

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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OCT 12 2006

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,, )

Complainant, )

v. )

PCB No. 03-191

COMMUNITY LANDFILL COMPANY, INC., )  
an Illinois Corporation, and CITY OF MORRIS, )  
an Illinois Municipal Corporation,, )

Respondents. )

**NOTICE OF FILING**

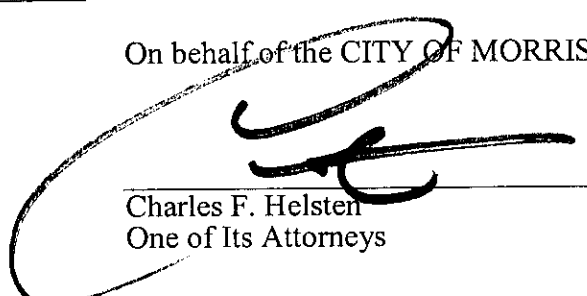
TO: All counsel of Record (see attached Service List)

Please take notice that on October 10, 2006, the undersigned filed with the Illinois Pollution Control Board, 100 West Randolph Street, Chicago, Illinois 60601, City of Morris's Response to Complainant's Motion for Interlocutory Appeal of Hearing Officer Order Granting Community Landfill's Motion to Cancel Hearing.

Dated: October 10, 2006

Respectfully submitted,

On behalf of the CITY OF MORRIS

  
\_\_\_\_\_  
Charles F. Helsten  
One of Its Attorneys

Charles F. Helsten  
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100 Park Avenue  
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STATE OF ILLINOIS  
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**CITY OF MORRIS'S RESPONSE TO COMPLAINANT'S MOTION FOR**  
**INTERLOCUTORY APPEAL OF HEARING OFFICER ORDER**  
**GRANTING COMMUNITY LANDFILL'S MOTION TO CANCEL**  
**HEARING**

NOW COMES the Respondent, City of Morris, an Illinois Municipal Corporation, and for a response to the Complainant's Motion for Interlocutory Appeal, states as follows:

**I. THE MOTION TO CONTINUE HEARING SUBSTANTIALLY COMPLIED WITH THE BOARD'S PROCEDURAL RULES, AND, AS SUCH WAS LEGALLY SUFFICIENT.**

Contrary to the State's representations, CLC's Motion does set forth a proposed time to reschedule the hearing; namely, sometime after March 2007, that date being offered by Edward Pruim's treating physicians as (in their professional opinion) the earliest practical date for a person in Mr. Pruim's medical condition to be expected to appear and participate in a rigorous stressful and strenuous protracted contested hearing.

What the State conveniently fails to recognize is that while, in most instances, the inavailability of a witness is due to a more easily ascertained and/or readily defined event (such as a professional/personal emergency of rather immediate [i.e., shortened] duration), in some instances (such as the present case) a precise, readily ascertainable date cannot for rescheduling of a hearing on the merits is all but impossible to ascertain. In these instances, a request that a

hearing be held sometime after the earliest date that a witness with ongoing serious medical problem (like Mr. Pruim's) should be deemed by this Board to be sufficient.

## **II. ED PRUIM IS A NECESSARY PARTY TO THIS ACTION.**

Contrary to the State's representation, the City has named Edward Pruim as a potential witness in this matter. Again, the State conveniently omits the witness list which the City has filed in this matter in conformance with Hearing Officer Bradley Halloran's prior Order (a copy of which was marked as Exhibit A and attached to the City's Response to CLC's Motion to Cancel Hearing). Again, a review of that witness list reflects that the City has included Edward Pruim as a witness it intends to call at hearing. Again, due to the fact that: 1) matters involving closure/post closure financial assurance by their very essence involve financial questions, and 2) Edward Pruim was the Treasurer and Chief Financial Officer of CLC Corporation, his participation in this hearing is essential. In addition, as more than amply set forth by the City in its initial Response (again, a portion of its Response which is conveniently ignored by the State), the City fears that if only one corporate representative (i.e., Robert Pruim) is called in this matter, that corporate representative will simply demurrer and defer to knowledge processed by Mr. Edward Pruim (again, who is the Treasurer and Chief Financial Officer of the Corporation) thereby in essence "whipsawing" the City. Again, (as established by the record made in this matter to date) as the cost of complying with closure/post closure requirements could literally run in the millions of dollars, and since the State is claiming that the tax payers of the City of Morris are potentially responsible for payment of such costs and expenses, it is essential that a full hearing be afforded to all parties with all witnesses and material evidence being received at that hearing in order to comport with this Honorable Board's long-standing principles of fundamental fairness.

**III. A “REMEDY” HEARING NEED NOT BE HELD WITHIN THE NEXT SEVERAL WEEKS.**

In addition, again, the State does not provide any specifics as to why a hearing must be held within the next several weeks. In fact, in contrast to the State’s total lack of any affirmative demonstration as to why it is essential that a remedy hearing be held in this case within the next several weeks, in the 106 page deposition which the City’s primary technical consultant (Devin Moose) gave to the Complainant, Mr. Moose testified that based upon the current status of activities which have been undertaken at the landfill facility over the course of the past 1-2 years, no imminent and substantial threat to the human health and/or environment is posed by this Site. As also noted by Mr. Moose in his deposition, since the Site is essentially closed, and, over the course of the past two years, extensive site characterization and preliminary closure activities have been undertaken by the City (pending final resolution of the City’s alleged status as a party responsible for posting of closure/post closure financial assurance) to assume the human health and/or the environment are not harmed, there is no need for an immediate hearing in this matter. Moreover, and as noted by Mr. Moose in his deposition testimony, the purpose of the financial assurance provisions of the Act have been squarely met (i.e., to guarantee that closure/post closure activities are initiated and ongoing), there is no immediate need for the conducting of a remedy hearing in this matter, and, accordingly, the more paramount concern is affording all parties a complete hearing on all issues and factors noted by this Honorable Board in its June 1, 2006 Order.

Again, as in its initial response to CLC’s Motion to Continue this hearing, the City wishes to again make clear it does not take sides where it supports one party or the other in this matter. Rather, the City’s sole and controlling concern is that it is afforded a full and fair hearing on all the evidence which exists in this case, since the tax payers of the City of Morris are being

asked to potentially undertake literally millions of dollars of closure/post closure activities (which finding again, the City vigorously objects to). Again, the State conveniently chooses not to apprise this Honorable Board of the very exacting and detailed nature of the testimony given by Mr. Moose which supports the City's position. Interestingly enough, the State has offered no response/rebuttal to Mr. Moose's testimony. All this being the case, one can only assume that the State is not in a position to rebut/controvert Mr. Moose's detailed, exacting testimony. Accordingly, and since the State has offered no affirmative demonstration that the Site is not under control, appropriate closure activities have not been initiated, and that (perhaps most importantly) the Site poses an imminent and substantial threat to the human health, safety and/or the environment, there is no need whatsoever for a remedy hearing to be conducted within the next several weeks in this matter.

**IV. AT THIS POINT IN TIME, AT LEAST ONE MATERIAL WITNESS TO BE CALLED IN THIS MATTER HAS MADE ALTERNATIVE PLANS AND IS NOT AVAILABLE.**

After receiving Hearing Officer Bradley Halloran's Order canceling this hearing, and not being able to envision any set of circumstances under which the State would not accept the sound rationale set forth by Hearing Officer Halloran in support of his ruling, the City notified its witnesses that this hearing had been cancelled so it could find an alternative productive use for this time. In that regard, counsel for the City has been apprised by Mr. Devin Moose that he is not now available to appear and testify at the hearing originally scheduled in this matter. (See Affidavit of Charles F. Helsten attached hereto).

As noted above, Mr. Moose is a critical witness for the City, expected to provide extremely relevant and probative testimony. Based upon the fact that Mr. Moose is now

unavailable for this hearing through no fault of the City's, this Honorable Board should uphold Hearing Officer's Halloran's Order.

Again, and in summary, the Hearing Officer Bradley Halloran had more than ample evidence presented to him which justified continuation of this hearing. In turn, consistent with Illinois law, absent an abuse of discretion by Mr. Halloran, this Honorable Board should affirm and uphold his ruling in this regard.

WHEREFORE, the Respondent City of Morris respectfully request that this Honorable Board: 1) deny this Interlocutory Appeal, 2) continue this matter to the December 7, 2006 telephonic status hearing established by Mr. Halloran in this matter, 3) set this matter for hearing on a proposed "remedy" in this matter at such time as a full and fair hearing can be afforded to all parties, with all material witnesses and all material evidence being received at such hearing, and 4) for such other further relief as this Honorable Board deems appropriate and just.

Dated: \_\_\_\_\_

10/10/06

Respectfully submitted,

On behalf of the CITY OF MORRIS

  
\_\_\_\_\_  
Charles F. Helsten  
One of Its Attorneys

Charles F. Helsten  
Hinshaw & Culbertson LLP  
100 Park Avenue  
P.O. Box 1389  
Rockford, IL 61105-1389  
815-490-4900

**AFFIDAVIT OF SERVICE**

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on October 10, 2006, she caused to be served a copy of the foregoing upon:

Mr. Christopher Grant Assistant Attorney General Environmental Bureau 188 W. Randolph St., 20th Fl. Chicago, IL 60601	Mark LaRose Clarissa Grayson LaRose & Bosco, Ltd. 200 N. LaSalle, Suite 2810 Chicago, IL 60601
Ms. Dorothy Gunn, Clerk Pollution Control Board 100 W. Randolph, Suite 11-500 Chicago, IL 60601	Bradley Halloran Hearing Officer Pollution Control Board 100 W. Randolph, Suite 11 Chicago, IL 60601

A copy of the same was enclosed in an envelope in the United States mail at Rockford, Illinois, proper postage prepaid, before the hour of 5:00 p.m., addressed as above.



A handwritten signature, appearing to read "Jason Line", is written over a horizontal line.

HINSHAW & CULBERTSON  
100 Park Avenue  
P.O. Box 1389  
Rockford, IL 61105-1389  
(815) 490-4900

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**AFFIDAVIT**

I, Charles F. Helsten being duly sworn under oath do depose and state as follows:

1. I am counsel of record for the Respondent, City of Morris in the above-mentioned matter.

2. Within that capacity, I have been charged with the responsibility of preparing evidence to be presented on behalf of the Respondent City of Morris consistent with this Honorable Board's ruling of June 1, 2006.

3. Upon being apprised of Hearing Officer Halloran's ruling on the Motion to Cancel Hearing, in order to provide the City's witnesses with as much advance notice as possible of the cancellation of the hearing (so this time slot could be filled with other productive commitments) I contacted Mr. Devin Moose and advised him that this hearing had been cancelled.

4. Upon receiving the State's Motion for Interlocutory Appeal, I contacted Mr. Moose to ascertain whether he was still available during the week of October 24-27. Mr. Moose advised me at that time that he had filled his calendar for that week with other commitments which could not be changed at this point in time.



Further Affiant Sayeth Not.

  
\_\_\_\_\_  
CHARLES T. HILSTEN

SUBSCRIBED and SWORN to  
before me this 10<sup>th</sup> day of October, 2006.

  
\_\_\_\_\_  
Notary Public

