

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
 General of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 ATKINSON LANDFILL CO., an)
 Illinois corporation,)
)
 Respondent.)

PCB No. 13-28
 (Enforcement-Water)

NOTICE OF FILING

To: *Via Email/Regular Mail*
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Via Email
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PLEASE TAKE NOTICE that on the 21st day of June, 2013, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, filed the attached Complainant's Response to Respondent's Motion to Strike and Dismiss First Amended Complaint, a true and correct copy of which is attached hereto and is hereby served upon you.

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

By: 
 Kathryn A. Pamerter
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DATE: June 21, 2013

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<i>ex rel.</i> LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
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v.)	PCB No. 13-28
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Illinois corporation,)	
)	
Respondent.)	

**COMPLAINANT’S RESPONSE TO RESPONDENT’S
MOTION TO STRIKE AND DISMISS FIRST AMENDED COMPLAINT**

NOW COMES, Complainant, People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois (“People” or “Complainant”), and responds to Atkinson Landfill Co.’s (“Respondent”) Motion to Strike and Dismiss (the “Motion”) the People’s First Amended Complaint accepted by the Illinois Pollution Control Board (the “Board”) on April 18, 2013. In support of this response, the People state as follows:

BACKGROUND

Respondent owns and operates an active municipal solid waste landfill at 1378 Commercial Drive, Atkinson, Henry County, Illinois (the “Landfill”). (First Amended Complaint at p. 2, ¶ 4.) On April 21, 2010, the Illinois Environmental Protection Agency (the “Illinois EPA”) issued Permit No. 2001-021-LFM, Modification No. 5, Log No. 2010-068, pursuant to which Respondent operates the Landfill. (*Id.*)

On April 3, 2008, the Illinois EPA issued Water Pollution Control Permit No. 2008-EO-0331 to Respondent (the “2008 Water Pollution Control Permit”), a true and correct copy of

which is attached to the First Amended Complaint as Exhibit A. (*Id.* at p. 2, ¶ 5.) The 2008 Water Pollution Control Permit allowed Respondent to dispose of approximately 12,000 gallons per day of Landfill leachate at the Village of Atkinson Sewage Treatment Plant located at 19696 East 2200 Street, Atkinson, Henry County, Illinois ("Village Treatment Plant"). (*Id.*) The Village Treatment Plant discharges its effluent to the Green River in Illinois. (*Id.*)

On August 24, 2011, the Illinois EPA conducted a compliance inspection at the Village Treatment Plant, including a review of their disposal records. (*Id.* at p. 2, ¶ 6.) During March and April 2011, Respondent hauled and disposed of Landfill leachate at the Village Treatment Plant as follows:

Date	Amount
March 16, 2011	16,960 gallons
March 17, 2011	12,720 gallons
March 18, 2011	12,720 gallons
March 21, 2011	12,720 gallons
March 22, 2011	12,720 gallons
March 23, 2011	12,720 gallons
March 24, 2011	12,720 gallons
March 25, 2011	12,720 gallons
March 28, 2011	12,720 gallons
March 29, 2011	12,720 gallons
March 30, 2011	42,400 gallons
March 31, 2011	21,200 gallons
April 1, 2011	42,400 gallons
April 4, 2011	38,160 gallons
April 5, 2011	42,400 gallons
April 6, 2011	42,400 gallons
April 7, 2011	42,400 gallons
April 8, 2011	25,440 gallons
April 9, 2011	38,160 gallons
April 11, 2011	50,880 gallons
April 12, 2011	50,880 gallons

(*Id.* at pp. 2-3, ¶ 6.) In April 2011, the Village of Atkinson stopped accepting Landfill leachate from Respondent. (*Id.* at p. 3, ¶ 7.)

Between May 4, 2011 and June 16, 2011, Respondent hauled and then disposed of

Landfill leachate in the following amounts at the City of Galva wastewater treatment facility (the "Galva Treatment Facility"), which discharges its effluent to the Edwards River in Illinois:

Hazardous Waste Manifest No.	Date	Amount
006301439	5/4/11	3,000 gallons
006301441	5/5/11	6,000 gallons
006301442	5/4/11	3,750 gallons
006301443	5/5/11	5,000 gallons
006301444	5/7/11	5,000 gallons
006301445	5/6/11	5,000 gallons
006301446	5/6/11	5,000 gallons
006301447	5/9/11	5,000 gallons
006301453	5/6/11	5,000 gallons
006301454	5/7/11	5,000 gallons
006301455	5/9/11	5,000 gallons
006301459	5/9/11	5,000 gallons
006301473	5/17/11	5,000 gallons
006301474	5/17/11	5,000 gallons
006301475	5/17/11	5,000 gallons
006301478	5/18/11	5,000 gallons
006301479	5/18/11	5,000 gallons
006301480	5/18/11	5,000 gallons
006301495	5/28/11	5,000 gallons
006301496	5/28/11	5,000 gallons
006301497	6/1/11	5,000 gallons
006301498	6/1/11	5,000 gallons
006301878	6/2/11	5,000 gallons
006301879	6/2/11	5,000 gallons
006301880	6/3/11	5,000 gallons
006301882	6/3/11	5,000 gallons
006301886	6/4/11	5,000 gallons
006301887	6/4/11	5,000 gallons
006301888	6/6/11	5,000 gallons
006301889	6/6/11	5,000 gallons
006301893	6/6/11	5,000 gallons
006301897	6/7/11	5,000 gallons
006301898	6/7/11	5,000 gallons
006301899	6/7/11	5,000 gallons
006301903	6/8/11	5,000 gallons
006301904	6/8/11	5,000 gallons
006301905	6/8/11	5,000 gallons
006301909	6/13/11	5,000 gallons
006301910	6/13/11	5,000 gallons
006301911	6/16/11	5,000 gallons
006301917	6/16/11	5,000 gallons

(*Id.* at pp. 8-9, ¶¶ 12-13.) Between May 4, 2011 and June 16, 2011, Respondent did not apply for and had not obtained any permit from the Illinois EPA to dispose of Landfill leachate at the Galva Treatment Facility. (*Id.* at p. 9, ¶ 14.) After June 16, 2011, the Galva Treatment Facility stopped accepting leachate from Respondent. (*Id.* at ¶ 15.) On December 22, 2011, the Illinois EPA issued Water Pollution Control Permit No. 2011-EP-2351 to Respondent to allow it to dispose of Landfill leachate at the Galva Treatment Facility thereafter. (*Id.* at p. 10, ¶ 16.)

On April 18, 2013, the Board accepted the People's First Amended Complaint against Respondent alleging violations of Sections 12(a) and (b) of the Act, 415 ILCS 5/12(a) and (b) (2010), and Section 309.204(a) of the Board's regulations concerning water pollution found in title 35, Subtitle C, Chapter I of the Illinois Administrative Code (the "Board Water Pollution Regulations"), 35 Ill. Adm. Code 309.204(a). In its Motion, Respondent seeks the dismissal of the First Amended Complaint, arguing that (a) the Attorney General was not permitted to file the complaint on her own motion; (b) as to Counts I, II and IV of the First Amended Complaint, Respondent was not required to obtain a permit to dispose of Landfill leachate at either the Village Treatment Plant or the Galva Treatment Facility; (c) as to Counts I-IV, Complainant failed to sufficiently allege that Respondent caused or contributed to water pollution; (d) as to Counts I-IV, Complainant failed to allege any actual harm or any violation of the federal and state pretreatment standards; and (e) as to Counts I and II, the terms of the 2008 Water Pollution Control Permit are ambiguous.¹

¹ Respondent also argues that the Village of Atkinson and the City of Galva authorized the discharges underlying the violations alleged in the First Amended Complaint. (Motion at pp. 18-21, 25-27.) Contemporaneously herewith, Complainant filed its Motion to Strike Respondent's Section 2-619(a)(9) Motion to Dismiss and Affidavits of Gary Hull and Erik Vardijan, which is incorporated herein by reference.

ARGUMENT

I. Legal Standard for a Motion To Strike or Dismiss Pleadings

In *People v. Inverse Investments, L.L.C.*, PCB 11-79, 2012 WL 586821, slip op. (Feb. 16, 2012), the Board set forth its standard for ruling on a motion to strike or dismiss. “[I]t is well established that a cause of action should not be dismissed with prejudice unless it is clear that no set of facts could be proved which would entitle the plaintiff to relief.” *Inverse Investments*, 2012 WL 586821 at *8 (quoting *Smith v. Central Illinois Regional Airport*, 207 Ill.2d 578, 584-85 (2003)). In making this determination, “the Board takes all well-pled allegations as true and draws all reasonable inferences from them in favor of the non-movant.” *Id.* (citing *Beers v. Calhoun*, PCB 04-204, slip op. at 2 (July 22, 2004); *In re Chicago Flood Litigation*, 176 Ill.2d 179, 184 (1997); *Board of Education v. A, C & S, Inc.*, 131 Ill.2d 428, 438 (1989)); *Khan v. Deutsche Bank AG, et al.*, 2012 IL 112219, ¶ 47 (Ill. Oct. 18, 2012) (“we construe the allegations of the complaint in the light most favorable to the plaintiff”). Moreover, “all inferences from those facts must be considered in the light most favorable to the non-movant.” *Id.* (citing *People v. Stein Steel Mills Svcs.*, PCB 02-1 (Nov. 15, 2001); *Nash v. Jimenez*, PCB 7-97 (Aug. 19, 2010); *Chicago Coke v. IEPA*, PCB 10-75 (Sept. 2, 2010)).

II. Section 31 of the Act Does Not Bar the Attorney General From Bringing Complaints on Her Own Motion.

Respondent argues that the Attorney General is not authorized under Section 31 of the Act to file a cause of action on her own motion. (Motion at pp. 17-18.) Respondent does not

allege that the Illinois EPA failed to comply with Sections 31(a) and (b) of the Act.² (*Id.*) Rather, Respondent contends that the Attorney General may only bring a cause of action on her own motion pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e) (2010), which section is cited when filing a complaint for injunctive relief in a circuit court. (*Id.*)

Respondent's argument ignores express statutory language and established case law. Section 31(d)(1) of the Act provides that "[a]ny person may file with the Board a complaint . . . against any person allegedly violating this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order." 415 ILCS 5/31(d)(1) (2010). The Attorney General is permitted to file a complaint pursuant to Section 31(d)(1) of the Act. *See People v. Waste Hauling Landfill, Inc. et al.*, PCB 10-9, 2009 WL 6506855, slip op. *12 (Dec. 3, 2009) ("[t]he Attorney General may bring an enforcement action pursuant to Section 31(d) of the Act . . . on the Attorney General's own motion regardless of the Agency's actions") (quoting *People v. Barger Engineering, Inc.*, PCB 06-82, slip op. at *3 (March 16, 2006) (quoting *People v. Community Landfill Co., Inc.*, PCB 97-193, slip op. at *4 (March 16, 2000)).

Similarly, in *People v. Sheridan Sand & Gravel Co.*, PCB 06-177, 2007 WL 1816057, slip op. (June 7, 2007), the Board considered whether the Attorney General may file a complaint on her own motion. The Board found:

"The Board has extensively addressed the requirements of Section 31 of the Act. In considering the legislative history of the 1996 amendments to Section 31 the Board has repeatedly found that they were not intended to bar the Attorney General from prosecuting an environmental violation. *See People v. Eagle-Picher-Boge*, PCB 99-152 (July 22, 1999); *People v. Geon*, PCB 97-62 (Oct. 2, 1997); and *People v. Heuermann*, PCB 97-92 (Sept. 18, 1997)."

² In fact, the Illinois EPA sent Respondent a Notice of Violation on July 27, 2011, relating to the violation alleged in Count I of the First Amended Complaint, and a Notice of Violation on November 15, 2011, relating to the violations alleged in Counts III and IV. Count II of the First Amended Complaint is brought solely on the Attorney General's own motion pursuant to 415 ILCS 5/31(d)(1) (2010). (First Amended Complaint at p. 6, ¶ 1.)

* * *

Further, the Board finds that because the Attorney General brought the complaint on her own motion, whether or not the Agency complied with Section 31 of the Act (415 ILCS 5/31 (2004)) has no bearing on the allegations in the complaint.

2007 WL 1816057, at *13-*14 (quoting *People v. Chiquita Processed Foods, L.L.C.*, PCB 02-156, slip op. 4-5 (Nov. 21, 2002)).

Respondent's reliance on *People v. NL Indus.*, 152 Ill.2d 82 (Ill. 1992), is misplaced. In considering whether the Act limits the Attorney General's power to file a cost recovery lawsuit, the *NL Indus.* court stated:

It is well established that the Attorney General is the chief legal officer of the State of Illinois. As such, the duties of the Attorney General have been found to include representing the People of the State of Illinois and all State agencies. The legislature may not deprive the Attorney General of any of its common law rights and duties under the constitution.

This court has held that the Attorney General has an obligation to represent the interests of the People so as to ensure a healthful environment for all the citizens of the State. Therefore, where the Act allows for the institution of a lawsuit without specifying which party can bring the suit, the Attorney General must be recognized as having authority to bring such an action.

152 Ill.2d at 103 (citations omitted). Section 31(d)(1) of the Act does not specify which party can file a lawsuit. 415 ILCS 5/31(d)(1) (2010). According to *NL Indus.*, "the Attorney General must be recognized as having authority to bring such an action." 152 Ill.2d at 103. Applying Section 31(d)(1) of the Act and the decisions in *Waste Hauling* and *Sheridan Sand*, the Attorney General properly filed the First Amended Complaint on her own motion.

III. Respondent was Required to have an Operating Permit to Dispose of Landfill Leachate into the Village Treatment Plant and the Galva Treatment Facility.

Section 309.204(a) of the Board Water Pollution Regulations provides that “[n]o person shall cause or allow the use or operation of any . . . wastewater source without an operating permit issued by the Agency. . . .” 35 Ill. Adm. Code 309.204(a). A wastewater source includes “any equipment, facility, or other source of any type whatsoever which discharges wastewater, directly or *indirectly* to the waters of the State.” 35 Ill. Adm. Code 301.430 (emphasis added). Wastewater means “sewage, industrial waste, or other waste, or any combination of these, whether treated or untreated, plus any admixed land runoff.” 35 Ill. Adm. Code 301.425. Industrial waste includes “any solid, liquid, or gaseous wastes resulting from any process of industry, manufacturing, trade, or business or from the development, processing, or recovery, except for agricultural crop raising, of any natural resource.” 35 Ill. Adm. Code 301.285. Waters means “all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon the State of Illinois. . . .” 35 Ill. Adm. Code 301.440.

In this case, Respondent’s Landfill, a facility or other source of any type, generates leachate, a liquid, from its industrial operations. (First Amended Complaint at p. 2, ¶¶ 4-6.) The Landfill leachate constitutes “industrial waste” and “wastewater” pursuant to 35 Ill. Adm. Code 301.285 and 35 Ill. Adm. Code 301.425, respectively. Respondent hauled and disposed of its Landfill leachate at the Village Treatment Plant and the Galva Treatment Facility. (*Id.* at p. 2, ¶ 6; pp. 8-9, ¶¶ 12-13.) The Village Treatment Plant discharges its effluent to the Green River, and the Galva Treatment Facility discharges its effluent to the Edwards River. (*Id.* at p. 2, ¶ 5; p. 8 at ¶ 12.) The Green River and the Edwards River are “waters” pursuant to 35 Ill. Adm. Code

301.440. By generating leachate through the operation of the Landfill, and hauling such wastewater to the Village Treatment Plant and the Galva Treatment Facility for discharge indirectly to waters of the State of Illinois, Respondent constitutes a “wastewater source” under 35 Ill. Adm. Code 301.430 that is required to obtain an operating permit from the Illinois EPA pursuant to 35 Ill. Adm. Code 309.204(a). In fact, Respondent applied for and obtained operating permits to dispose of leachate at the Village Treatment Plant and the Galva Treatment Facility in April 2008 and December 2011, respectively. (*Id.* at p. 2, ¶ 5; p. 10, ¶ 16.)

Respondent contends no permit was required for its leachate disposal, and that the permit it applied for and obtained from the Illinois EPA in April 2008 was “at best, superfluous.” (Motion at p. 3; *see also* pp. 2, 4-5, 24-25.) In support, Respondent selectively quotes Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), even though the First Amended Complaint does not allege a violation of that statutory provision. (*Id.* at pp. 2, 24.) Section 12(f) of the Act provides in its entirety that:

No person shall:

(f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an [National Pollution Discharge Elimination System (“NPDES”)] permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program. 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, as now or hereafter amended, and regulations pursuant thereto. . . .

415 ILCS 5/12(f) (2010). The last sentence of Section 12(f) quoted above, on which Respondent relies (*see* Motion at pp. 2, 24), applies only to “subsection” 12(f) and Section 39(b) of the Act,

not Sections 12(a) and (b) of the Act which Complainant alleges Respondent violated. In addition, in relying on Section 12(f) of the Act, Respondent confuses a NPDES permit with a Section 309.204(a) operating permit. A NPDES permit is issued for discharges into navigable waters as defined in the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, whereas an operating permit is one of the other permits for “certain structures and discharges therefrom that are not required to have a NPDES permit.” 35 Ill. Adm. Code 309.101; *see also* 415 ILCS 5/13(a)(3), (b) (2010).

Respondent also argues that “[t]o 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.” (Motion at p. 4.) Respondent misapprehends the concept of a “dual permit system.” In the legislative declaration to Title III of the Act concerning water pollution, the General Assembly found “that it is in the interest of the People of the State of Illinois for the State to authorize such NPDES and UIC programs and secure federal approval thereof, and thereby to avoid the existence of duplicative, overlapping or conflicting *state and federal statutory permit systems*. . . .” 415 ILCS 5/11(a)(7) (2010) (emphasis added); *see also Environmental Protection Agency v. Culligan DuPage Soft Water Service*, PCB 74-376, 1975 WL 7175, slip op. at *1-*3 (March 26, 1975) (considering whether respondent was required to obtain a federal permit or an Illinois permit for wastewater disposal, the court noted that “Culligan would not be required to obtain an NPDES permit and would instead, be subject to other permit requirements of the Illinois law”). Respondent does not allege it had to obtain both a federal and state permit.

Based on the foregoing, Respondent was required to obtain an operating permit pursuant to 35 Ill. Adm. Code 309.204(a). *See supra* pp. 8-9. Accordingly, Respondent's Motion as to Counts I, II and IV, arguing that no permit was required (Motion at pp. 2-5, 24-25),³ must be denied.

IV. Respondent's Threatened Discharges of Landfill Leachate Into the Green River and the Edwards River Caused or Tended to Cause Water Pollution in Illinois, and Respondent's Operation of Trucks to Haul Landfill Leachate Without a Permit was Capable of Causing or Contributing to Water Pollution.

Sections 3.165, 3.315 and 3.550 of the Act provide the following definitions:

"Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

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

"Waters" are all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

415 ILCS 5/3.165, 5/3.315 and 5/3.550 (2010). The leachate generated at the Respondent's Landfill is a "contaminant" as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2010). Respondent, an Illinois corporation, is a "person," as that term is defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2010). The Green River and the Edwards River are "waters," as that term is defined by Section 3.550 of the Act, 415 ILCS 5/3.550 (2010).

Section 12 of the Act provides, in pertinent part, as follows:

³ Citing Section 31(c)(1) of the Act, Respondent similarly contends that Complainant failed to allege a statutory basis for the Illinois EPA's issuance to Respondent of Permit No. 2001-021-LFM, which allows Respondent to operate its Landfill, and the 2008 Water Pollution Control Permit. (Motion at pp. 5-6.) Yet, Section 31(c)(1) of the Act does not require an allegation of the statutory basis for the issuance of a permit. *See* 415 ILCS 5/31(c)(1) (2010). In addition, the First Amended Complaint alleges the 2008 Water Pollution Control Permit was issued pursuant to 35 Ill. Adm. Code 309.204(a). The complaint does not allege any violation of Permit No. 2001-021-LFM.

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. . . .
- (b) Construct, install, or operate any equipment, facility, vessel, or aircraft capable of causing 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. . . .

415 ILCS 5/12(a), (b) (2010). Section 3.545 of the Act defines “water pollution” as:

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.

415 ILCS 5/3.545 (2010).

As alleged in the First Amended Complaint concerning the Section 12(a) violations, Respondent’s Landfill generated leachate from its industrial operations, which was disposed of at the Village Treatment Plant and the Galva Treatment Facility. (First Amended Complaint at p. 2, ¶¶ 4-6; pp. 8-9, ¶¶ 12-13.) By disposing of leachate at the Village Treatment Plant in excess of the approximately 12,000 gallon per day allowance in the 2008 Water Pollution Control Permit and at the Galva Treatment Facility without having obtained any permit, Respondent threatened the pass through of wastewater into the Green River and the Edwards River, respectively. (*Id.* at pp. 4-5, ¶¶ 16-18; p. 10, ¶¶ 18-20.) Untreated wastewater 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.” (*Id.* at pp. 4-5, ¶ 17; p. 10, ¶ 19 (quoting 415 ILCS 5/3.545 (2010)). Based on the foregoing, Complainant sufficiently alleged that Respondent threatened the discharge of Landfill leachate into the environment in Illinois so as to cause or tend to cause the discharge of Landfill leachate in the Green River and the Edwards River 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. (*Id.* at pp. 4-5, ¶¶ 16-18; p. 10, ¶¶ 18-20; *see also* 415 ILCS 5/12(a) (2010); 415 ILCS 5/3.545 (2010)).

Similarly, as alleged in the First Amended Complaint concerning the Section 12(b) violations, Respondent operated trucks to haul Landfill leachate for disposal indirectly to the Green River in March and April 2011 in excess of the allowed amount permitted under the 2008 Water Pollution Control Permit and thus without an operating permit issued by the Illinois EPA. (*Id.* at pp. 6-7, ¶¶ 4-6, 22-23.) Respondent also operated trucks to haul leachate for disposal indirectly to the Edwards River in May and June 2011 without an operating permit issued by the Illinois EPA. (*Id.* at pp. 8-9, ¶¶ 12-13; pp. 11-12, ¶¶ 19-20.) Accordingly, Complainant sufficiently alleged that Respondent operated equipment to haul its Landfill leachate to the Village Treatment Plant and the Galva Treatment Facility, which was capable of causing or contributing to the discharge of Landfill leachate in the Green River and the Edwards River 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. (*Id.* at p. 7, ¶¶ 22-24; pp. 11-12, ¶¶ 19-20 (*see also* 415 ILCS 5/12(b) (2010); 415 ILCS 5/3.545 (2010)).

Respondent contends that the First Amended Complaint must contain allegations “that

actual harm occurred.” (Motion at pp. 13-14, 21-23.)⁴ As support, Respondent cites a sentence from both *E.P.A. v. Rosenbalm*, PCB No. 71-299, 1973 WL 5798, slip. op. (Jan. 16, 1973) and *Citizens Utilities Co. of Illinois v. Illinois Pollution Control Bd.*, 127 Ill. App. 3d 504 (3rd Dist. 1984). In *Rosenbalm*, the initial complaint alleged violations of the Act and the Rules and Regulations for Refuse Disposal Sites and Facilities. 1973 WL 5798, at *1. At the first hearing, the initial complaint was amended to add a count concerning “failing to confine dumping operations to the smallest practicable area on eight dates.” *Id.* At the second hearing, the respondent objected to the amendments to the complaint. *Id.* The Board stated in its entirety:

[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 Respondent fair notice of the specific dates of alleged infractions of the law so as to enable him to properly prepare a defense. It is not difficult to list the dates of the alleged violations, or to amend the complaint, giving proper notice of such amendments as prescribed by the Board’s Procedural Rules, where additional infractions are found and are to be proven up by the Agency at the hearing. But to affix to the allegations of violations on specific dates as listed in the original complaint additional alleged violations supposedly occurring from a date certain in the past up to and through the close of the record in the case is exceedingly unfair and entirely unnecessary.

Id. at *2. Unlike in *Rosenbalm*, the First Amended Complaint sets forth specific dates of Respondent’s alleged violations. (First Amended Complaint at pp. 2-3, ¶ 6; *Id.* at p. 9, at ¶ 13.) Complainant also has not sought to amend the complaint to include “additional alleged violations supposedly occurring from a date certain in the past up to and through the close of the record in the case.” 1973 WL 5798, at *2.

In *Citizens Utilities*, the court considered whether, based on evidence presented at

⁴ Respondent also argues that Complainant is required to allege a violation of the federal and state pretreatment standards. (Motion at pp. 12-13, 23-24.) However, at this time, Complainant is not seeking relief for pretreatment regulation violations and as a result, such allegations are unnecessary.

extensive hearings, a sewage treatment plant violated the operation and maintenance standards set forth in Citizens Utilities Company of Illinois' ("Citizens") NPDES permit and in Rule 601(a) of the Board's rules concerning operation and maintenance. 127 Ill. App. 3d at 505-507. The court found that the language of the permit and Rule 601 required a showing of "a causal link between unsatisfactory operation and maintenance and any improper discharges into the creek," *i.e.* "actual, resulting pollution." *Id.* at 507-08. Unlike in *Citizens Utilities*, neither Section 12(a), nor Section 12(b) of the Act require a showing of an actual violation. Section 12(a) of the Act covers enforcement of, among other things, threatened discharges of contaminants that may tend to cause discharges in waters of the State that are "likely to create a nuisance or render such waters harmful or detrimental or injurious. . . ." 415 ILCS 5/12(a) (2010); 415 ILCS 5/3.545 (2010). Section 12(b) of the Act addresses enforcement of, among other things, the operation of a facility or equipment capable of causing or contributing to discharges in waters of the State that are "likely to create a nuisance or render such waters harmful or detrimental or injurious. . . ." 415 ILCS 5/12(b) (2010); 415 ILCS 5/3.545 (2010).

Contrary to the Respondent's contentions, Complainant was not required to allege actual harm to support the Section 12(a) and Section 12(b) violations brought against Respondent in the First Amended Complaint. Because the First Amended Complaint sufficiently alleges violations of Sections 12(a) and (b) of the Act, 415 ILCS 5/12(a), (b) (2010), Respondent has failed to satisfy its burden under *Inverse Investments*, and thus its Motion should be denied.

V. Discovery is Required Before Considering Respondent's Argument that Certain Terms of the 2008 Water Pollution Control Permit are Ambiguous.

Respondent's 2008 Water Pollution Control Permit provides:

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 (DMF of 12,000 gpd) of landfill leachate to the headworks of the Village of Atkinson STP.

(First Amended Complaint at p. 2, ¶ 5.) Counts I and II of the First Amended Complaint only allege a violation regarding the amount of Landfill leachate that Respondent discharged at the Village Treatment Plant, not the location of Respondent's alleged improper discharges. Respondent seeks the dismissal of Counts I and II of the First Amended Complaint, contending that the terms "DMF," "hauling," "pollution control facilities," "approximately" and "headworks" in the 2008 Water Pollution Control Permit are ambiguous, vague or unintelligible. (Motion at pp. 6-11.) Yet, *Harris v. American General Finance Corp.*, 54 Ill. App. 3d 835 (3rd Dist. 1977) and *Citizens Utilities* on which Respondent relies, require that discovery be conducted and the Board, as the trier of fact, determine whether such terms are ambiguous and if so, the meaning of such terms.

In *Harris*, the court reviewed the lower court's determination following a bench trial that the parties had not entered into a binding contract. 54 Ill. App. 3d 835, 836, 839. In finding that the word "guaranteed" was unambiguous, the court stated:

[t]he intent of the parties must be determined from the language of their agreement alone where it is not ambiguous . . . and contract language is not rendered ambiguous simply because the parties do not agree upon its meaning. . . . Even assuming that the word 'guaranteed' is ambiguous, extrinsic evidence would be admissible to explain it.

Id. at 839-40. Similarly, in *Citizens Utilities*, the reviewing court considered the record before

the Board, including the testimony of two witnesses, in determining the meaning of certain provisions in Citizens' NPDES permit. 127 Ill. App. 3d at 506-07.

Even if, as the Respondent contends, certain terms of the 2008 Water Pollution Control Permit are ambiguous, extrinsic evidence may be offered to explain their meaning. *See, e.g., Harris*, 54 Ill. App. 3d at 839-40. For example, Respondent's understanding of the terms "DMF," "hauling" and "approximately" 12,000 gpd is arguably set forth in its Application for Permit or Construction Approval WPC-PS-1, a true and correct copy of which is attached hereto as Exhibit 1. In addition, Respondent arguably did not consider the 2008 Water Pollution Control Permit to be ambiguous during the approximately three years from the date of issuance until its March 16, 2011-April 12, 2011 alleged violations. (First Amended Complaint at pp. 2-3, ¶¶ 5-6.) However, both parties must be permitted to complete discovery regarding the terms of the 2008 Water Pollution Control Permit and present their arguments regarding such terms to the Board as the trier of fact.

Section 31(c)(1) of the Act requires that the complaint "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. . . ." 415 ILCS 5/31(c)(1) (2010). The First Amended Complaint sufficiently alleges violations of Sections 12(a) and 12(b) of the Act and Section 309.204(a) of the Board Water Pollution Regulations and specific facts supporting such violations, thereby complying with Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2010). Whether certain terms of the 2008 Water Pollution Control Permit are ambiguous and, if so, the meaning of such terms, may be determined by the Board as the trier of

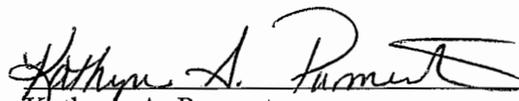
fact following the parties' completion of discovery in this case.

CONCLUSION

Based on the foregoing, Respondent has not established that there is "no set of facts [that] could be proved which would entitle the plaintiff to relief." *Inverse Investments*, 2012 WL 586821 at *8. Taking all well-pled allegations of the First Amended Complaint as true and drawing all reasonable inferences from them in favor of Complainant, *id.*, Respondent's Motion should be denied.

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

By:



Kathryn A. Pament
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Floor
Chicago, IL 60602
(312) 814-0608

EXHIBIT 1

WEAVER
BOOS
CONSULTANTS
NORTH CENTRAL, LLC
GEO-ENVIRONMENTAL ENGINEERS
AND SCIENTISTS

RECEIVED 0331-08
MAR 04 2008

Environmental Protection Agency
WPC-Permit Log In March 3, 2008
Project No. 0009-01-11.00

Illinois Environmental Protection Agency
Bureau of Water
DWPC Permit Section #15
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

SCREENED

DEFLEASABLE

Re: **Permit Application**
Atkinson Landfill Leachate Discharge to the Village of Atkinson STP
Atkinson Landfill
IEPA Site No. 0730200003

Dear Sir or Madam:

Weaver Boos Consultants North Central, LLC, on behalf of Atkinson Landfill Company, is submitting this application for the operating permit for the discharge of landfill leachate from the Atkinson Landfill to the Village of Atkinson STP. The Atkinson Landfill is currently permitted to truck all site-generated leachate to the City of East Moline Regional WWTP (Permit 2002-EE-1066), but is requesting a permit to discharge the lower strength discharges from the newly constructed cells and the contingent groundwater remediation system at the Village of Atkinson Sewer Treatment Plant.

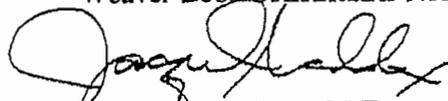
The permit application consists of the following information:

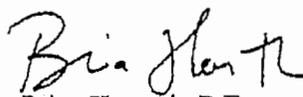
- IEPA Form WPC-PS-1, which includes required signatures; and
- IEPA Schedule N (Waste Characteristics).

Please find enclosed the original and one copy of the permit application. We trust that this information is sufficient for your needs at this time. If you have any questions or if you require additional information, please feel free to contact either of the undersigned.

Sincerely,

Weaver Boos Consultants North Central, LLC


Jacqueline Maddox, E.I.T
Staff Engineer


Brian Horvath, P.E.
Senior Project Manager

Cc: Branko Vardijan



Illinois Environmental Protection Agency
Permit Section, Division of Water Pollution Control
P.O. Box 19276
Springfield, Illinois 62794-9276

0331-8

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MAR 04 2008
Environmental Protection Agency
WPC Permit Log In

Application for Permit or Construction Approval
WPC-PS-1

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1. Owner Name: Atkinson Landfill Company
Name of Project: Atkinson Landfill Leachate Discharge
Township: Atkinson County: Henry

2. Brief Description of Project:
Discharge of landfill leachate at the Village of Atkinson Sewer Treatment Plant via tanker truck hauling

3. Documents Being Submitted: If the Project involves any of the Items listed below, submit the corresponding schedule, and check the appropriate boxes.

	Schedule		Schedule
Private Sewer Connection/Extension	A/B <input type="checkbox"/>	Spray Irrigation	H <input type="checkbox"/>
Sewer Extension Construct Only	C <input type="checkbox"/>	Septic Tanks	I <input type="checkbox"/>
Sewage Treatment Works	D <input type="checkbox"/>	Industrial Treatment/Pretreatment	J <input type="checkbox"/>
Excess Flow Treatment	E <input type="checkbox"/>	Waste Characteristics	N <input checked="" type="checkbox"/>
Lift Station/Force Main	F <input type="checkbox"/>	Erosion Control	P <input type="checkbox"/>
Fast Track Service Connection	FTP <input type="checkbox"/>	Trust Disclosure	T <input type="checkbox"/>
Sludge Disposal	G <input type="checkbox"/>		

Plans: Title _____ No. of Pages: _____

Specifications: Title _____ No. of Books/Pages: _____

Other Documents: _____
(Please Specify)

3.1 Illinois Historic Preservation Agency approval letter: Yes No

4. Land Trust: Is the project identified in Item number 1 herein, for which a permit is requested, to be constructed on land which is the subject of a trust? Yes No

If yes, Schedule T (Trust Disclosure) must be completed and item number 7.1.1 must be signed by a beneficiary, trustee or trust officer.

5. This is an Application for (Check Appropriate Line):

- A. Joint Construction and Operating Permit
- B. Authorization to Construct (See Instructions) NPDES Permit No. IL00 _____
- C. Construct Only Permit (Does Not Include Operations)
- D. Operate Only Permit (Does Not Include Construction)

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6. Certifications and Approval:

6.1 Certificate by Design Engineer (When required: refer to instructions)

I hereby certify that I am familiar with the information contained in this application, including the attached schedules indicated above, and that to the best of my knowledge and belief such information is true, complete and accurate. The plans and specifications (specifications other than Standard Specifications or local specifications on file with this Agency) as described above were prepared by me or under my direction.

Engineer Name: _____

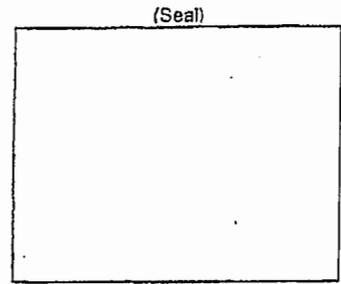
Registration Number: _____
(3 digits) (6 digits)

Firm: _____

Address: _____

City: _____ State: _____ Zip: _____ Phone No: _____

Signature X _____ Date: _____



ILLINOIS
SABLI

7. Certifications and Approvals for Permits:

7.1 Certificate by Applicant(s)

I/We hereby certify that I/we have read and thoroughly understand the conditions and requirements of this Application, and am/are authorized to sign this application in accordance with the Rules and Regulations of the Illinois Pollution Control Board. I/We hereby agree to conform with the Standard Conditions and with any other Special Conditions made part of this Permit.

7.1.1 Name of Applicant for Permit to Construct: N/A

Address: _____

City: _____ State: _____ Zip Code: _____

Signature X _____ Date: _____

Printed Name: _____ Phone No: _____

Title: _____

Organization: _____

7.1.2 Name of Applicant for Permit to Own and Operate: Atkinson Landfill Company

Address: 221 North Washtenaw

City: Chicago State: IL Zip Code: 60612

Signature X *Branko Vardijan* Date: _____

Printed Name: Branko Vardijan Phone No: (773) 761-7706

Title: President

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7.2 Attested (Required When Applicant is a Unit of Government)

Signature X _____ Date: _____

Title: _____
(City Clerk, Village Clerk, Sanitary District Clerk, Etc.)

7.3 Applications from non-governmental applicants which are not signed by the owner, must be signed by a principal executive officer of at least the level of vice president, or a duly authorized representative.

7.4 Certificate By Intermediate Sewer Owner

I hereby certify that (Please check one):

- 1. The sewers to which this project will be tributary have adequate reserve capacity to transport the wastewater that will be added by this project without causing a violation of the environmental Protection Act or Subtitle C, Chapter I, or
- 2. The Illinois Pollution Control Board, in PCB _____ dated _____ granted a variance from Subtitle C, Chapter I to allow construction of facilities that are the subject of this application.

Name and location of sewer system to which this project will be tributary:

Sewer System Owner: Village of Atkinson Sewer System

Address: 107 West Main St, PO Box 614

City: Atkinson State: IL Zip Code: 61235

Signature X *Guy Pauley* Date: _____

Printed Name: Guy Pauley Phone No: 309-936-7658

Title: Mayor of Atkinson, IL 61235

7.4.1 Additional Certificate By Intermediate Sewer Owner

I hereby certify that (Please check one):

- 1. The sewers to which this project will be tributary have adequate reserve capacity to transport the wastewater that will be added by this project without causing a violation of the environmental Protection Act or Subtitle C, Chapter I, or
- 2. The Illinois Pollution Control Board, in PCB _____ dated _____ granted a variance from Subtitle C, Chapter I to allow construction facilities that are the subject of this application.
- 3. Not applicable

Name and location of sewer system to which this project will be tributary:

Sewer System Owner: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Signature X _____ Date: _____

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Printed Name: _____ Phone No: _____

Title: _____

7.5 Certificate By Waste Treatment Works Owner

I hereby certify that (Please check one):

- 1. The waste treatment plant to which this project will be tributary has adequate reserve capacity to treat the wastewater that will be added by this project without causing a violation of the Environmental Protection Act or Subtitle C, Chapter I, or
- 2. The Illinois Pollution Control Board, in PCB _____ dated _____ granted a variance from Subtitle C, Chapter I to allow construction and operation of the facilities that are the subject of this application.
- 3. Not applicable

I also certify that, if applicable, the industrial waste discharges described in the application are capable of being treated by the treatment works.

Name of Waste Treatment Works: Village of Atkinson Sewer Treatment Facility

Waste Treatment Works Owner: Village of Atkinson

Address: 107 West Main Street

City: Atkinson State: IL Zip Code: 61235

Signature X [Signature] Date: _____

Printed Name: Guy Pawley Phone No: 309-930-7658

Title: Mayor of Atkinson, IL 61235

Please return completed form to the following address:

Illinois Environmental Protection Agency
Permit Section, Division of Water Pollution Control
P.O. Box 19276
Springfield, Illinois 62794-9276

This Agency is authorized to require this information under Illinois Revised Statutes, 1979, Chapter 111 1/2, Section 1039. Disclosure of this information is required under that Section. Failure to do so may prevent this form from being processed and could result in your application being denied. This form has been approved by the Forms Management Center.

0331-08 RECEIVED

This Agency is authorized to require this information under Illinois Revised Statutes, 1979, Chapter 111 1/2, Section 1039. Disclosure of this information is required under that section. Failure to do so may prevent this form from being processed and could result in your application being denied.

MA 4 2008
For IEPA Use:
Environmental Protection Agency
WPC-Permit-Log-In
DATE RECEIVED:

J
M
S
B

SCREENED

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF WATER POLLUTION CONTROL
PERMIT SECTION
Springfield, Illinois 62794-9276

SCHEDULE N WASTE CHARACTERISTICS

1. Name of Project Atkinson Landfill Leachate Discharge at the Village of Atkinson Sewer Treatment Plant

2. FLOW DATA	EXISTING	PROPOSED DESIGN
2.1 Average Flow (gpd)	0	12,000
2.2 Maximum Daily Flow (gpd)	0	12,000

2.3 TEMPERATURE

Time of Year	Avg. Intake Temp. F	Avg. Effluent Temp. F	Max. Intake Temp. F	Max. Effluent Temp. F	Max. Temp. Outside Mixing Zone F
SUMMER	75	75	85	85	N/A
WINTER	45	45	70	70	N/A

2.4 Minimum 7-day, 10-year flow: n/a cfs n/a MGD.

2.5 Dilution Ratio: n/a ; _____

2.6 Stream flow rate at time of sampling n/a cfs _____ MGD.

3. CHEMICAL CONSTITUENT Existing Permitted Conditions ; Existing conditions ; Proposed Permitted Conditions

Type of sample: grab (time of collection _____) ; composite (Number of samples per day _____)
(see instructions for analyses required)

CONSTITUENT	RAW WASTE (mg/l)	TREATED EFFLUENT Avg. (mg/l) Max.	UPSTREAM (mg/l)	DOWNSTREAM SAMPLES (mg/l)
Ammonia Nitrogen (as N)	4			
Arsenic (total)	0.1			
Barium	0.1			
Boron	1			
BOD ₅	25			
Cadmium				
Carbon Chloroform Extract				
Chloride	25			
Chromium (total hexavalent)	0.01			
Chromium (total trivalent)	0.01			

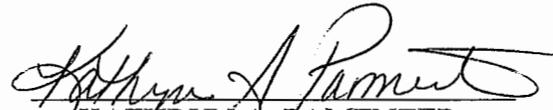
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CONSTITUENT	RAW WASTE (mg/l)	TREATED EFFLUENT Avg. (mg/l) Max.	UPSTREAM (mg/l)	DOWNSTREAM SAMPLES (mg/l)
Copper	0.02			
Cyanide (total)				
Cyanide (readily released @ 150° F & pH 4.5)				
Dissolved Oxygen				
Fecal Collform				
Fluoride				
Hardness (as Ca CO ₃)				
Iron (total)	1			
Lead	0.01			
Manganese	0.3			
MBAS				
Mercury				
Nickel	0.02			
Nitrates (as N)				
Oil & Grease (hexane solubles or equivalent)	6			
Organic Nitrogen (as N)				
pH	6 - 8			
Phenols	0.3			
Phosphorous (as P)				
Radioactivity				
Selenium				
Silver				
Sulfate	200			
Suspended Solids	150			
Total Dissolved Solids	300			
Zinc	0.1			
Others				

RELEASE AS BULK

CERTIFICATE OF SERVICE

I, KATHRYN A. PAMENTER, an Assistant Attorney General, do certify that I caused to be served this 21st day of June, 2013, the attached Notice of Filing and Complainant's Response to Respondent's Motion to Strike and Dismiss First Amended Complaint upon (a) Kenneth Anspach, Esq. *via email* and *via regular mail* by placing a true and correct copy in an envelope addressed as set forth on said Notice of Filing, first class postage prepaid, and depositing same with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m., and (b) Bradley P. Halloran *via email*.


KATHRYN A. PAMENTER