must be sufficiently clear and specific to allow preparation of a defense, and § 31 of the Act, 415 ILCS § 5/31 requires notice of a specific violation charged and notice of the specific conduct constituting the violation. *Lloyd A. Fry Roofing Co. v. Pollution Control Board ("Lloyd A. Fry Roofing Co.")*, 20 Ill. App. 3d 301, 305 (2nd Dist. 1974).

C. The Allegations of Counts I And II are Vague And Ambiguous, as are the Terms of Permit No. 2008-E0-0331 upon which they are Based, and Thereby Fail to Provide Notice of a Specific Violation Charged and Notice of the Specific Conduct Constituting the Violation.

The allegations of Counts I and II of the Complaint concern alleged violations of the terms of Permit No. 2008-E0-0331. Yet, as set forth in detail hereinbelow, the terms of Permit No. 2008-E0-0331 are unintelligible, vague and ambiguous. Where there is any ambiguity as to the meaning of the language used in a document it should be construed most strongly against the drafter under the doctrine of *contra proferentem*. *Harris v. American General Finance Corp. ("Harris")*, 54 Ill. App. 3d 835, 840 (3rd Dist. 1977). Permit No. 2008-E0-0331 has multiple ambiguities that must be thusly construed against the drafter, i.e., the STATE.

Moreover, as set forth above charges in an administrative proceeding must be sufficiently clear and specific to allow preparation of a defense. *Lloyd A. Fry Roofing Co.*, 20 Ill. App. 3d at 305. Because the charges in the Complaint rely upon the unintelligible, vague and ambiguous language of Permit No. 2008-E0-0331 as set forth below, the allegations of Counts I and II fail to meet this minimal standard.

i. Permit No. 2008-E0-0331, which Purports to Authorize ALC to "operate…facilities described as…[t]he hauling of approximately 12,000 gpd" is Unintelligible, Ambiguous and Vague.

Paragraph 5 of Counts I and II alleges that, in addition to the Operating Permit, another permit, *i.e.*, Permit No. 2008-E0-0331, was also issued to ALC by Illinois EPA. No allegation is made either in Count I or Count II regarding the statutory basis for the purported issuance of Permit No. 2008-E0-0331, or why it was even necessary, given that ALC was already operating under the Operating Permit. As set forth in Part I(A) of this motion, no such permit was required.

Paragraph 5 additionally sets forth the following language from Permit No. 2008-E0-0331:

> Permit is hereby granted to the above designated permittee(s) to construct and/or operate water pollution control facilities described as follows:
>
> The hauling of approximately 12,000 gpd[5] (DMF of 12,000 gpd) of landfill leachate to the headworks of the Village of Atkinson STP.

"'DMF,'" paragraph 5 further explains, "means design maximum flow." However, even with this explanation, the quoted language of Permit No. 2008-E0-0331, and, hence, of paragraph 5, makes no sense. How is it possible for one to "operate…facilities described as…[t]he hauling of approximately 12,000 gpd?"

[5] Gallons per day

That the quoted language from Permit No. 2008-E0-0331 is unintelligible, as is paragraph 4 of Counts I and II where the quotation is set forth, is confirmed by reference to definitions of the key words set forth therein. The word "hauling" is nowhere defined in the Act. The word "hauling" was found in the Free Online Dictionary, which defines it as "[t]o pull or drag forcibly: tug." The word "facility" is also not defined in the Act, although the phrase "pollution control facility" is defined at § 3.330(a) of the Act, 415 ILCS 5/3.330(a), as follows:

> "Pollution control facility" is any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act 70 ILCS2605/1 et seq.

Needless to say, "hauling" or "to pull or drag forcibly" is not included or even remotely contemplated by the definition of pollution control facility. Since "hauling" or "to pull or drag forcibly" is not included or even remotely contemplated by the definition of "facility" or "pollution control facility," under *Harris* the ambiguity thereby created must be construed against the STATE. Accordingly, Permit No. 2008-E0-0331 must be deemed unenforceable and void.

ii. Permit No. 2008-E0-0331, which Refers to "approximately 12,000 gpd" is Ambiguous and Vague.

Further, the quoted language from Permit No. 2008-E0-0331 refers to "approximately 12,000 [gallons per day]." The word "approximate" set forth in the quoted language is nowhere defined in the Act. It is, however, defined at Black's Law Dictionary, 5th Ed., in pertinent part, as "[u]sed in the sense of an estimate merely, meaning more or less, but about and near the amount, quantity, or distance specified." Thus, "approximately 12,000 gallons per day" is a mere estimate, and could mean more than 12,000 gallons per day.

Paragraph 6 of Counts I and II alleges that:

> During the months of March and April 2011, Respondent hauled and disposed of leachate at the Village STP in excess of the approximately 12,000 gallons per day limit allowed by the Water Pollution Control Permit [Permit No. 2008-E0-0331.]

Thus, paragraph 6 alleges that ALC disposed of "in excess of the approximately 12,000 gallons per day limit allowed by the Water Pollution Control Permit [Permit No. 2008-E0-0331.]" Yet, the Complaint does not allege that Permit No. 2008-E0-0331 contains a "limit." Certainly, no "limit" is set forth in Permit No. 2008-E0-0331. Permit No. 2008-E0-0331 merely states, "Permit is hereby granted to the above designated permittee(s) to construct and/or operate…[t]he hauling of approximately 12,000 gpd[6] (DMF of 12,000 gpd) of landfill leachate to the headworks of the Village of Atkinson STP." Nothing in the permit states that the hauling of more than "approximately 12,000 gallons per day" is barred. In fact, a reasonable interpretation of the quoted language is that it authorizes hauling *at least* "approximately 12,000 gallons per day." Another reasonable interpretation is that Permit No. 2008-E0-0331 authorizes the hauling of not only approximately 12,000 gallons per day" to the "headworks," but also more to the headworks or to some other location.

Paragraph 6 also contains a table of alleged exceedances of the purported "approximately 12,000 gallons per day" limit. Yet, many of the figures set forth do not appear in excess of that purported limit. For example, there are nine instances of the alleged disposal of "12,720 gallons." Certainly, that figure is within the definition of "about and near the amount, quantity…specified" or an "estimate merely" of 12,000 gallons. Construing this ambiguity against the STATE would require a finding that there was no violation of Permit No. 2008-E0-

[6] Gallons per day.

0331, even for disposal of as much leachate as 50,880 gallons in a day as set forth in paragraph 6.

iii. The Use of the Phrase "Head works" Renders Permit No. 2008-E0-0331 Unintelligible, Ambiguous and Vague.

Permit No. 2008-E0-0331 also contains the phrase "head works." "Head works" is not defined either under the Act or in the Illinois Administrative Code. The STATE neither proffers a definition or avers that the term is defined elsewhere. No definition of "head works" can be found at the American Heritage Dictionary of the English Language, Third Edition ("American Heritage"), and none can be found at Merriam-Webster.com. Both of those dictionaries have definitions, however, for "headwork," which in American Heritage Dictionary is defined as "Mental activity or work, thought" and at Merriam-Webster.com, which defines "headwork" as "mental labor: *especially* : clever thinking," a definition that has been in use since 1837. Given those definitions, "headworks" would be defined as "mental labors." Obviously, it does not take much mental labor to ascertain that the reference to "head works" in Permit No. 2008-E0-0331 as set forth in the allegations at paragraph 4 of Counts I and II is ambiguous, at best.

Under *Harris*, construing "headworks" against the drafter of Permit No. 2008-E0-0331, *i.e.*, the STATE, suggests that the permit really does not designate a definable point where ALC is required to dispose of any leachate thereunder. If there is no definable point, then the disposal "of approximately 12,000 gpd (DMF of 12,000 gpd) of landfill leachate to the headworks" could be accomplished at any location and at any time. Under those circumstances, even the disposal of as much as 50,880 gallons in a day would not be deemed a permit violation.

That allegations may not be based upon alleged violation of the ambiguous terms of a permit was the holding in *Citizens Utilities Company of Illinois v. Illinois Pollution Control Board ("Citizens Utilities")*, 127 Ill. App. 3d 504, 507 (3rd Dist. 1984), as follows:

> Taking the permit first, it is apparent that the import of Conditions 3(a) and 3(d) is founded upon operation and maintenance to prevent water pollution. It is apparently the position of IEPA and the Board that unsatisfactory conditions which could potentially lead to water pollution are sufficient to premise violations upon. *The problem with this position is that without reference to actual, resulting pollution, the conditions are too vague for rational enforcement. Use of such terms as "efficiently as possible" and "optimum operation and maintenance" without reference to the ability or inability of the plant to operate free of unacceptable discharges renders these standards meaningless.* (Emphasis added.)

Thus, in *Citizens Utilities*, the use of vague terms in a permit such as "efficiently as possible" and "optimum operation and maintenance" rendered any standards for enforcement based thereon to be "meaningless." Similarly, here, the inclusion of vague terms such as "operate…facilities described as…[t]he hauling of approximately 12,000 gpd," "approximately 12,000 gallons per day," and "Head works" also renders any standards for enforcement based thereon to be "meaningless."

Under these circumstances the charges set forth in this Complaint are not sufficiently clear and specific to allow preparation of a defense, and are violative of the requirement of § 31 of the Act, 415 ILCS § 5/31, in that they fail to set forth notice of a specific violation charged and notice of the specific conduct constituting the violation. *Lloyd A. Fry Roofing Co. v. Pollution Control Board*, 20 Ill. App. 3d at 305. For the reasons set forth above, the allegations of Counts I and II fail to meet even this minimal standard.

D. Since No Specific Violations of Pretreatment Standards Are Alleged Under 40 C.F.R. 403.5(B)(1)-(8) and 35 Ill. Adm. Code 307.1101(B)(1)-(13), No Cause of Action is Stated.

Paragraph 16 of Counts I and II alleges, as follows:

> The discharge of certain types of wastewater, including leachate generated by landfills, *may cause* serious harm to the Village STP by upsetting the treatment process, interfering with the normal operation of the STP, or causing conditions at the STP which may

> be harmful to STP workers and which may result in contaminants passing through the Village STP untreated. (Emphasis added.)

Thus, paragraph 16 of Counts I and II alleges that leachate "*may cause* serious harm to the Village STP by upsetting the treatment process, interfering with the normal operation of the STP, or causing conditions at the STP which may be harmful to STP workers." No *actual* upset, pass through, interference, harm to workers or damage to the Village STP is alleged.

In fact, if actual upset, interference, pass through, harm or damage to the Village STP had occurred there would have been an ample legal basis to bring an action against ALC. Landfills that discharge trucked leachate into POTWs are subject to pretreatment standards for introduction of pollutants into treatment works.

The first part of the pretreatment standards addresses the control of pollutants that pass through or interfere with treatment processes in POTWs.[7] It applies to pollutants indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs, to POTWs that receive wastewater from sources subject to pretreatment standards and to any new or existing source subject to such pretreatment standards.[8] It establishes a general prohibition against pollutants that cause pass through or interference.[9] A pass through is defined as a discharge that exits the POTW into waters of the United States that alone or in conjunction with discharges from other sources cause a violation of the POTW's NPDES permit.[10] Interference is defined as a discharge that, alone or in conjunction with discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal, and therefore is a cause of a violation of any requirement of the POTW's NPDES

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[7] 40 C.F.R. 403.1.
[8] 40 C.F.R. 403.1(b).
[9] 40 C.F.R. 403.5(a)(1); 35 Ill. Adm. Code 307.1101(a) and 310.201(a).
[10] 40 C.F.R. 403.3(p).

permit or of the prevention of sewage sludge use or disposal in compliance with various federal statutes.[11]

The second part of the pretreatment program establishes specific prohibitions against discharges into a POTW of pollutants that create a fire or explosion hazard, pollutants that will cause corrosive structural damage to the POTW, pollutants that will cause an obstruction to the flowing within the POTW, oxygen demanding pollutants at a flow rate or concentration that will cause interference, heat in amounts that will inhibit biological activity in the POTW, petroleum and other oils, pollutants which result in the presence of toxic gasses, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems, and any trucked or hauled pollutants, except at discharge points designated by the POTW.[12]

Yet, nowhere in the entirety of the Complaint are actual violations of the above-cited federal and state regulations constituting the pretreatment program *actually alleged*. All that is alleged is that leachate "may cause serious harm to the Village STP by upsetting the treatment process, interfering with the normal operation of the STP, or causing conditions at the STP which may be harmful to STP workers and which may result in contaminants passing through the Village STP untreated."[13] That something "may cause" harm is not tantamount to actually causing harm. The STATE has not even attempted to allege either that *actual* harm occurred or that an *actual* violation of the pretreatment regulations occurred. As the Board cautioned the STATE in *EPA v. Rosenbalm*, PCB No. 71-299, 1973 Ill. ENV LEXIS 2 (January 16, 1973):

> *...[W]e caution the Agency and its representatives to avoid unfair, omnibus pleadings which either intend to sweep within its purview prospective violations which may occur* subsequent to the filing of the complaint, or are so vague and indefinite as to fail to give the

[11] 40 C.F.R. 403.3(k).
[12] 40 C.F.R. 403.5(b)(1)-(8); 35 Ill. Adm. Code 307.1101(b)(1)-(13).

[13] Counts I and II, par. 16.

> Respondent fair notice of the specific dates of alleged infractions of the law so as to enable him to properly prepare a defense. (Emphasis added.)

Thus, allegations about events that "may occur," according to the Board "fail to give the Respondent fair notice of the specific dates of alleged infractions of the law so as to enable him to properly prepare a defense." Note, in this regard, that there are affirmative defenses available to a party that has been charged with an *actual* violation under 35 Ill. Adm. Code 310.201; these are not available to ALC here.

As set forth above, charges in an administrative proceeding…must be sufficiently clear and specific to allow preparation of a defense, and this section requires notice of a specific violation charged and notice of the specific conduct constituting the violation. *Lloyd A. Fry Roofing Co.*, 20 Ill. App. 3d at 305. Here, neither the specific violation nor the conduct constituting the violation is set forth.

E. Counts I and II Fail to Sufficiently Allege That ALC Caused or Contributed to Water Pollution in Violation of §12(a) and (b) of the Act, 415 ILCS 5/12(a) and (b).

Paragraph 8 of Count I and II sets forth the statutory prohibition on water pollution at §12(a) of the Act, 415 ILCS 5/12(a), as follows:

> No person shall:
> (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

Thus, in order to violate §12(a) of the Act, 415 ILCS 5/12(a), one must "cause or threaten or allow the discharge of contaminants… so as to cause or tend to cause water pollution."

Paragraph 15 of Counts I and II quotes the statutory definition of "Water Pollution" at Section 3.545 of the Act, 415 ILCS 5/3.545 (2010), as follows:

> "WATER POLLUTION" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

Thus, in order for there to be "water pollution" there must be actual "*alteration* of the physical, thermal, chemical, biological or radioactive properties of any *waters of the State*, or such *discharge of any contaminant into any waters of the State* (emphasis added)." "Waters of the state" is undefined in the Act or regulations. However, as set forth above, POTWs are excluded from the definition of "waters of the United States".[14] The Village STP is a POTW. Thus, discharges into the Village STP cannot constitute "water pollution."

Paragraph 18 of Count I alleges, as follows:

> By disposing of landfill leachate at the Village STP in excess of the approximately 12,000 gallons per day limit imposed by the Water Pollution Control Permit, and thereby threatening the pass through of untreated wastewater into the Green River, Respondent threatened the discharge of a contaminant into waters of the State which could cause or tend to cause water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

Thus, paragraph 18 alleges that ALC, by allegedly disposing of leachate at the Village STP in excess of the purported limits imposed by Permit No. 2008-E0-0331, ALC allegedly caused water pollution in violation of §12(a) of the Act, 415 ILCS 5/12(a). Yet, as set forth above, in order to violate §12(a) of the Act, 415 ILCS 5/12(a), one must "cause or threaten or allow the discharge of contaminants… so as to cause or tend to cause water pollution." Here, there is no allegation either that ALC caused or threatened or allowed the discharge of contaminants so as to cause or tend to cause water pollution in the waters of the state. All that is alleged is that ALC

[14] *See* CWA, § 212(2)(A), 33 U.S.C. § 1292(2)(A); 40 C.F.R. 403.3(q); 40 C.F.R. 122.3(c).

discharged leachate into a POTW. While paragraph 18 mentions "threatening the pass through of untreated wastewater into the Green River," a "water of the state," there is no allegation that this threat caused or tended to cause water pollution, a requirement of §12(a) of the Act, 415 ILCS 5/12(a). As the court held in *Citizens Utilities*, 127 Ill. App. 3d at 507, discussed in Part I(C) of this Motion:

> The problem with this position is that without reference to actual, resulting pollution, the conditions are too vague for rational enforcement.

There is no alleged "actual, resulting pollution" arising from alleged violations of the standards set forth in Permit No. 2008-E0-0331. Moreover, as set forth in Part I(A) of this Motion, no permit was required for the alleged discharges into the Village STP, in any event. Thus, the entirety of Counts I is insufficient to state a cause of action under §12(a) of the Act, 415 ILCS 5/12(a). Accordingly, Count I must be stricken and dismissed.

Similarly, allegations in Count II that ALC violated § 12(b) of the Act, 415 ILCS 5/12(b), also fail to state a cause of action. Paragraph 16 of Count II quotes § 12(b) of the Act, 415 ILCS 5/12(b), as follows:

> No person shall:
>
> (b) Construct, install, or operate any equipment, facility, vessel, or aircraft capable of or contributing to water pollution, or designed to prevent water pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

Paragraph 24 of Count II alleges that the hauling and disposal of leachate from the ALC landfill to the Village STP violated this section by being "capable of or contributing to water pollution" through purportedly disposing of alleged contaminants in violation of Permit No. 2008-E0-0331. Yet, "water pollution" requires a discharge into "waters of the state" pursuant to Section 3.545 of

the Act, 415 ILCS 5/3.545. Count II contains no allegation that the discharge reached or even threatened to reach any water of the state, other than an reference in paragraph 23 that disposal at the Village STP also constituted disposal "*indirectly* to the Green River, a water of the State." (Emphasis added.) Yet, pursuant to 40 CFR 122.2, an "*indirect* discharger means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works." (Emphasis added.) So, the STATE's allegation of an "indirect" discharge into the Green River is nothing more than a roundabout manner of alleging that ALC discharged leachate into a POTW, *i.e.*, the Village STP, which is *not* a water of the state. Hence, Count II fails to allege a cause of action for violation of § 12(b) of the Act, 415 ILCS 5/12(b). Moreover, as set forth in Part I(A) of this Motion, no permit was required for the alleged discharges into the Village STP, in any event. Thus, the entirety of Count II is insufficient to state a cause of action under §12(b) of the Act, 415 ILCS 5/12(b). Accordingly, it must be stricken and dismissed.

F. No Authority Exists Under § 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31, for the Attorney General to Bring an Action on Her Own Motion.

Counts I and II of the Complaint begin by alleging at paragraph 1 that:

> This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, *on her own motion* and at the request of the Illinois EPA, *pursuant to Section 31 of the Illinois Environmental Protection Act* ("Act"), 415 ILCS 5/31 (2010), against Respondent Atkinson Landfill Co. (Emphasis added.)

Thus, the STATE alleges that Counts I and II are "brought…by LISA MADIGAN…on her own motion… pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010)…" However, there is no provision in § 31 of the Act authorizing the Attorney General to bring an action "on her own motion." The only authority for the Attorney General to bring an action "on his own motion" lies in § 42(e) of the Act, 415 ILCS 5/42(e) which provides:

> (e) The State's Attorney of the county in which the violation occurred, or *the Attorney General, may*, at the request of the Agency or *on his own motion, institute a civil action* for an injunction, prohibitory or mandatory, to restrain violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order, or to require such other actions as may be necessary to address violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order. (Emphasis added.)

This provision was construed in *People v. N L Industries*, 152 Ill. 2d 82, 103 (1992), which held:

> *Where the statute neglects to specify which party is to file a certain action*, it must be recognized that the State's Attorney of the county in which the violation occurred or the Attorney General is allowed to do so.
>
> * * *
>
> The Attorney General should have the authority to file actions before both the Board and the circuit courts to redress violations of the Act, *wherever a specific party is not authorized by the Act*. (Emphasis added).

Of course, § 31(b) of the Act, 415 ILCS § 5/31(b), is quite specific that the Attorney General may bring actions thereunder, but only on the basis of "the Agency's referral or request to the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violation occurred for legal representation regarding an alleged violation that may be addressed pursuant to subsection (c) or (d) of this Section." Thus, there simply is no basis for this Complaint being "brought…by LISA MADIGAN…on her own motion…pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010)…"

II. COUNTS I AND II MUST BE DISMISSED UNDER § 2-619(a)(9) OF THE CODE OF CIVIL PROCEDURE, 735 ILCS 2-619(a)(9).

A. ALC'S Alleged Disposal of Leachate at the Village STP Was Authorized Under Special Conditions 2 And 3 of Permit No. 2008-E0-0331 and Pursuant to 35 Ill. Adm. Code 307.1101 and 40 CFR 403.5(8) as Discharges "at Discharge Points Designated by the POTW."

Counts I and II of the Complaint allege that ALC allegedly disposed of leachate at the Village of Atkinson sewage treatment plant (the "Village STP") in purported excess of the purported limits imposed by Permit No. 2008-E0-0331 and at a location purportedly other than that specified in Permit No. 2008-E0-0331 and thereby allegedly violated §§ 12(a) and (b) of the Act, 415 ILCS 5/12(a) and (b). Yet, ALC's alleged disposal of leachate at the Village STP was specifically authorized under Permit No. 2008-E0-0331 and under both state and federal law.

It is true that Permit No. 2008-E0-0331 purports to authorize "[t]he hauling of approximately 12,000 gpd (DMF of 12,000 gpd) of landfill leachate to the headworks of the Village of Atkinson STP." Therefore, Permit No. 2008-E0-0331 does seem to purport to dictate the amount of discharges of leachate by ALC thereunder. However, the Permit also states, as follows:

> SPECIAL CONDITION 2: The issuance of this permit does not relieve the permittee of complying with 35 Ill. Adm. Code, Part 307 and/or the General Pretreatment Regulations (40 CFR 403) and any guidelines developed pursuant to Section 301, 306, or 307 of the Federal Clean Water Act of 1977.
>
> SPECIAL CONDITION 3: The issuance of this permit does not relieve the permittee of the responsibility of complying with any limitations and provisions imposed by the City of Atkinson.

Thus, Special Condition 2 provides that ALC must comply with, *inter alia*, 35 Ill. Adm. Code Part 307 and 40 CFR 403, as well as the CWA. In this regard, 35 Ill. Adm. Code 307.1101 provides, as follows:

> No person may introduce the following types of pollutants into a POTW:
> ***
> (13) *Any* trucked or hauled pollutants, *except at discharge points designated by the POTW.* (Emphasis added.)

Likewise, 40 CFR 403.5 provides, as follows:

> [T]he following pollutants shall not be introduced into a POTW:
> ***
> (8) *Any* trucked or hauled pollutants, *except at discharge points designated by the POTW.* (Emphasis added.)

Thus, a POTW, in this instance the Atkinson STP, has the authority under both 35 Ill. Adm. Code Part 307 and 40 CFR 403 to designate discharge points where "[a]ny trucked or hauled pollutants" may be discharged. In addition, 35 Ill. Adm. Code 307.1101(13) and 40 CFR 403.5(8), in referring to the word "*any*" trucked or hauled pollutants, authorizes the POTW to determine the *amount* of the discharge.[15] Permit No. 2008-E0-0331, at Special Condition 2, specifically states that ALC must comply with those provisions.

In addition, Permit No. 2008-E0-0331 requires that ALC must "comply… with any limitations and provisions imposed by the City of Atkinson [sic]." Thus, ALC was required to comply with any limitations or provisions imposed by the Atkinson STP with respect to the amount and location of leachate discharges into the Atkinson STP.

ALC did, in fact, comply with both 35 Ill. Adm. Code Part 307 and 40 CFR 403, *i.e.*, specifically 35 Ill. Adm. Code 307.1101(13) and 40 CFR 403.5(8), and the limitations and provisions imposed by the Village STP with regard to the discharge of leachate. Attached hereto as Exhibit "A" is the affidavit of Gary Hull, a truck driver for ALC, who testifies that Bob Floming, Public Works Supervisor for the Village of Atkinson, specifically designated the discharge point for the ALC leachate. In that regard, Bob Floming instructed Gary Hull to dispose of the leachate at the sewer access at the abandoned gas station located on the southwest corner of the intersection of State Street (County Road 5) and Commercial Drive in the Village of Atkinson. Therefore, the discharge that is the subject of Counts I and II of the Complaint was specifically authorized under Special Condition 2 of Permit No. 2008-E0-0331 because it

[15] The word "any" is defined in pertinent part as: "Some; one out of many; an indefinite number." Black's Law Dictionary, 4th Ed.

complied with the provisions of 35 Ill. Adm. Code Part 307 and 40 CFR 403 and with Special Condition 3 of Permit No. 2008-E0-0331 in that it complied with the limitations and provisions imposed by the Village of Atkinson. Further, the discharge that is the subject of Counts I and II of the Complaint complied with the provisions of 35 Ill. Adm. Code 307.1101(13) and 40 CFR 403.5(8) because it was discharged at points designated by the POTW. Additionally, since paragraph 6 of Counts I and II allege that 16,960 gallons were discharged into the Village STP on March 16, 2011, one must conclude that the Village of Atkinson thereby also designated the *amount* of the discharge pursuant to the terms of Special Conditions 2 and 3 of Permit No. 2008-E0-0331 and 35 Ill. Adm. Code 307.1101(13) and 40 CFR 403.5(8). Accordingly, there was no violation of Permit No. 2008-E0-0331 or of the Act.

III. COUNTS III-IV RELATING TO DISCHARGES INTO THE GALVA WWTF ARE SUBSTANTIALLY INSUFFICIENT IN LAW AND MUST BE DISMISSED PURSUANT TO § 2-615 OF THE CODE OF CIVIL PROCEDURE, 735 ILCS 5/2-615.

A. Counts III and IV Fail to Sufficiently Allege That ALC Caused or Contributed to Water Pollution in Violation of § 12(a) and (b) and of the Act, 415 ILCS 5/12(a) and (b).

Paragraph 8 of Counts I and II, incorporated into Counts III and IV sets forth the statutory prohibition on water pollution at § 12(a) of the Act, 415 ILCS 5/12(a). As set forth in detail in Part I(E) of this Motion to Dismiss, in order to violate §12(a) of the Act, 415 ILCS 5/12(a), one must "cause or threaten or allow the discharge of contaminants… so as to cause or tend to cause water pollution."

Paragraph 15 of Counts I and II, incorporated into Counts III and IV, quotes the statutory definition of "Water Pollution" at Section 3.545 of the Act, 415 ILCS 5/3.545 (2010). Yet, as set forth in Part I(E) of this Motion, in order for there to be "water pollution" there must be actual "*alteration* of the physical, thermal, chemical, biological or radioactive properties of any *waters of the State*, or such *discharge of any contaminant into any waters of the State* (emphasis

added)." The Galva WWTF is a POTW. As further set forth in Part I(E) of this Motion to Dismiss," waters of the State" do not include POTWs.

Paragraph 20 of Count III alleges, as follows:

> By disposing of landfill leachate at the Galva WWTF without any permit issued by the Illinois EPA, and thereby threatening the pass through of untreated wastewater into the Edwards River, Respondent threatened the discharge of a contaminant into waters of the State which could cause or tend to cause water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

Thus, paragraph 20 alleges that ALC, by allegedly disposing of leachate at the Galva WWTF that "may cause serious harm to the WWTF" allegedly caused water pollution in violation of §12(a) of the Act, 415 ILCS 5/12(a). Yet, as set forth above, in order to violate §12(a) of the Act, 415 ILCS 5/12(a), one must "cause or threaten or allow the discharge of contaminants... so as to cause or tend to cause water pollution." Here, there is no allegation either that ALC caused or threatened or allowed the discharge of contaminants so as to cause or threaten or allow water pollution in the waters of the state. All that is alleged is that ALC discharged leachate into the Galva WWTF. There is no allegation that the discharge reached or even threatened to reach any water of the state. While Count III, paragraph 17, mentions that the Galva WWTF discharges effluent into the Edwards River, there is no allegation that the leachate that ALC discharged into the Galva WWTF either entered or threatened to enter the Edwards River or that it caused or tended to cause pollution in the Edwards River.

As the court held in *Citizens Utilities*, 127 Ill. App. 3d at 507, discussed in Part I(C) of this Motion:

> The problem with this position is that without reference to actual, resulting pollution, the conditions are too vague for rational enforcement.

There is no alleged "actual, resulting pollution" arising from alleged violations of the statutory

standards set forth in Count III. Moreover, as set forth in Part III(C) of this Motion, no permit was required for the alleged discharges into the Galva WWTF, in any event. Thus, the entirety of Counts III and IV are insufficient to state a cause of action under §12(a) of the Act, 415 ILCS 5/12(a). Accordingly, they must be stricken and dismissed.

B. Since No Specific Violations of Pretreatment Standards Are Alleged Under 40 C.F.R. 403.5(B)(1)-(8) and 35 Ill. Adm. Code 307.1101(B)(1)-(13), No Cause of Action is Stated.

Paragraph 18 of Counts III and IV alleges, as follows:

> The discharge of certain types of wastewater without an operating permit, including leachate generated by landfills, *may* cause serious harm to the Galva WWTF by upsetting the treatment process, interfering with the normal operation of the Galva WWTF or causing conditions at the Galva WWTF which *may* be harmful to Galva WWTF workers and which *may* result in contaminants passing through the Galva WWTF untreated. (Emphasis added.)

Thus, paragraph 18 of Counts III and IV alleges that leachate *"may"* cause upset, interference, pass through, harm to workers or damage to the Galva WWTP. No *actual* upset, interference, pass through, harm to workers or damage to the Galva WWTP is alleged.

If actual upset, interference, pass through, harm or damage to the Galva WWTF had occurred there would have been an ample legal basis to bring an action against ALC. The regulations setting forth the applicable pretreatment standards are set forth in Part I(D) of this Motion to Dismiss. Yet, nowhere in the entirety of the Complaint are actual violations of those federal and state regulations constituting the pretreatment program actually alleged. All that is alleged is that leachate *"may"* cause upset, interference, pass through, harm to workers or damage to the Galva WWTP. That something "may cause" harm is not tantamount to actually causing harm. Allegations about events that "may occur," "fail to give the Respondent fair notice of the specific dates of alleged infractions of the law so as to enable him to properly prepare a defense." *EPA v. Rosenbalm*, PCB No. 71-299, 1973 Ill. ENV LEXIS 2 (January 16,

1973), *supra*. The STATE has not even attempted to allege either that *actual* harm occurred or that an *actual* violation of the pretreatment regulations occurred.

C. Count IV Fails to State a Cause of Action and Must Be Dismissed Pursuant to § 2-615 of the Code of Civil Procedure, 735 ILCS 5/2-615, Because No Permit Was Required for the Alleged Discharges.

Count IV of the Complaint alleges that ALC allegedly disposed of leachate at the Galva WWTF without a permit and thereby allegedly violated § 12(b) of the Act, 415 ILCS 5/12(b) and 35 Ill. Adm. Code 309.204(a). Counts IV fails to allege a violation of §§ 12 (b) of the Act, 415 ILCS 5/12(b) and 35 Ill. Adm. Code 309.204(a), because *no permit was required* for that alleged disposal of leachate. As set forth in Part I(A) of this Motion to Dismiss, §12(f) of the Act, 415 ILCS 5/12(f) provides that "No permit shall be required… for any discharge for which a [NPDES] permit is *not required*" under the CWA. Under the CWA, an NPDES permit, *is* required under for any discharge of a pollutant from a point source to waters of the United States.[16] However, an NPDES permit is *not* required discharges directly into POTW, which is excluded from the definition of "waters of the United States".[17] Accordingly, no permit is required for a discharge into a POTW under §12(f) of the Act, 415 ILCS 5/12(f).

The Galva WWTF is a POTW. Thus, no permit was required for any discharge into the Galva WWTF. Given that no permit was required for any discharge into the Galva WWTF, there could not have been any permit violation for any discharge into the Galva WWTF.

Despite the requirements of §12(f) of the Act, 415 ILCS 5/12(f), the Complaint alleges in Count IV, paragraph 17, incorporated by reference into Count IV, that a permit *is required* for discharges into a treatment works pursuant to 35 Ill. Adm. Code 309.204(a). That regulation states that "an operating permit issued by the Agency" is required for the "operation of

[16] CWA, §402, 33 U.S.C. §1342.
[17] CWA, § 212(2)(A), 33 U.S.C. § 1292(2)(A); 40 C.F.R. 403.3(q); 40 C.F.R. 122.3(c); D.K. McCall, III, *Clean Water Act*, in Environmental Law Handbook (T. Sullivan ed. 2011) ("McCall") at 323-324.

any…wastewater source." Yet, 35 Ill. Adm. Code 309.204 directly contradicts §12(f) of the Act, 415 ILCS 5/12(f) and is, therefore, unenforceable.

As with the discussion of Count II in Part I(E) of this Motion, Count IV contains no allegation that the discharge reached or even threatened to reach any water of the state, other than an reference in paragraph 19 that disposal at the Galva WWTF also constituted disposal "*indirectly* to the Edwards River, which is a water of the State." Yet, pursuant to 40 CFR 122.2, an "*indirect* discharger means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works." (Emphasis added.) So, the STATE's allegation of an "indirect" discharge into the Edwards River is nothing more than a roundabout manner of alleging that ALC discharged leachate into a POTW, *i.e.*, the Galva WWTF, which is *not* a water of the state. Hence, Count IV fails to allege a cause of action for violation of § 12(b) of the Act, 415 ILCS 5/12(b). Moreover, as set forth above, no permit was required for the alleged discharges into the Galva WWTF, in any event. Thus, the entirety of Count IV is insufficient to state a cause of action under §12(b) of the Act, 415 ILCS 5/12(b). Accordingly, it must be stricken and dismissed.

IV. COUNTS III AND IV MUST BE DISMISSED UNDER § 2-619(a)(9) OF THE CODE OF CIVIL PROCEDURE, 735 ILCS 2-619(a)(9).

A. ALC'S Alleged Disposal of Leachate at the Galva WWTF Was Authorized Pursuant To 35 Ill. Adm. Code 307.1101(13) And 40 CFR 403.5(8) as Discharges "at Discharge Points Designated By the POTW."

Count IV of the Complaint alleges that ALC allegedly disposed of leachate at the Galva WWTF without a permit and thereby allegedly violated §§ 12(b) of the Act, 415 ILCS 5/12(b). Yet, ALC's alleged disposal of leachate at the Galva WWTF was specifically authorized under both state and federal law.

As set forth in Part II(A) of this Motion to Dismiss, 35 Ill. Adm. Code 307.1101

provides, as follows:

> No person may introduce the following types of pollutants into a POTW:
> ***
> (13) *Any* trucked or hauled pollutants, *except at discharge points designated by the POTW* (Emphasis added.)

Likewise, 40 CFR 403.5 provides, as follows:

> [T]he following pollutants shall not be introduced into a POTW:
> ***
> (8) *Any* trucked or hauled pollutants, *except at discharge points designated by the POTW.* (Emphasis added.)

Thus, a POTW, in this instance the Galva WWTF, has the authority under botb 35 Ill. Adm. Code 35 Ill. Adm. Code 307.1101(13) and 40 CFR 403.5(8) to designate discharge points where "[a]ny trucked or hauled pollutants" may be discharged.

ALC did, in fact, comply with both 35 Ill. Adm. Code 307.1101(13) and 40 CFR 403.5(8) with regard to the discharge of leachate. Attached hereto as Exhibit "B" is the Affidavit of Erik Vardijan, manager and tanker truck driver for ALC, confirming such compliance. There, Erik Vardijan states that on May 4, 2011 Greg Thompson, Water and Sewer Superintendent, City of Galva, designated a discharge point to discharge all leachate from ALC into the sewers of the Galva WWTF. That discharge point was at the main sewer interceptor to the North Treatment Plant. All of leachate from ALC that was subsequently discharged into the Galva WWTF was discharged at that same designated discharge point. Therefore, the discharge that is the subject of Count IV of the Complaint complied with the provisions of 35 Ill. Adm. Code 307.1101(13) and 40 CFR 403.5(8) because it was discharged at points designated by the POTW. In addition, 35 Ill. Adm. Code 307.1101(13) and 40 CFR 403.5(8), in referring to the word "*any*" trucked or

hauled pollutants, also authorizes the POTW to determine the *amount* of the discharge.[18] Accordingly, there was no violation of the Act.

V. CONCLUSION.

In summary, Counts I-II relating to alleged discharges into the Village STP are substantially insufficient in law and must be dismissed pursuant to § 2-615 of the Code Of Civil Procedure, 735 ILCS 5/2-615. First of all, no permit was required for the alleged discharges that purportedly violated Permit No. 2008-E0-0331. Secondly, the Complaint fails to allege any statutory basis for the issuance of Permit No. 2008-E0-0331 or for its attempted restriction on the disposal of leachate. Thirdly, the allegations of Counts I and II are vague and ambiguous, as are the terms of Permit no. 2008-E0-0331 upon which they are based, and thereby fail to provide notice of a specific violation charged and notice of the specific conduct constituting the violation. Fourthly, since no specific violations of pretreatment standards are alleged under 40 C.F.R. 403.5(B)(1)-(8) and 35 Ill. Adm. Code 307.1101(B)(1)-(13), no cause of action is stated. Fifthly, Counts I And II fail to sufficiently allege that ALC caused or contributed to water pollution in violation of §12(a) and (b) of the Act, 415 ILCS 5/12(a) and (b). Fifthly, no authority exists under § 31 of the Act, 415 ILCS 5/31, for the Attorney General to bring an action on her own motion.

Additionally, Counts I And II must be dismissed under § 2-619(a)(9) of the Code of Civil Procedure, 735 ILCS 2-619(a)(9). In particular, ALC's alleged disposal of leachate at the Village STP was authorized under Special Conditions 2 and 3 of Permit No. 2008-E0-0331 and pursuant to 35 Ill. Adm. Code 307.1101 and 40 CFR 403.5(8) as discharges "at discharge points designated by the POTW."

[18] The word "any" is defined in pertinent part as: "Some; one out of many; an indefinite number." Black's Law Dictionary, 4th Ed.

Furthermore, Counts III-IV relating to discharges into the Galva WWTF are substantially insufficient in law and must be dismissed pursuant to § 2-615 of the Code Of Civil Procedure, 735 ILCS 5/2-615. First of all, Counts III and IV fail to sufficiently allege that ALC caused or contributed to water pollution in violation of § 12(a) and (b) and of the Act, 415 ILCS 5/12(a) and (b). Secondly, since no specific violations of pretreatment standards are alleged under 40 C.F.R. 403.5(b)(1)-(8) and 35 Ill. Adm. Code 307.1101(b)(1)-(13), no cause of action is stated. Thirdly, Count IV fails to state a cause of action and must be dismissed pursuant to § 2-615 of the Code of Civil Procedure, 735 ILCS 5/2-615, because no permit was required for the alleged discharges.

Additionally, Counts III And IV must be dismissed under § 2-619(a)(9) of the Code Of Civil Procedure, 735 ILCS 2-619(a)(9). In particular, ALC's alleged disposal of leachate at the Galva WWTF was authorized pursuant to 35 Ill. Adm. Code 307.1101 and 40 CFR 403.5 as discharges "at discharge points designated by the POTW."

WHEREFORE, ALC moves that the Complaint be stricken and dismissed.

Respondent, ATKINSON LANDFILL CO.,

By: _____
its attorney

KENNETH ANSPACH, ESQ.
ANSPACH LAW OFFICE
111 West Washington Street
Suite 1625
Chicago, Illinois 60602
(312) 407-7888

THIS FILING IS SUBMITTED ON RECYCLED PAPER.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13-28
	)	
ATKINSON LANDFILL CO.,	)	
	)	
Respondent.	)	

AFFIDAVIT OF GARY HULL

Gary Hull, being first duly sworn, deposes and says that:

1. I have been employed by Atkinson Landfill Co. as a truck driver.

2. On or around March 16, 2011 I drove a tanker truck containing a load of leachate (the "ALC Leachate") from the Atkinson Landfill to the Village of Atkinson Sewage Treatment Plant (the "Atkinson STP") where I met village employee, Bob Floming, who told me that the Atkinson STP had too much water due to heavy rains from the past several days.

3. At that time and place, Mr. Floming told me to then go to the abandoned gas station located on the southwest corner of the intersection of State Street (or County Road 5) and Commercial Drive and discharge the ALC Leachate into the sewer access there.

4. I called Diana Vardijan, a manager at Atkinson Landfill, and told her what Mr. Floming had directed me to do. She told me to proceed with the Village representative's instructions.

5. I proceed to the designated location as per Mr. Floming's instructions and discharged the ALC Leachate into the sewer system.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the under signed certifies that the statements set forth in this affidavit are true and correct to the best of his knowledge.

Gary Hull

Gary Hull

EXHIBIT "A"

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13-28
	)	
ATKINSON LANDFILL CO.,	)	
	)	
Respondent.	)	

AFFIDAVIT OF ERIK VARDIJAN

Erik Vardijan, being first duly sworn, deposes and says that:

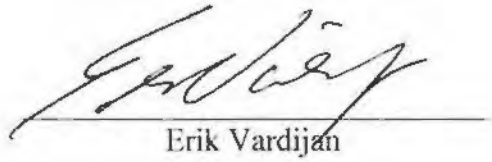
1. I have been employed by Atkinson Landfill Co. since 2001 as a truck driver and manager.

2. On May 4, 2011 I drove a tanker truck containing a load of leachate (the "ALC Leachate") from the Atkinson Landfill to the City of Galva wastewater treatment facility ("Galva WWTF"). This load was the first to be delivered from the Atkinson Landfill to the Galva WWTF.

3. At that time and place Greg Thompson, Water and Sewer Superintendent, City of Galva, designated a discharge point for me to discharge the ALC Leachate into sewers of the Galva WWTF. That discharge point was at the main sewer intereeptor to the North Treatment Plant (the "Plant"), about 1000 feet from the Plant.

4. All subsequent loads of ALC Leachate discharged by either me or other tanker truck drivers employed by ALC, were discharged into the sewers of the Galva WWTF at the same designated discharge point.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this affidavit are true and correct to the best of his knowledge.



Erik Vardijan

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalties of perjury as provided by law pursuant to 735 ILCS 5/1-109, that the attached Motion to Strike and Dismiss First Amended Complaint and Supporting Memorandum was __ personally delivered, _X_ placed in the U. S. Mail, with first class postage prepaid, ___ sent via facsimile and directed to all parties of record at the address(es) set forth below on or before 5:00 p.m. on the 7th day of June, 2013.

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Assistant Attorney General
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