

OCT 03 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

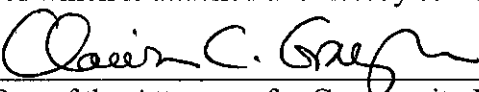
STATE OF ILLINOIS
Pollution Control Board

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

NOTICE OF FILING

TO: Christopher Grant	Bradley Halloran
Environmental Bureau	Hearing Officer
Assistant Attorney General	Illinois Pollution Control Board
188 West Randolph Street	100 West Randolph
20th Floor	Suite 11
Chicago, Illinois 60601	Chicago, Illinois 60601
Charles F. Helsten	Scott Belt
Hinshaw & Culbertson, LLP	Scott Belt and Associates, PC
100 Park Avenue	105 East Main Street
P.O. Box 1389	Suite 206
Rockford, Illinois 61105-1389	Morris, Illinois 60450

PLEASE TAKE NOTICE that on **October 3, 2005**, the undersigned filed an original and nine copies of RESPONDENT COMMUNITY LANDFILL COMPANY INC.'S MOTION TO STRIKE PORTIONS OF COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT with Ms. Dorothy Gunn, Clerk of the Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601, a copy of which is attached and hereby served upon you.



One of the Attorneys for Community Landfill Co.

Mark A. LaRose
Clarissa C. Grayson
LAROSE & BOSCO, LTD.
Attorney No. 37346
200 North LaSalle Street, Suite 2810
Chicago, Illinois 60610
(312) 642-4414

THIS FILING IS SUBMITTED ON RECYCLED PAPER.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

OCT 03 2005

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

STATE OF ILLINOIS
Pollution Control Board

PCB No. 03-191
(Enforcement)

**RESPONDENT COMMUNITY LANDFILL COMPANY INC.'S MOTION TO STRIKE
PORTIONS OF COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT**

Respondents Community Landfill Company, Inc., ("CLC" or "Respondent") by and through its attorneys LaRose & Bosco, Ltd., and pursuant to 35 Ill. Adm. Code 101.500 and 735 ILCS 5/2-615, hereby moves the Illinois Pollution Control Board ("Board") to strike portions of Complainant's Motion for Summary Judgment and in support thereof, states as follows:

FACTS

1. On April 16, 2003, the Complainant filed its Complaint alleging that CLC violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2002) and 35 Ill. Adm. Code Sections 811.700(f) and 811.712. (See Exhibit A, Complaint).
2. This one-count Complaint alleged that that CLC had not obtained the proper financial assurance as required by the Act. (Ex. A).
3. This Complaint asked the Board to conduct a hearing, find CLC in violation, order CLC to obtain financial assurance and assess a civil penalty. (Ex. A).

4. On July 21, 2005, the Complainant filed its Motion for Summary Judgment on the allegations set forth in its Complaint. (See Exhibit B, Motion for Summary Judgment, without exhibits).

5. In addition to requesting summary judgment on the initial allegations, Complainant alleges for the first time in any pleading in this matter that CLC has continued disposal operations at the Landfill. (See. Ex. B, page 4, Para. 7; page 8, para. 17). The Complainant includes an affidavit from Mark Retzlaff.

6. In addition to this allegation, the Complainant also asks the Board to order CLC to “cease and desist from transporting and depositing any additional material at the Landfill.” (See Ex. B, page 16, para. 38(3)). Like the additional allegations referenced in the above paragraph, this additional request for relief is above and beyond the initial relief sought in the Complaint.

7. For the reasons stated in the Argument section of this Motion, CLC asks that this Board strike the portions within the Complainant’s Motion for Summary Judgment that contain new allegations and separate relief above and beyond those set forth in its initial Complaint.

ARGUMENT

In its Motion for Summary Judgment, Complainant launches a specific allegation of dumping against CLC. This off-handed allegation marks the first such notice to CLC of any further violations of the Act. The procedural rules require the Complainant to seek permission from the Board before alleging new facts and allegations. See People of the State of Illinois v. Petco Petroleum Corp., 2005 WL 1255250, page 3 (2005). In any Motion to Amend a complaint, the Complainant must also provide just and reasonable cause for the amendments. Id. By

circumventing the Board's own procedural rules, the Complainant has denied CLC's right to notice and an opportunity to be heard on these new allegations.

Similarly, in its Motion for Summary Judgment, Complainant also asks for relief not initially sought in its complaint. First, it asks for "interim relief in the form of an Order stopping additional dumping." Exhibit B, page 15, para. 38. Second, the Motion asks the Board to order the CLC to "cease and desist from transporting and depositing any additional material at the Landfill." Id., page 16, para. 38(3). By requesting such relief, Complainant is asking for relief above and beyond what was initially plead in their complaint, which contained allegations of failure to provide financial assurance. According to the procedural rules, the party filing the Motion for Summary Judgment "may move the Board for summary judgment for all or any part of the relief sought." 35 IL ADC 101.516(a). This additional requested relief is plainly different than the relief initially plead.

Second, while the Board does have the power to issue a cease and desist order, it may only do so upon issuing a final order. 415 ILCS 5/33(a) and (b). The Board may only issue such final orders "after due consideration of the written and oral statements, the testimony and arguments that shall be submitted at the hearing." Id. To date, the Board has not had an opportunity to make such considerations, making any cease and desist order premature.

WHEREFORE, for the reasons stated above, Respondents ask the Board to strike the portions within the Complainant's Motion for Summary Judgment that contain new allegations and separate relief above and beyond those set forth in its initial Complaint.

Respectfully submitted,



Clarissa C. Grayson

Attorney for Community Landfill Company

Mark A. LaRose
Clarissa C. Grayson
LAROSE & BOSCO, LTD.
Attorney No. 37346
200 N. LaSalle Street, Suite 2810
Chicago Illinois 60601
(312) 642-4414
Fax (312) 642-0434

CERTIFICATE OF SERVICE

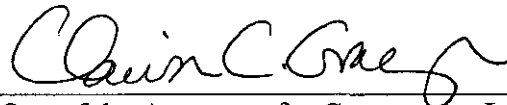
I, Clarissa C. Grayson, an attorney hereby certify that I served a copy of the foregoing
RESPONDENT COMMUNITY LANDFILL COMPANY INC.'S MOTION TO STRIKE
PORTIONS OF COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT by placing the
same in the United States Mail, first-class postage prepaid this **3rd** day of **October 2005**,
addressed as follows:

Mr. Christopher Grant
Environmental Bureau
Assistant Attorney General
188 West Randolph Street
20th Floor
Chicago, Illinois 60601

Mr. Scott Belt
Scott Belt and Associates, PC
105 East Main Street
Suite 206
Morris, Illinois 60450

Mr. Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph
Suite 11
Chicago, Illinois 60601

Mr. Charles F. Helsten
Hinshaw & Culbertson, LLP
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61105-1389



One of the Attorneys for Community Landfill Co.

Mark A. LaRose
Clarissa C. Grayson
LaRose & Bosco, Ltd.
Attorney No. 37346
200 N. LaSalle Street
Suite 2810
Chicago, Illinois 60610
(312) 642-4414

Exhibit A

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APR 16 2003

STATE OF ILLINOIS

PCB No. 03-191 Pollution Control Board
(Enforcement)

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.)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, COMMUNITY LANDFILL COMPANY, INC., an Illinois corporation, and the CITY OF MORRIS, an Illinois municipal corporation, as follows:

COUNT IFAILURE TO PROVIDE ADEQUATE FINANCIAL ASSURANCE

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

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

enforcing the Act.

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

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

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

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

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

municipal solid waste permits, from Illinois EPA.

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

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

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

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

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

No person Shall:

* * *

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

* * *

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

* * *

13. Pursuant to authority granted by the Act, the Illinois Pollution Control Board has promulgated regulations requiring and regulating closure and post-closure financial assurance for municipal solid waste landfills. These regulations are codified at 35 Ill. Adm. Code, Subtitle G, Subchapter I, Subpart G ("Board Financial Assurance Regulations").

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

* * *

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

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

* * *

- (b) the surety company issuing the Bond shall be licenced to transact the business of insurance by

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

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

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

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

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

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

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

waste.

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

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

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

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

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

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

23. From June 1, 2000 until the time of filing this complaint, Respondents have conducted disposal operations at both parcel "A" and parcel "B" of the Morris Community Landfill, with

closure and post-closure financial assurance solely in the form of three performance bonds from Frontier Insurance Company, a company not listed in United States Department of the Treasury "Circular 570", and therefore not meeting the requirements of 35 Ill. Adm. Code 811.712. Respondents have thereby violated Sections 811.700(f) and 811.712 of the Board Financial Assurance Regulations, 35 Ill. Adm. Code 811.700(f) and 811.712, and have thereby also violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, COMMUNITY LANDFILL COMPANY, INC. and the CITY OF MORRIS on Count I:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;

2. Finding that the Respondents have violated Section 21(d)(2) of the Act, 35 Ill. Adm. Code 811.700(f), and 35 Ill. Adm. Code 811.712;

3. Ordering the Respondents to immediately obtain, and provide to Illinois EPA, landfill closure and post-closure financial assurance meeting the requirements of the Board Financial Assurance regulations;

4. Ordering the Respondents to cease and desist from any further violations of Section 21(d)(2) of the Act, 35 Ill. Adm.

Code 811.700(f), and 35 Ill. Adm. Code 811.712;

5. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Respondents for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

6. Ordering the Respondents to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

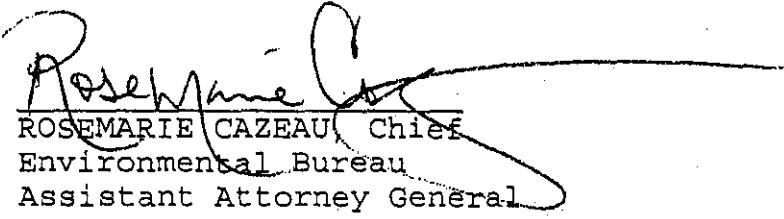
7. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General of the
State of Illinois

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

BY:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

OF COUNSEL

CHRISTOPHER GRANT

Assistant Attorney General

Environmental Bureau

188 W. Randolph St. 20th Floor

Chicago, Illinois 60601

(312) 814-5388

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

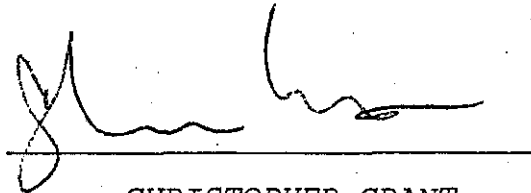
PCB No.
(Enforcement)

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 16th day of April, 2003, the foregoing Complaint and Notice of Filing upon the persons listed below by certified mail, and addressed to:

FOR COMMUNITY LANDFILL COMPANY, INC.
Mr. Mark La Rose, Registered Agent
734 N. Wells Street
Chicago, Illinois 60610

FOR CITY OF MORRIS
The Honorable Richard Kopczick, Mayor
320 Wauponsee Street
Morris, Illinois 60450



CHRISTOPHER GRANT

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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Complainant,)
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vs.)
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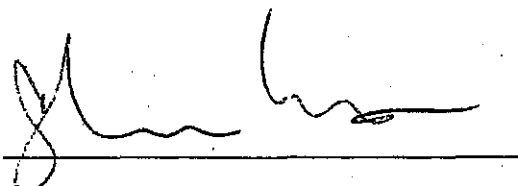
PCB No.
(Enforcement)

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 16th day of April, 2003, the foregoing Complaint and Notice of Filing upon the persons listed below by certified mail, and addressed to:

FOR COMMUNITY LANDFILL COMPANY, INC.
Mr. Mark La Rose, Registered Agent
734 N. Wells Street
Chicago, Illinois 60610

FOR CITY OF MORRIS
The Honorable Richard Kopczick, Mayor
320 Wauponsee Street
Morris, Illinois 60450



CHRISTOPHER GRANT

Exhibit B

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

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

COMPLAINANT'S MOTION FOR SUMMARY JUDGEMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, through its attorney, LISA MADIGAN, Attorney General of the State of Illinois, and requests that the Illinois Pollution Control Board ("Board") grant, pursuant to 35 Ill. Adm. Code 101.516, summary judgment in favor of Complainant and against the Respondents, COMMUNITY LANDFILL COMPANY, and the CITY OF MORRIS. In support thereof, Complainant states as follows:

I. INTRODUCTION/BACKGROUND

1. On April 16, 2003, the State filed its Complaint, on referral from the Illinois Environmental Protection Agency pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002). The State alleges that the Respondents violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2002), and 35 Ill. Adm. Code Sections 811.700 (f), and 811.712, through failure to provide adequate financial



assurance for closure/post-closure activities at the Morris Community Landfill, Morris, Grundy County Illinois ("Landfill"). Financial assurance is required by 35 Ill. Adm. Code, Part 811, Subpart G.

2. Upon application by the Respondents, on August 4, 2000 Illinois EPA issued two significant modification permits to the Respondents, 2000-155-LFM for Parcel A [Exhibit A], and 2000-156-LFM for Parcel B [Exhibit B]. The Respondents subsequently obtained various modifications to the Permits. Both Permits (and modifications thereto) were issued to Respondent City of Morris ("Morris"), as owner, and Respondent Community Landfill Company ("CLC"), as operator. Pursuant to these permits, and the provisions of the Board's landfill regulations, the Respondents were to provide a total of \$17,427,366.00 in compliant financial assurance, beginning in 2000. See Exhibit A, p. 45, par. 6, Exhibit B, p. 33, par. 6.

3. Section 21.1 of the Act requires "persons" conducting waste disposal operations pursuant to an Illinois EPA-issued permit to post "...a performance bond or other security for the purpose of insuring closure of the site and post closure care in accordance with this Act and regulations adopted thereunder...." 415 ILCS 5/21.1 (2002).

4. Closure/post closure financial assurance must meet the provisions of 35 Ill. Adm. Code 811.700, as further described by

35 Ill. Adm. Code Sections 811.706, 811.710 through 811.717, and 811.719-720. These regulations, and the Act, prohibit any person from conducting waste disposal operations without adequate, compliant financial assurance, i.e. financial assurance meeting the specific requirements of these Board regulations.

5. The Respondents have failed to comply with the conditions of their permits and the pertinent regulations. Instead, in 2000, the Respondents provided Illinois EPA with three surety bonds issued by Frontier Insurance Company, an inadequate surety. Copies of these bonds are attached hereto as Exhibit C.

6. Following denial of subsequent permit applications due to inadequate financial assurance, the Respondents fully litigated the issue of whether the Frontier Bonds met regulatory requirements. In *Community Landfill Company and City of Morris v. Illinois EPA*, PCB 01-48/01-49 (Consolidated) (April 5, 2001, slip op., at 29) [Exhibit D], the Board found that the amount of financial assurance to be maintained by the Respondents was \$17,427,366.00. In *Community Landfill Company and City of Morris v. Illinois EPA*, PCB 01-170 (December 6, 2001, slip op. at 22) [Exhibit E], the Board found that the Frontier Bonds did not meet the requirements of 35 Ill. Adm. Code 811.712(b). The Board upheld the denial of the permit applications due to the Respondents' failure to provide adequate, compliant financial

assurance. On appeal, the Appellate Court affirmed the Board's finding. 331 Ill. App. 3d 1056 [Exhibit F]. The Illinois Supreme Court subsequently denied the Respondents' Petition for Leave to Appeal. 202 Ill. 2d 600 (Dec. 5, 2002).

7. As the attached Exhibits demonstrate, the Respondents have failed to provide any financial assurance meeting the requirements of the Act or their permits. However, they have continued operations, specifically waste disposal in parcel A at the Landfill, without financial assurance.

8. This Motion seeks an order finding the Respondents in violation of the pertinent regulations and the Act; ordering the Respondents to stop disposal of any material at the Site until they comply with the Act, Board regulations, and relevant Permits; ordering the Respondents to immediately provide financial assurance meeting the requirements of the Act, and relevant permits; and setting a date for hearing on the issue of Civil Penalty.

II. PRELIMINARY MATTERS

9. Complainant alleges that the Respondents have violated 35 Ill. Adm. Code Sections 811.700(f) and 811.712. Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2002), provides that violation of these regulations are violations of the Act as well.

10. The pertinent sections of the Act and regulations provide:

415 ILCS 5/21(d)(2) (2002)

No person Shall:

* * *

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

* * *

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

* * *

35 Ill. Adm. Code 811.700(f)

* * *

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

35 Ill. Adm. Code 811.712

* * *

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

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

11. In its Answer, CLC admits that it is a "person", as defined. The City of Morris denies that it is a "person" as that term is used in the Act. However, Respondent Morris admits that it is an Illinois municipal corporation [Morris Answer, par.3]. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), defines "person" as follows:

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

12. As a municipal corporation, the City of Morris is a 'political subdivision', and therefore a "person". The City of Morris' denial of this allegation is frivolous.

13. Respondent CLC admits that it was issued the following permits: Significant Modification Permits No. 2000-155-LFM and 2000-156-LFM on August 4, 2000, Permit Modification No. 2 on June 29, 2001, and Permit Modification No. 3 on January 8, 2002 [CLC Answer, par. 8]. However, Respondent Morris denies that it was issued these permits [Morris Answer, par. 8]. Again, Respondent Morris' denial is frivolous. Exhibits A and B clearly indicate that the City was Permittee as 'owner'. See also: Affidavit of Brian White [Exhibit G, par. 7-8] regarding subsequent permits. Moreover, Respondent Morris vigorously litigated the denial of

its subsequent permit applications in Case No. PCB 01-170, and the Appellate Court. Respondent Morris' standing in these cases was as existing permit holder, and applicant for the (denied) modifications. There is no genuine question that Respondent Morris is Permittee under all relevant Landfill permits.

14. Section 3.285 of the Act, 415 ILCS 5/3.285 (2002), provides, as follows:

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

15. Both Respondents admit that parcels A & B of the Morris Community Landfill are MSWLF units. Therefore the provisions of 35 Ill. Adm. Code 811.700(f) apply to the entire Morris Community Landfill.

III. THE RESPONDENTS HAVE CONDUCTED A WASTE DISPOSAL OPERATION

a. Activities of Both Respondents

16. Although the term 'waste disposal operation' is not defined in the Act, the facts show that both Respondents are 'conducting a waste disposal operation' at the Landfill, giving

that term its common meaning. First, both Respondents were issued permits for solid waste disposal at the landfill. This fact alone, as a matter of law, demonstrates that both Respondents were conducting a waste disposal operation. In addition, as shown by Exhibit H, the Respondents submitted reports acknowledging the receipt of solid waste at the Landfill. These reports were signed, under oath, by the Mayor of the City of Morris and the President of CLC, and indicate dumping activity during the years 2000, 2001, and 2002. Although the Respondents have failed to submit these reports for subsequent years [See: Affidavit of Ellen Robinson, Exhibit H, par. 7], as shown by the Affidavit of Mark Retzlaff [Exhibit I, par. 11], waste disposal at the Landfill has continued, in parcel A, through at least May 18, 2005.

b. Activities of Respondent Community Landfill Company

17. Respondent CLC admits that it is the operator, and that it manages day-to-day operations at the Landfill [CLC Answer, par. 5]. It also admits that it was issued Significant Modification Permits No. 2000-155-LFM, 2000-156-LFM, and modifications issued on June 29, 2001 and January 8, 2002 [CLC Answer, par. 8]. As shown by the Affidavit of Mark Retzlaff [Exhibit I], CLC employee James Pelnarsh Sr. continues to manage operations at the Site. In October, 2004, Retzlaff noted dumping of general debris, and reviewed records of substantial dumping of

petroleum-contaminated soil. Exhibit I, par. 7-9. On May 19, 2005, James Pelnarsh Sr. admitted to additional dumping the previous day. Exhibit I, par. 11

c. Activities of Respondent City of Morris

18. Not only did the City apply for the relevant permits, it provided, as principal, a Frontier Insurance Company surety bond in the sum of \$10,081,630.00 [Exhibit C]. Also, the City of Morris was a Petitioner in the two Landfill Permit appeals, and was co-appellant in the appeal of the Boards' finding in PCB 01-170.

19. Respondent Morris has also profited from continued disposal at the Site. As shown by excerpts from the deposition transcript of the City's representative deponent, Mr. John Enger [Exhibit J], the City receives a royalty for waste dumped at the Landfill, free or reduced dumping fees, and (formerly) royalties from operation of a landfill gas-to-energy plant. Exhibit J, at p. 21-22.

20. The City of Morris' active involvement in permitting for solid waste disposal, bonding the landfill, and collecting royalties for waste dumping, shows that it was, along with CLC, 'conducting a waste disposal operation'.

IV. COMPLAINANT IS ENTITLED TO SUMMARY JUDGMENT

21. Section 101.516 of the Board Procedural Rules, 35 Ill. Adm. Code 101.516, provides, in pertinent part, as follows:

- * * *
- b) If the record, including pleadings, depositions and admissions on file, together with any affidavits, show that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment.

22. The affidavits, depositions, prior Board and court rulings, and the pleadings in this matter clearly indicate that the Respondents have failed to provide the required financial assurance for the Morris Community Landfill, in violation of the Board's financial assurance regulations, and the relevant landfill permits.

- a. The Respondents have violated 35 Ill. Adm. Code 811.712

23. Section 811.712 of the Board regulations requires that Performance Bonds used as financial assurance be listed in the U.S. Department of the Treasury 'Circular 570'.

24. The Respondents noncompliance with 811.712 has previously been decided. In PCB 01-170, the Board found that the Frontier Bonds submitted by Respondents did not meet the requirement of this Section. Exhibit E, at 14. The Appellate Court, Third District upheld the Board's determination. Exhibit E, at 4.

25. The principal of Collateral Estoppel should be applied in our case. Collateral Estoppel applies where:

- 1) the issue decided in the prior adjudication is identical with the one presented in the instant matter;
- 2) there was a final judgement on the merits in the prior adjudication; and

- 3) The party against whom estoppel is asserted was a party or a party in privity with a party to the prior adjudication.

People v. Community Landfill Co. et al. PCB 03-191, slip op at 4-5 (October 16, 2003), (citing *ESG Watts, Inc. v. IEPA*, PCB 96-191 and 97-210, slip op. at 2-3 (July 23, 1998))

26. The issue of whether the Frontier Bonds were compliant, decided by the Board in PCB 01-170, is identical to that in our case-the Bonds are the same. This issue has already reached a final adjudication, and was reviewed on appeal. The Respondents were Petitioners in PCB 01-170, and fully litigated the issue.

27. Although courts closely scrutinize the application of 'offensive collateral estoppel', its use is appropriate in this case. Courts do not favor offensive collateral estoppel where:

- 1) it may encourage potential plaintiffs to 'wait and see' rather than joining in earlier litigation; and/or
- 2) where the prior litigation was comparatively minor, and a Defendant did not have incentive to fully litigate an issue.

American Family Mutual Insurance Co. v. Savickas, 193 Ill. 2d 378, 390 (2000).

28. However, neither of these factors is present in this case. First, the prior litigation involved the same parties. The State could not 'wait and see' for a favorable result: Respondents' permit appeal [in PCB 01-170] was thrust upon it. Also, the Respondents, seeking to operate new sections of the landfill, had the incentive to vigorously litigate the legitimacy

of their own bonds. In fact the Respondents appealed to Board's ruling to Appellate Court, and sought leave to appeal to the Illinois Supreme Court. There is no unfairness to the Respondents from applying offensive collateral estoppel, and its use is reasonable-there is no reason to further litigate the 'legitimacy' of the Frontier Bonds.

29. Moreover, as shown by the Affidavit of Brian White [Exhibit G, par. 11], Frontier Insurance Company is not listed on Circular 570. Therefore, as a matter of law, the Performance Bonds provided do not comply with either Section 811.712 or the Respondents' permits.

30. By providing noncompliant performance bonds as financial assurance for closure/post closure of the Landfill, the Respondents have violated 35 Ill. Adm. Code 811.712. There is no genuine question of material fact, and the Board should find that Plaintiff is entitled to judgment on this issue as a matter of law.

b. The Respondents Violated, and Continue to Violate, 35 Ill. Adm. Code 811.700(f) by Failing to Provide Adequate Financial Assurance

31. Section 811.700(f) of the Board regulations, 35 Ill. Adm. Code 811.700(f), prohibits disposal operations at Municipal Solid Waste Landfills without compliant financial assurance.

32. The Board and the appellate court have previously determined that the Frontier Bonds did not meet the requirements

of 35 Ill. Adm. Code 811.712(b); the Board does not need to revisit this issue. However, the Respondents also have failed to substitute or provide any adequate financial assurance, even though they have known since no later than December 5, 2002 (when the Illinois Supreme Court denied Respondents' Petition), that the Frontier Bonds did not satisfy their financial assurance obligations.

33. 35 Ill. Adm. Code 811.706 lists ten alternative mechanisms for providing acceptable financial assurance, including, *inter alia*, compliant performance bonds, payment bonds, insurance policies, and local government guarantees. As shown by the Affidavit of Brian White, neither Respondent has arranged for or submitted closure/post closure financial assurance conforming with any of these ten mechanisms [Exhibit G, par. 12]. The Respondents do not now have any adequate, compliant financial assurance for closure/post closure of parcels A & B of the Landfill. This fact is indisputable.

34. In addition, the Respondents have also failed to provide annual updates of closure/post-closure costs, or even to annually adjust estimates for inflation as required by 35 Ill. Adm. Code 811.701(c) [Exhibit G, par. 14-15], and their Permits.

35. By conducting waste disposal operations at the Landfill after August 4, 2000, without providing financial assurance according to the requirements of 35 Ill. Adm. Code Sections

811.700 and 811.706, the Respondents have violated 35 Ill. Adm. Code 811.700(f). There is no genuine issue of material fact, and Complainant is entitled to judgment as a matter of law.

c. Violation of 415 ILCS 5/21 (d)(2).

36. Section 21(d)(2) of the Act provides that "no person shall...conduct any waste-storage, waste-treatment, or waste-disposal operations...in violation of the Board's regulations and standards...." As shown above, the Respondents have conducted, and continue to conduct waste disposal operations at the Landfill, while violating 35 Ill. Adm. Code 811.712 and 811.700(f). The Respondents have thereby also violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2002). There is no genuine issue of material fact and Complainant is entitled to judgment as a matter of law.

d. The Respondents' Violations were Wilful, Knowing, and Repeated

37. The Respondents have violated the financial assurance regulations, and their Permits, since at least August 4, 2000. Since no later than December 5, 2002, when the Illinois Supreme Court denied their Petition for Leave to Appeal, the Respondents have been fully aware that the Frontier Insurance Company bonds were noncompliant, and thus insufficient. Yet the Respondents have failed to provide any other compliant financial assurance for closure/post-closure of the landfill to the date of filing this Motion for Summary Judgment, even though, as shown by the

Landfill Capacity Reports [Exhibit H], and the Affidavit of Mark Retzlaff [Exhibit I], they have continued waste disposal operations. The Respondents' failure to provide compliant financial assurance, while continuing waste disposal operations, constitutes wilful, knowing, and repeated violations of the Act and pertinent regulations.

V. REQUESTED RELIEF

38. Although there should be no doubt regarding the Respondents' violations of the financial assurance violations, discovery in this case continues on issues related to civil penalty, specifically the economic benefit accruing to the Respondents from these violations. Complainant believes that a hearing on the sole issue of civil penalty will be necessary once discovery closes on September 25, 2005. However there is no reason to delay the Board's decision on the Respondents' liability, or to delay interim relief in the form of an Order stopping additional dumping and requiring the Respondents to immediately comply with the closure/post-closure financial assurance regulations. Therefore, Complainant respectfully requests that the Board order interim relief in the form of the following:

1. A finding that the Respondents have violated 415 ILCS 5/21(d)(2) (2002), and 35 Ill. Adm. Code Sections 811.700(f) and 811.712;

2. A finding that the Respondents' violations were wilful, knowing, and/or repeated;

3. Ordering the Respondents to cease and desist from transporting and depositing any additional material at the Landfill until they are in full compliance with their Permits, and the Board's financial assurance regulations;

4. Requiring the Respondents to immediately provide financial assurance as required by the Act, Part 811, Subpart G of the Board solid waste regulations, and the Respondents' permits;

5. Requiring the Respondents to update the closure/postclosure costs in accordance with Permits No. 2000-155-LFM, 2000-156-LFM and modifications thereto;

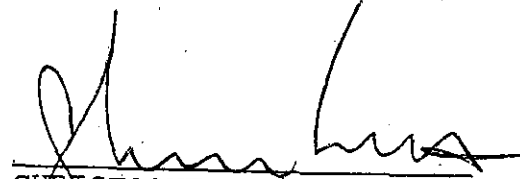
6. Ordering the Respondents to initiate closure of parcels A & B of the Landfill; and

7. Setting a date for hearing on the issue of civil penalty.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board grant its Motion for Summary Judgment against the Respondents, COMMUNITY LANDFILL COMPANY and the CITY OF MORRIS, award the relief requested herein, set a date for hearing on the issue of civil penalty, and take such other action as the Board believes to be appropriate and just.

Respectfully Submitted,

BY:



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2. A finding that the Respondents' violations were wilful, knowing, and/or repeated;

3. Ordering the Respondents to cease and desist from transporting and depositing any additional material at the Landfill until they are in full compliance with their Permits, and the Board's financial assurance regulations;

4. Requiring the Respondents to immediately provide financial assurance as required by the Act, Part 811, Subpart G of the Board solid waste regulations, and the Respondents' permits;

5. Requiring the Respondents to update the closure/postclosure costs in accordance with Permits No. 2000-155-LFM, 2000-156-LFM and modifications thereto;


6. Ordering the Respondents to initiate closure of parcels A & B of the Landfill; and

7. Setting a date for hearing on the issue of civil penalty.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board grant its Motion for Summary Judgment against the Respondents, COMMUNITY LANDFILL COMPANY and the CITY OF MORRIS, award the relief requested herein, set a date for hearing on the issue of civil penalty, and take such other action as the Board believes to be appropriate and just.

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