

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE
OCT 31 2005
STATE OF ILLINOIS
Pollution Control Board

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

PCB No. 03-191
(Enforcement)

NOTICE OF FILING

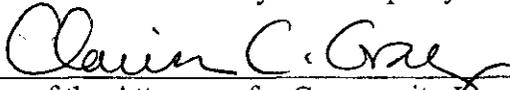
TO: Christopher Grant
Environmental Bureau
Assistant Attorney General
188 West Randolph Street
20th Floor
Chicago, Illinois 60601

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

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

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

PLEASE TAKE NOTICE that on **October 31, 2005**, the undersigned filed an original and nine copies of RESPONDENT COMMUNITY LANDFILL COMPANY INC.'S RESPONSE TO THE CITY OF MORRIS' 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

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**RESPONDENT COMMUNITY LANDFILL COMPANY INC.'S RESPONSE TO
THE CITY OF MORRIS' CROSS-MOTION FOR SUMMARY JUDGMENT**

Respondent Community Landfill Company, Inc., ("CLC" or "Respondent") by and through its attorneys LaRose & Bosco, Ltd., hereby responds to the City of Morris' Cross-Motion for Summary Judgment. In support thereof, Respondent states as follows:

INTRODUCTION

The City of Morris' Cross-Motion for Summary Judgment lacks legal foundation and must be denied. By attempting to downgrade its interest in the Landfill to a "fee title holder," the City of Morris sets forth a disingenuous, last-minute effort to distance themselves from this litigation. For the reasons stated in the argument section, this Board should deny the City of Morris' Cross-Motion for Summary Judgment.

**I. THE CITY OF MORRIS IS AN OPERATOR OF THE MORRIS
COMMUNITY LANDFILL**

Courts should dispose of litigation through summary judgment only if the moving party's rights are free and clear from doubt. *Kurczak v. Cornwell*, 835 N.E.2d 452, 460 (2nd Dist. 2005). If the non-moving party can demonstrate a genuine issue of material fact, the court should not dispose of the litigation through such drastic measures. *Id.* A

cursory glance at the City of Morris' actions at the landfill show that it was no mere fee title holder of the landfill as it would like to characterize itself, but rather is an operator substantially involved in conducting the waste disposal operation.

The rules that govern the Illinois Pollution Control Board strictly define an operator as a "person who conducts a waste treatment, waste storage or waste disposal operation." 35 Ill. Adm. Code 807.104. However, courts and the Board itself have broadened the definition depending "on the specific facts of the case as a whole." *People v. Bishop*, 315 Ill. App. 3d 976, 978 (5th Dist. 2000).

In *Bishop*, the Defendant Dean Bishop challenged the Board's finding that he was an operator of a landfill despite the fact that he never applied nor signed a permit stating that he was the operator. *Bishop* at 977. Nonetheless, in finding that Bishop was an operator, the court looked to his substantial involvement in the landfill noting that Bishop pledged a certificate of deposit as financial assurance for the landfill. *Id.* at 980.

Similar to the Defendant in *Bishop*, the City of Morris has pledged financial assurance for the operation of the landfill. (Exhibit 1, May 31, 2000 Performance Bond). The City of Morris' substantial involvement in the permitting process and the financial assurance negotiations demonstrates that it was more than a passive owner of the landfill. In further support of the proposition that the City of Morris is not merely a passive owner, the City has been issued numerous permits over the course of the past years. (See People's Exh. K, ¶6).

Additionally, the Board regulations are clear that "[t]he owner or operator shall provide financial assurance to the agency. . . ." 35 Ill. Admin. Code 811.700(b). The Board does not limit the responsibility solely to either entity. The City of Morris jointly

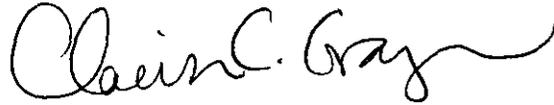
litigated issues relating to financial assurance and for it now to say that it is not responsible because it does not “conduct” waste disposal operations is simply an attempt to avoid these responsibilities. If it did not have this responsibility, why did it post a performance bond in the amount of \$10,081,630.00? (See Exh. 1).

The City of Morris has made a commitment to the Illinois Environmental Protection Agency to treat leachate, condensate and groundwater at the landfill. (See Addendum to Lease Agreement, attached as Exhibit 2). In the Addendum to the Lease Agreement dated July 1, 1982, (the addendum being dated July 20, 1999), the parties are described as “co-applicants” and “co-permittees”. (See Exh. 2). On December 13, 1999, the City Council of the City of Morris authorized Mayor Robert Feeney to purchase the performance bond “to secure its obligations” and to enter into the Lease Addendum authorizing it to accept and treat leachate, groundwater and condensate. (See Resolution No: R-99-6, attached as Exhibit 3). As defined by the Pollution Control Board’s administrative rules, the *operator*, and not the owner, “is responsible of the operation of a leachate management system.” Ill.Admin.Code § 811.309(a). By agreeing to treat leachate at the landfill, and by providing financial assurance, the City of Morris is an operator who conducts a waste treatment operation. For the City of Morris to now state that it is a mere owner of the landfill property is to turn its back on its prior commitments.

While the City of Morris is the owner of the land, its actions as an operator of the landfill completely contradict its arguments as set forth in its Cross-Motion for Summary Judgment. At the very least, the City of Morris’ actions demonstrate a genuine issue of material fact necessary to survive summary judgment.

WHEREFORE, for the reasons stated herein, Respondent Community Landfill Company, Inc. respectfully requests that the Board deny the City of Morris' Cross-Motion for Summary Judgment.

Respectfully submitted,



Clarissa C. Grayson
Attorney for Community Landfill Company

Mark A. LaRose
Clarissa C. Grayson
LAROSE & BOSCO, LTD.
Attorney No. 37346
200 North LaSalle Street,
Suite 2810
Chicago Illinois 60610
(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 RESPONSE TO THE CITY OF MORRIS' CROSS-MOTION FOR SUMMARY JUDGMENT** by placing the same in the United States Mail, first-class postage prepaid this 31st 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 11-500
Chicago, Illinois 60601

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



One of the Attorneys for Community Landfill Co.

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

PERFORMANCE BOND

Date bond executed: May 31, 2000

Effective date: May 31, 2000

Principal: City of Morris
320 Waubonsee Street, Morris, Illinois 60450

Type of organization: Municipality

State of incorporation: N/A

Surety: Frontier Insurance Company

Site:

EPA Site Number:

Name:

Address:

City:

Amount guaranteed by this bond: \$ _____

EPA Site Number: 0530600001 - Grundy County

Name: Morris Community Landfill (Corp. Office)

Address: 13903 S. Ashland Ave.
Riverdale, Illinois 60827

Amount guaranteed by this bond: \$ 10,081,630.00

Please attach a separate page if more space is needed for all sites.

Total penal sum of bond: \$ 10,081,630.00

Surety's bond number: 158465

The Principal and the Surety promise to pay the Illinois Environmental Protection Agency ("IEPA") the above penal sum unless the Principal or Surety provides closure and postclosure care or corrective action for each site in accordance with the closure and postclosure care or corrective action plans for that site. To the payment of this obligation the Principal and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

Whereas the Principal is required, under Section 21(d) of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1021(d) (15 ILCS 5/21(d))) to have a permit to conduct a waste disposal operation;

Whereas the Principal is required, under Section 21.1 of the Environmental Protection Act, to provide financial assurance for closure and postclosure care or corrective action; and

Whereas the Surety is licensed by the Illinois Department of Insurance;

Whereas the Principal and Surety agree that this bond shall be governed by the laws of the State of Illinois;



and postclosure care or corrective action plans for the site if, during the term of the bond, the Principal fails to provide closure and postclosure care or corrective action for any site in accordance with the closure and postclosure care or corrective action plans for that site as guaranteed by this bond. The Principal fails to so provide when the Principal:

- a) Abandons the site;
- b) Is adjudicated bankrupt;
- c) Fails to initiate closure of the site or postclosure care or corrective action when ordered to do so by the Board or a court of competent jurisdiction;
- d) Notifies the Agency that it has initiated closure, or initiates closure, but fails to close the site or provide postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans; or
- e) For corrective action, fails to implement corrective action at a municipal solid waste landfill unit in accordance with 35 Ill. Adm. Code 811.326.

The Surety shall pay the penal sum of the bond to the IEPA or notify the IEPA that it intends to provide closure and postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans for the site within 30 days after the IEPA mails notice to the Surety that the Principal has failed to so provide closure and postclosure care or corrective action. Payment shall be made by check or draft payable to the State of Illinois, Landfill Closure and Postclosure Fund.

If the Surety notifies the Agency that it intends to provide closure and postclosure care or corrective action, then the Surety must initiate closure and postclosure care or corrective action within 60 days after the IEPA mailed notice to the Surety that the Principal failed to provide closure and postclosure care or corrective action. The Surety must complete closure and postclosure care or corrective action in accordance with the closure and postclosure care or corrective action plans, or pay the penal sum.

The liability of the Surety shall not be discharged by any payment or succession of payments unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety exceed the amount of the penal sum.

This bond shall expire on the 31st day of May, 2001 provided, however, that if the Principal fails to provide substitute financial assurance prior to the expiration date, and the IEPA mails notice of such failure to the Surety within 30 days after such date, the term of this bond shall be automatically extended for one twelve-month period starting with the date of expiration of the bond.

The Principal may terminate this bond by sending written notice to the Surety; provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond from the IEPA.

In Witness Whereof, the Principal and Surety have executed this Fidelity Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below verify that they are authorized to execute this surety bond on behalf of the Principal and Surety.

PRINCIPAL: City of Morris
 Signature: *Robert T. Feeney*
 Typed Name: Robert T. Feeney
 Title: Mayor, City of Morris
 Date: 5/31/00

CORPORATE SURETY
 Name: Frontier Insurance Company
 Address: 2636 Elm Hill Pike, Suite 500
Nashville, TN 37214
 State of Incorporation: New York
 Signature: *Christine Cahill*
 Typed Name: Christine Cahill
 Title: Attorney-In-Fact
 Corporate seal:
 Bond premium: \$ 201,633.00

Corporate seal



2636 Elm Hill Pike, Suite 500
Nashville, Tennessee 37214

BOND RIDER

To be attached to and form a part of City of Morris

Bond No. 158465 Dated May 31st of 2000

_____, as Principal, and

FRONTIER INSURANCE COMPANY, as Surety, in favor of Illinois Environmental Protection Agency

_____, as Obligee.

It is understood and agreed that the Bond is changed or revised in the particulars as indicated below:

The expiration date of the bond is hereby amended from: 5-31-01
to: 5-31-05

Said Bond shall be subject to all its terms, conditions, and limitations, except as herein expressly modified.

This Bond Rider shall become effective: July 13, 2000

IN WITNESS WHEREOF, FRONTIER INSURANCE COMPANY has caused its corporate seal to be hereunto
affixed this: July 13, 2000

FRONTIER INSURANCE COMPANY



(Seal)

Christine Cahill, Attorney-in-Fact

STATE OF Illinois)
COUNTY OF DuPage)

On this 31st day of August, 19 99, before me came

Mark M. Caplis who executed the preceding instrument,

to me personally known, and being by me duly sworn, said that he/she is the therein described and authorized ATTORNEY-IN-FACT of

COMPANY; that the seal affixed to said instrument is the Corporate Seal of said Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

SEAL

OFFICIAL SEAL
NANCY L LANE
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXPIRES 06/30/2000
Nancy L. Lane
Notary Public

ADDENDUM TO THE LEASE DATED JULY 1, 1982

This Addendum to Lease Agreement dated July 1, 1982 is made on July 20th, 1999 by and between the City of Morris (hereinafter referred to as Lessor) and Community Landfill Co., an Illinois corporation (hereinafter referred to as Lessee).

1. The parties are presently co-permittees of Morris Community Landfill under Permit No. 1996-21-SP, dated October 11, 1996, and various other supplemental permits issued by the IEPA.

2. The parties are co-applicants under an application for significant modification of Parcel A (east side) and Parcel B (west side), IEPA permit application log nos. 1996-255 and 1996-256. This permit application is presently under consideration by the IEPA, and a decision is expected to be rendered by the IEPA in calendar year 1999.

3. Pursuant to the provisions of paragraph 10 of the November 14, 1994 amendment, the landfill may remain open and operating, subject to the terms and conditions of any permit or permits issued by the IEPA, until no later than July 2010. Should the parcels reach final disposal capacity prior to July 2010, the landfill shall close but this lease shall continue for lessee to conduct closure and post closure care and remedial activities as required by applicable IEPA permits.

4. That the present closure/post-closure care plans submitted to the IEPA for both parcels require the collection and treatment of leachate, ground water, and gas condensate from the landfill. The closure/post-closure care plans presently allow the Lessee to hold the leachate, contaminated ground water, and gas condensate in an equalization tank on site, and to pump it to the City of Morris POTW via the City of Morris sewer system, pursuant to IEPA Permit No. 1999-EE-3440, and specifically subject to any limitations and provisions imposed by the City of Morris. In consideration of the rents, royalties, disposal privileges, methane gas production rentals, the Lessor

EXHIBIT

2

agrees subject to any limitations and provisions issued by the City of Morris POTW, that it will accept and treat the groundwater and condensate without charge, and accept and treat the leachate without charge for up to 3,500 gallons per day and at a charge of \$1.60 per thousand gallons for any leachate in excess of 3,500 gallons per day.

5. This Agreement does not relieve Lessee of the responsibility of complying with the provisions of IEPA Permit No. 1999-FR-3440, or the provision of any other permit relating to the operation, closure or post-closure care of the landfill, and specifically any limitations and provisions imposed by the City of Morris POTW.

6. This Agreement shall inure to the benefit of Lessee, its successors and assigns, and specifically to the State of Illinois Environmental Protection Agency, or its designee, in the event it is required to perform closure/post-closure activities.

7. All of the closure and post-closure responsibilities for the site as set forth in a closure/post-closure plan approved by the IEPA, shall remain the responsibility of the lessee.

8. All of the terms and conditions of the July 1, 1982 lease, and any amendments and/or addendum thereto not specifically modified by this Addendum shall remain in full force and effect.

COMMUNITY LANDFILL CO., Lessee

By: Robert J. Quinn
Its President

CITY OF MORRIS

By: Robert T. Jensen
Its Mayor

AGREEMENT FOR TREATMENT OF
LIQUID FROM MORRIS COMMUNITY LANDFILL

This Agreement is made this 20th day of July, 1999 by and between the City of Morris (hereinafter the City) and Community Landfill Co., an Illinois corporation (hereinafter CLC).

1. Pursuant to the provisions of a July 1999 Addendum to the Lease between the City and CLC, regarding Morris Community Landfill, the City has agreed to accept and treat leachate, groundwater and gas condensate from Morris Community Landfill at the City's publicly owned treatment works (POTW).

2. The City and CLC expressly agree that the City's ability to accept and treat leachate, groundwater and gas condensate at the City's POTW may be limited by capacity of the POTW, or restrictions put on the POTW by the Illinois Environmental Protection Agency (IEPA). The City may have to impose future limitations on its ability to accept and treat the leachate, groundwater and gas condensate, from Morris Community Landfill, based on capacity considerations or restrictions imposed by the Illinois Environmental Protection Agency.

3. Notwithstanding anything in the Addendum to the Lease dated July __, 1999, CLC agrees that the City may place future limitations or conditions on its acceptance of leachate, groundwater, or gas condensate at the City's POTW based on capacity considerations or restrictions imposed by the Illinois Environmental Protection Agency.

COMMUNITY LANDFILL CO.

By: Robert J. Pavin
Its President

CITY OF MORRIS

By: Robert T. Feeney
Its Mayor

RESOLUTION NO: R-99-6

Be it resolved by the City Council of the City of Morris, Illinois as follows:

WHEREAS, an addendum to the lease dated July 1, 1982 and as amended between the City of Morris and Community Landfill Company concerning the Morris Community Landfill has been recommended by the Finance Committee of the City of Morris; and

WHEREAS, the addendum is necessary to promote public health and safety; and

WHEREAS, the Legislature of the State of Illinois has granted municipalities the authority to enter into such agreements and/or addendums; and

WHEREAS, the addendum is necessary to protect the City of Morris as to closure and post closure care of the Morris Community Landfill; and

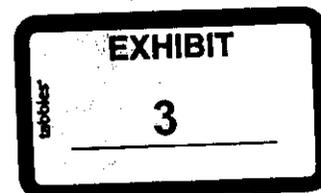
WHEREAS, the City of Morris is materially interested in the transaction in which the City of Morris will apply to the Frontier Insurance Company for a performance bond to secure its obligations for closure and post-closure care of the Morris Community Landfill; and

WHEREAS, the Frontier Insurance Company has executed or is willing to consider the execution of such bond, as surety, upon being furnished with the written indemnity of the City of Morris; and

WHEREAS, the City of Morris hereby agrees to purchase a performance bond in the amount of \$10,081,630 from Frontier Insurance Company or its agent in order to insure the performance of the City of Morris' treatment of leachate and groundwater in the City of Morris publicly owned treatment facility for the post closure care period of the Morris Community Landfill; and

WHEREAS, it is necessary to authorize the Mayor to do all things and sign all documents necessary to secure said performance bond; and

WHEREAS, Community Landfill Company has agreed to pay all bond premiums of said bond.

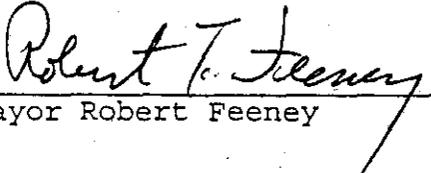


IT IS HEREBY resolved that the Mayor and the City Clerk are hereby authorized to execute any and all documents necessary to secure said aforementioned performance bond and to enter into the addendum to the lease dated July 1, 1982 by and between the City of Morris and Community Landfill Company.

Passed this 13th day of December A.D. 1999.

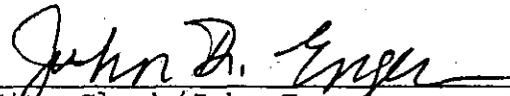
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|----------|-------|
| <u>7</u> | Ayes |
| <u>0</u> | Nayes |
| <u>0</u> | Pass |

Approved:



Mayor Robert Feeney

Attest:



City Clerk/John Enge