

JUL 16 2003

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
vs. )  
)  
COMMUNITY LANDFILL COMPANY, INC., )  
)  
an Illinois corporation, and )  
)  
the CITY OF MORRIS, an Illinois )  
)  
municipal corporation, )  
)  
Respondents. )

STATE OF ILLINOIS  
Pollution Control Board  
PCB No. 03-191  
(Enforcement-Land)

to: Mr. Mark La Rose  
La Rose & Bosco  
734 N. Wells Street  
Chicago, IL 60610

Mr. Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
100 W. Randolph, Chicago IL

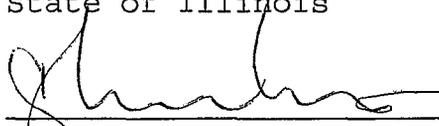
Mr. Charles Helston  
Hinshaw & Culbertson  
100 Park Avenue  
Rockford IL 61105-1389

**NOTICE OF FILING**

PLEASE TAKE NOTICE that we have today, July 16, 2003,  
filed with the Office of the Clerk of the Illinois Pollution  
Control Board, Complainant's Reply and Motion to Strike  
Affirmative Defenses, a copy of which is attached herewith and  
served upon you.

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

BY:



CHRISTOPHER GRANT  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Flr.  
Chicago, IL 60601  
(312) 814-5388

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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**COMPLAINANT'S REPLY AND MOTION TO STRIKE RESPONDENT  
COMMUNITY LANDFILL COMPANY'S AFFIRMATIVE DEFENSES**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, pursuant to Section 101.506 of the Board's Procedural Rules and Section 2-615 of the Illinois Code of Civil Procedure, now replies to Respondent COMMUNITY LANDFILL COMPANY, INC.'s Third and Fourth Affirmative Defenses, and moves for an order striking or dismissing Respondent's First and Second Affirmative Defenses. In support thereof, Complainant states as follows:

1. On April 16, 2003, Complainant filed a one count complaint against the Respondents, alleging violations of Sections 21(d)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/21(d)(2) (2002), and 35 Ill. Adm. Code Sections 811.700(f) and 811.712. Specifically, Complaint alleges that the Respondents operated a Municipal Solid Waste Landfill without having first provided appropriate financial assurance, as

Co. v. Sargent & Lundy, 242 Ill. App. 3d 614, 630, (1st Dist. 1993). Respondents First and Second Affirmative Defenses are neither legally nor factually sufficient and therefore should be stricken.

**MOTION TO STRIKE FIRST AND SECOND AFFIRMATIVE DEFENSES**

**CLC'S FIRST AND SECOND AFFIRMATIVE DEFENSES  
ARE BARRED BY COLLATERAL ESTOPPEL**

4. CLC's First and Second Affirmative Defenses state:
  1. The complaint is barred by the doctrines of laches and estoppel since the Agency accepted the Frontier Bonds and issued a significant modification permit on August 4, 2000 knowing that Frontier had been delisted.
  2. The Frontier Insurance bonds complied with all applicable regulations at the time of their issuance, and were accepted by the Agency.

5. The issues raised by Respondent have already been adjudicated between the parties, on the merits. *Community Landfill Company et al v. Illinois Environmental Protection Agency*, PCB 01-170 (PCB 2001). In PCB 01-170, Respondents appealed Illinois EPA's denial of a supplemental permit for the Morris Community Landfill, the site which is the subject matter of the complaint in the instant case. Illinois EPA's denial, in part, was based on the same Frontier surety bonds which form the basis of the instant action. In the 2001 case, Respondents raised these same two issues in defense: i.e. that the State was barred from contesting their validity on the basis of laches and

*Reclamation District Retirement Fund*, 298 Ill. App. 3d 66 (1st Dist. 1998). Collateral estoppel applies where the following is present:

- (1) the issue decided in the prior adjudication is identical with the one presented in the instant matter;
- (2) there was a final judgment on the merits in the prior adjudication; and
- (3) the party against whom estoppel is asserted was a party to prior adjudication.

*People v. ESG Watts*, PCB 96-181 and 97-210, slip op. at 2-3, citing *Talarico v. Dunlap*, 177 Ill. 2d 185, 191 (1997).

8. Respondent's laches and equitable estoppel arguments are identical to those rejected in the prior case. PCB 01-170, slip op. at 11; aff'd 331 Ill. App. 3d, at 1062. The decision was a final determination, on the merits, and resolved the identical issue between the same parties as in the instant case. Respondent is therefore precluded on the basis of Collateral Estoppel from seeking relitigation of this issue. Respondent's First Affirmative Defense is therefore legally insufficient, and should be stricken.

9. Similarly, the issue in Respondent's Second Affirmative Defense, i.e. the claimed validity of the financial assurance submitted, was also rejected, on the merits, in the prior case. PCB 01-170, slip op. at 10; aff'd 331 Ill. App. 3d, at 1061. The Board, affirmed by the Appellate Court, found that the bonds submitted by Respondent did NOT comply with applicable

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board issue an order in favor of Complainant and against Respondent COMMUNITY LANDFILL COMPANY, INC.:

a. striking Respondent's First and Second Affirmative Defenses; and

b. granting such other relief as the Board deems appropriate and just.

RESPECTFULLY SUBMITTED:

PEOPLE OF THE STATE OF ILLINOIS  
by LISA MADIGAN,  
Attorney General of the  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY:



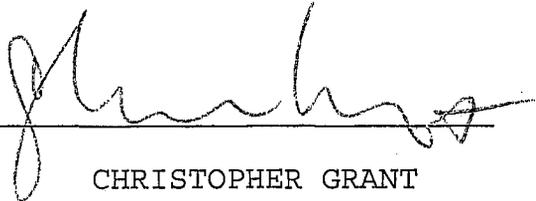
CHRISTOPHER GRANT  
Environmental Bureau  
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20<sup>th</sup> Floor  
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 municipal corporation, )  
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 Respondents. )

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 16th day of July, 2003, the foregoing Reply and Motion to Strike Affirmative Defenses, and Notice of Filing, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.

  
CHRISTOPHER GRANT