

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUL 13 2004

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-Land)

to: Mr. Mark La Rose
La Rose & Bosco
200 N. La Salle Street, #2810
Chicago, IL 60601

Mr. Bradley P. Halloran
Hearing Officer
IPCB
Hand Delivery

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

NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, July 13, 2004, filed with the Office of the Clerk of the Illinois Pollution Control Board, Complainant's First Motion to Compel Respondent City of Morris, a copy of which is attached and herewith 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., 20th Flr.
Chicago, IL 60601
(312) 814-5388

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PCB No. 03-191
(Enforcement-Land)

COMPLAINANT'S FIRST MOTION TO COMPEL RESPONDENT CITY OF MORRIS TO
RESPOND TO COMPLAINANT'S FIRST SET OF INTERROGATORIES
AND REQUEST FOR THE PRODUCTION OF DOCUMENTS

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA
MADIGAN, Attorney General of the State of Illinois, pursuant to
35 Ill. Adm. Code Sections 101.100(b), 101.616, 101.620, and
101.800, Supreme Court Rules 201, 213, and 214, and the May 13,
2004 Hearing Officer Order entered in this matter, moves the
Hearing Officer to compel Respondent CITY OF MORRIS ("Morris") to
fully comply with Complainant's written discovery requests. In
support thereof, Complainant states, as follows:

1. On January 22, 2004, Complainant served it's First Set
of Interrogatories and Request for the Production of Documents
upon Respondent Morris, by first class mail to counsel for
Respondent. A copy of Complainant's discovery request is
attached hereto as Exhibit 'A'.

2. On May 13, 2004, Hearing Officer Halloran directed both
Respondents to respond to Complainant's written discovery on or
before June 1, 2004. A copy of the May 13, 2004 Order is

attached hereto as Exhibit 'B'.

3. To the date of filing this Motion, Respondent Morris has failed to provide answers to Complainant's interrogatories, and has failed to produce any documents responsive to Complainant's request.

WHEREFORE, Complainant requests the following relief from the Hearing Officer:

1. A finding that Respondent CITY OF MORRIS is in violation of the Board's procedural rules, and the May 13, 2004 Hearing Officer Order in this matter;

2. An Order compelling Respondent CITY OF MORRIS to comply with Complainant's written discovery requests with out further delay; and

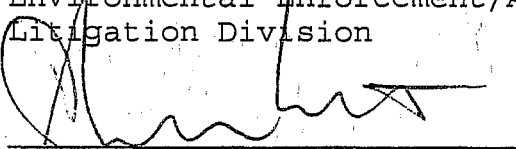
3. Such other relief that the Hearing Officer deems appropriate.

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
Assistant Attorney General
188 West Randolph Street,
20th Floor
Chicago, IL 60601
(312) 814-5388

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COMMUNITY LANDFILL COMPANY, INC.,

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EXHIBIT

'A'

COMPLAINANT'S FIRST SET OF INTERROGATORIES
AND REQUEST FOR THE PRODUCTION OF DOCUMENTS

Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN,
Attorney General of the State of Illinois, pursuant to Supreme Court Rules 213 and 214, and 35
Ill. Adm. Code 101.616, serves Respondent, CITY OF MORRIS ("Morris"), the following First
Set of Interrogatories and Request for Production of Documents.

The Complainant requests that Respondent Morris file a sworn answer or objection to
each interrogatory within twenty-eight (28) days after service hereof. Documents requested shall
be produced for inspection and copying in the offices of the Environmental Bureau, 188 West
Randolph Street, 20th Floor, Chicago, Illinois 60601, or at such other place as the parties may
agree, within 28 days of service hereof.

If any of the following interrogatories cannot be answered in full, please so state, and
answer to the fullest extent possible.

Instructions

1. Claims of Privilege. If the Respondent claims that any information requested in

these interrogatories or any document covered by this request is not subject to discovery on grounds of any privilege, it shall supply with respect to each such item:

- a. The date of the information or document;
- b. The type or nature of the information or document, e.g., letter or conversation;
- c. The person or persons who prepared the information or document and his, her, or their title(s);
- d. The name and job title of each person to whom the document was shown;
- e. The present location and custodian of the document;
- f. The basis on which the Respondent claim the privilege;
- g. A description of the information or the contents of the document sufficient to support the claim of privilege; and
- h. The paragraph of these interrogatories or request for documents to which the document relates.

2. Interrogatories.

- a. In answering each interrogatory, identify each document, person, communication or meeting which relates to, corroborates, or in any way forms the basis for the answer given.
- b. Pursuant to Supreme Court Rule 213, Respondent is requested to serve upon Complainant corrected, supplemented or augmented answers hereto, document or other forms of information from whatever source, which arguably tends to show that Respondent's prior answers are, might be, were or might have been in a sense incorrect, incomplete, potentially misleading or less than fully responsive or truthful.
- c. If you encounter any ambiguity in construing any interrogatory or any definition or instruction pertaining to any interrogatory, set forth the matter deemed "ambiguous" and the construction chosen or used in responding to the interrogatory.
- d. If you lack information necessary to answer any interrogatory completely, state the following:
 - i. The responsive information currently available;
 - ii. The responsive information currently unavailable;
 - iii. Efforts you have made and intend to make to obtain the information currently available; and
 - iv. When you expect to receive the currently unavailable information.

- e. If dates are requested in these interrogatories, the exact date should be given if possible. However, if the exact date cannot be determined due to absence or inadequacy of records, the best estimate should be given and labeled as such.

3. Production of Documents.

- a. If any requested document was in Respondent's possession or subject to Respondent's control, but is not now in Respondent's control, or is no longer in existence, as to each such document state the following:
 - i. Whether the document:
 - A. Is missing or lost,
 - B. Has been destroyed,
 - C. Has been transferred to others, or
 - D. Has been otherwise disposed of;
 - ii. The circumstances surrounding the document's disposition;
 - iii. Any authorization for the disposition; and
 - iv. If known, the present location and custodian of the document.
- b. Each document request shall be construed to include any document responsive to the request which is later discovered by Respondent.

Definitions

1. As used herein, 'financial assurance' refers to the requirement of financial assurance for closure and post-closure costs, as a condition to Illinois EPA permits No 2000-155-LFM and 2000-156-LFM. Financial assurance means one or more of the following:

- a) A trust fund
- b) A surety bond guaranteeing payment
- c) A surety bond guaranteeing performance
- d) A letter of credit
- e) Closure insurance
- f) Self-insurance meeting the requirements of 35 Ill. Adm. Code 811.715;
- g) Local government financial test meeting the requirements of 35 Ill. Adm. Code 811.716;
- h) Local government guarantee meeting the requirements of 35 Ill. Adm. Code 811.717;
- i) Corporate financial test meeting the requirements of 35 Ill. Adm. Code 811.719;
- j) Corporate guarantee meeting the requirements of 35 Ill. Adm. Code 811.720.

2. As used herein, Permit 2000-155-LFM, means the permit issued by Illinois EPA on August 4, 2000 to the City of Morris and Community Landfill Company, approving and regulating development and operation of Parcel A of the CLC Community Landfill.

3. As used herein, Permit 2000-156-LFM, means the permit issued by Illinois EPA on August 4, 2000 to the City of Morris and Community Landfill Company, approving and regulating development and closure of Parcel B of the Morris Community Landfill.

4. As used herein, "person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, or any other legal entity or their legal representative, agent or assigns.

5. When used in reference to a natural and/or corporate person herein, to "identify" means to state his or her full name, present and last known address, and present or last known business affiliation. When used in reference to a document herein, to "identify" means to state its date, author, addresser, addressee, type (e.g., letter, memorandum, invoice, map), or some other means of identification, and its present location and custodian. If the document was, but no longer is, in a Respondent's possession or control, state the disposition made of it and its present location and custodian.

6. As used herein, "document" means the original and any non-identical copy of any communication or other transgression of information that has been reduced by any means into tangible form or medium, including written, electronic, magnetic or photographic.

7. "Relating to" or "related to" shall mean anything which directly or indirectly concerns, consists of, pertains to, reflects, evidences, mentions, describes, sets forth, constitutes, contains, shows, underlies, supports, refers to in any way, is or was used in the preparation of, is appended to, is legally, logically or factually connected with, proves, disproves, or tends to prove or disprove the stated matter.

8. As used herein, "present" means the time at which this First Set of Interrogatories is served.

9. As used herein, "financial institution" means any bank, savings and loan company, institutional lender, commercial credit provider, credit union, insurance company, surety company, trust company, or other related institution.

10. All terms not specifically defined herein shall have their logical, ordinary meaning, unless such terms are defined in the Act or the regulations promulgated thereunder, in which case the appropriate or regulatory definitions shall apply.

INTERROGATORIES

Interrogatory No.1

Identify each person who supplied information for answers to these interrogatories and further state for which interrogatories each person so identified supplied information.

ANSWER:

Interrogatory No. 2

Identify each and every fact witness who may be called by Respondent Morris as a witness in any hearing in this matter, and state his or her area of knowledge.

ANSWER:

Interrogatory No.3

Identify each and every opinion witness who may be called by Respondent Morris as a witness at any hearing in this matter, and state:

- a) his or her area of knowledge;
- b) the subject matter on which the opinion witness will testify;
- c) the conclusions and opinions of the opinion witness and the bases therefore;
- d) the qualifications of the opinion witness.

ANSWER:

Interrogatory No. 4

Identify each Illinois EPA Permit, including developmental, operating, supplemental, modification, and significant modification, issued to the City of Morris as "operator" or "owner and operator" of the Morris Community Landfill, from 1974 until the present

ANSWER:

Interrogatory No.5

Identify each Illinois EPA Permit, including developmental, operating, supplemental, modification, and significant modification, issued to the City of Morris as "owner" of the Morris Community Landfill from 1974 until the present.

ANSWER:

Interrogatory No.6

State the Date on which Community Landfill Company became the operator of the Morris Community Landfill.

ANSWER:

Interrogatory No.7

Did the City of Morris arrange for and/or maintain financial assurance, as defined herein, related to Permits 2000-155-LFM and 2000-156-LFM?

If yes:

1. Identify the amount and type of financial assurance arranged for and/or maintained;
2. State the dates that the financial assurance became effective and the dates on which the financial assurance was discontinued or cancelled;
3. State the amount and type of financial assurance in place at the present [i.e the date these interrogatories were served upon Respondent];
4. State the fee(s) paid by the City of Morris for financial assurance arranged for and/or maintained.

ANSWER:

Interrogatory No.8

Did any person, excepting the City of Morris, arrange for and/or maintain financial assurance, as defined herein, related to permits 2000-155-LFM and 2000-156-LFM.?

If so:

1. Identify the amount and type of financial assurance arranged for and/or maintained;
2. State the dates that the financial assurance became effective and the dates on which the financial assurance was discontinued or cancelled;
3. State the amount and type of financial assurance in place at the present [i.e the date these interrogatories were served upon Respondent];
4. State the fee(s) paid by the City of Morris for financial assurance arranged for and/or maintained.

ANSWER:

Interrogatory No. 9

Identify the type and dollar amount of financial assurance, as herein defined, currently being maintained by any party, to cover closure and post-closure care at the Morris Community Landfill, in force relating to Permits 2000-155-LFM and 2000-156-LFM.

ANSWER:

Interrogatory No. 10

For each year from 2000 until the present, state the average interest rate paid by the City of Morris for borrowed funds.

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Any and all documents relating to answers to the above interrogatories, and all documents identified in the course of answering the above interrogatories, and any and all documents consulted or reviewed in order to answer the above interrogatories.

2. All correspondence and any and all documents relating to correspondence between the City of Morris and any person which relate to proposals, quotes, costs, or applications for financial assurance for the Morris Community Landfill, from 1999 until the present.

3. Any and all documents which Respondent will enter into evidence or otherwise use at hearing in this matter.

Respectfully Submitted

BY: 

Christopher Grant
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, Illinois 60601
(312) 814-5388

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vs.

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(Enforcement-Land)

COMMUNITY LANDFILL COMPANY, INC.,
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the CITY OF MORRIS, an Illinois
municipal corporation,

Respondents.

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 22d day of January, 2004, the foregoing Interrogatories and Request for the Production of Documents, upon the persons listed below, by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.

CHRISTOPHER GRANT

Service List:

Mr. Charles Helston
Attorney for Respondent City of Morris
Hinshaw & Culbertson
100 W. Park
Rockford, Illinois 61105

Copy to:

Mark A. LaRose, Clarissa Grayson
LaRose & Bosco, Ltd.
734 N. Wells Street
Chicago, Illinois 60610

ILLINOIS POLLUTION CONTROL BOARD

May 13, 2004

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

COMMUNITY LANDFILL COMPANY,
INC., and CITY OF MORRIS, an Illinois
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Respondents.

PCB 03-191

(Enforcement - Land)

EXHIBIT

'B'

HEARING OFFICER ORDER

On May 13, 2004, 2004, all parties participated in a telephonic status conference with the hearing officer. A revised discovery schedule was discussed and is as follows: respondents to serve its answers to complainant's written discovery on or before June 1, 2004; all oral discovery to be completed on or before July 15, 2004; all discovery to be completed on or before August 20, 2004.

The parties or their legal representatives are directed to participate in a telephonic status conference on July 15, 2004, at 10:00 a.m. The telephonic status conference must be initiated by the complainant, but each party is nonetheless responsible for its own appearance. At the status conference, the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917

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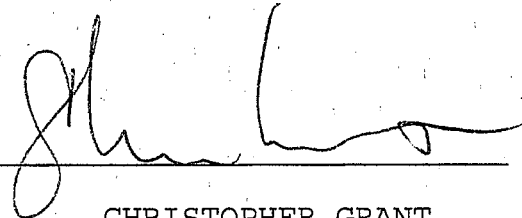
the CITY OF MORRIS, an Illinois)

municipal corporation,)

Respondents.)

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 13th day of July, 2004, Complainant's First Motion to Compel Respondent City of Morris to Respond to Complainant's First Set of Interrogatories and Request for the Production of Documents, 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.

A handwritten signature in dark ink, appearing to read 'Christopher Grant', is written over a horizontal line.

CHRISTOPHER GRANT