

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,, )

Complainant, )

v. )

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

Respondents. )

PCB No. 03-191

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Pollution Control Board

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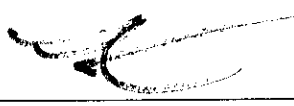
TO: All counsel of Record (see attached Service List)

Please take notice that on October 12, 2006, the undersigned filed with the Illinois Pollution Control Board, 100 West Randolph Street, Chicago, Illinois 60601, Respondent City of Morris's Response to State's Motion for Interim Relief.

Dated: October 12, 2006

Respectfully submitted,

On behalf of the CITY OF MORRIS

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

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**RESPONDENT CITY OF MORRIS'S RESPONSE TO STATE'S MOTION**  
**FOR INTERIM RELIEF**

NOW COMES the Respondent, City of Morris, and for Response to the Complainant's Motion for Interim Relief, states as follows:

**I. The Immediate Posting Of Financial Assurance In This Case Is Not Necessary And Is Contrary To And Inconsistent With This Honorable Board's Prior Orders On This Matter.**

In its Motion for Interim Relief, the Complainant alludes in general, vague and wholly conclusory fashion as to the supposed need for the immediate posting of financial assurance for closure/post closure care of the Morris Community Landfill.

However, the State presents no further evidence in support of its renewed request, over and above what had already presented to this Board in its initial request for the exact same type of relief at the time it filed its Motion for Summary Judgment over one year ago in this matter.

In fact, as expressly conceded by the Complainant at paragraph I (2) of its present Motion for Interim Relief, the exact same request as is now being advanced by the State on an "expedited" basis was denied by this Honorable Board as part of its February 16, 2006 Interim Order. Since that time, the State has offered nothing more in support of this exact same request for Interim Relief, other than attaching a October 4, 2006 Affidavit from Brian White in support of its present Motion. However, a review of Brian White's October 4, 2006 Affidavit more than

amply reflects that this Affidavit does nothing more than simply parrot and regurgitate the wholly conclusory allegations (not statements of fact) contained in the first Affidavit that Mr. White executed in support of the State's initial Motion for Summary Judgment some time ago.

The Respondent City of Morris would submit that this Honorable Board has had two occasions over the course of the past year to enter the Interim Relief which has been repeatedly asked for by the State had it thought it necessary to do so. In fact, to the contrary, a review of the Board's February 16, 2006 Order, as well as the Board's June 1, 2006 Order, demonstrates that Board's proper belief and conviction that a hearing on all relevant matters and all relevant factors should be held in this case before any Order as to the granting of any type of relief should be made. Again, had this Honorable Board believed the Request for Interim Relief repeatedly sought by the State over the course of the past year or more was appropriate, it would have previously entered an Order to that effect (as opposed to ordering a hearing on a proposed remedy in this matter, so it could consider the positions of all sides, and could carefully consider and weigh all relevant and appropriate evidence and factors which are presented in this case).

Moreover, as indicated in the 106 page deposition of Mr. Devin Moose (the City's landfill consultant who was deposed by the State at length in early August, 2006), there is no present need for the posting of financial assurance. As already noted by the City in paragraph 6 September 28, 2006 Response to Community Landfill's Motion to Cancel Hearing and Complainant's Response and Opposition to Motion to Cancel Hearing, this Site is essentially closed, and for the past two years, site characterization and closure activities have been undertaken by the City (pending final resolution of the City's alleged status as a party responsible for the posting of closure/post closure financial assurance) to assure that the human

health and/or the environment are not harmed. (See pps.70-75 and 76-80 of Mr. Moose's deposition).

In turn, consistent with the finding of this Honorable Board at page 4 of its June 1, 2006 Order, the purpose of financial assurance obligations are then "...so that neither human health nor the environment is harmed from the operation of a municipal solid waste landfill...". As such, and again as noted by Mr. Moose in his deposition testimony, since: 1) site characterization and preliminary closure activities have been undertaken by the City (again pending final resolution of the City's alleged status as a party responsible for the posting and closure/post closure financial assurance), and 2) since, in turn, Mr. Moose has also indicated that no imminent and substantial threat to the human health and/or the environment is presently posed by the facility, again, the express purpose of the financial assurance provisions of the Act have been squarely met. In turn, accordingly, there is no immediate need for the posting of financial assurance, and monies spent on the posting of interim financial assurance would be put to better use in the undertaking of actual continued closure activities at the landfill.

As noted by the City in its response and opposition to the Complainant's Interlocutory Appeal of Hearing Officer Order, it is extremely interesting that while alleging in vague, general and unsupported, wholly conclusory fashion that closure/post closure financial assurance is needed to be posted to protect the human health and/or the environment, the State does not in any way controvert or challenge the previous deposition testimony of expert witness Devin Moose and, moreover, does not offer any sworn testimony by any other official of IEPA in opposition to Mr. Moose's conclusions. Again, based upon what appears to be the State's total deference (and agreement with) Mr. Moose's prior deposition testimony, any present allegation by the State that the posting of interim closure/post closure financial assurance is necessary pending the

conducting of a remedy hearing in this matter is totally unsubstantiated, and, in turn, totally without merit.

## **II. Hearing In This Matter Will Not Be Indefinitely Delayed**

In II paragraph 4 of its Motion for Interim Relief, the State refers to the “serious issues” posed by the absence of the posting of interim financial assurance at the Morris Community Landfill and uses these “serious issues” as its basis for urging this Board to enter an Order requiring the posting of interim closure/post closure financial assurance. However, as noted above, while the State constantly refers to the “serious issues” posed by the absence of the posting of financial assurance in this particular case, interestingly enough, the State makes no attempt to either enumerate these “serious issues”, or explain why any such “serious issues” it has identified do in fact directly impact the human health and/or the environment.

Again, the State conveniently ignores very significant and relevant portions of this Honorable Board’s Order of June 1, 2006. Again, (as initially noted by the City in its September 28, 2006 Response), this Board’s Order of that date goes further in noting that the Board must interrupt the Act as it applies “...in each individual instance.” (Emphasis added). As such, this Honorable Board has wisely noted that it is presently unable to determine what (if any) form of closure/post closure financial assurance is necessary to accomplish the purposes of the Act (i.e., protection of the human health and/or the environment) at this point in time, much less what the amount of that financial assurance should be. In this regard, it is also interesting to note that in his deposition of early August, 2006, Mr. Moose testifies in detail as to his belief that after a thorough review of the last closure/post closure financial estimate posted by the Community Landfill in this matter (totally some \$17.8 million dollars), he feels that such estimate is wholly outdated, and is inaccurate and not reflective of present site conditions in a variety of respects. In essence, Mr. Moose’s expert testimony confirms the feelings of this Honorable Board as

embodied in its June 1, 2006 Order, namely that in order to determine what remedy/relief is appropriate, as this Honorable Board has done at all times in the past, a full and complete hearing should be conducted on the facts and circumstances as they exist in this "...individual instance...".

Moreover, hearing in this matter has not been "...indefinitely delayed..." as alleged by the State in its Motion for Interim Relief. As noted by the Respondent, City of Morris in its Response and Opposition to the Complainant's Interlocutory Appeal, CLC's Motion to Cancel Hearing does in essence constructively suggest a replacement hearing date, that being after March, 2007. Again, since the record made in this matter thus far indicates that: 1) the site is presently closed and is undergoing preliminary closure activity, and 2) the State has offered absolutely no evidence whatsoever that any imminent and substantial threat to the human health and the environment exist in this case. As such, no need exist for the conducting of a hearing, much less the entry of an order providing for interim closure/post closure financial assurance at this point in time.

### **III. Entry Of An Order Providing For Interim Financial Relief Ignores The Current State Of Facts In This Case**

In support of its response to III of the State's Motion for Interim Relief, the City incorporates by reference the matter set forth in II of its Response above. Moreover, the City would again point out that as this Honorable Board (in its June 1, 2006 Order clarifying its prior February 16, 2006 Interim Order) has indicated that the purpose of posting of financial assurance for closure/post closure obligations are to ensure "...that neither the human health or the environment is harmed from the operation of a solid waste landfill...", and as the uncontroverted, unrebutted record made in this matter to date demonstrates that no potential threat or harm exists, no "violation of the Act" is alleged by the State exist in this matter which

would justify the imposition of the drastic remedy of this Board entering an Order of Relief without and full and complete hearing on all the facts and circumstances presented in this particular case.

**IV. The Complainant Has Made No Affirmative Showing Whatsoever That The Drastic Remedy OF Imposition OF The Relief It Requests Is Necessary To Protect The State**

In support of its response to paragraph 4 of the State's Motion for Interim Relief, the City realleges and incorporates by reference the contents of paragraphs II and III of its Response set forth above.

WHEREFORE, the City of Morris respectfully requests that this Honorable Board deny Complainant's Motion, and uphold in other respects Hearing Officer Bradley Halloran's Order of October 3, 2006 (as well as all subsequent Orders issued by Hearing Officer Halloran), and for such other and further relief as this Honorable Board deems appropriate and just.

Dated: October 12, 2006

Respectfully submitted,

On behalf of the CITY OF MORRIS



Charles F. Helsten  
One of Its Attorneys

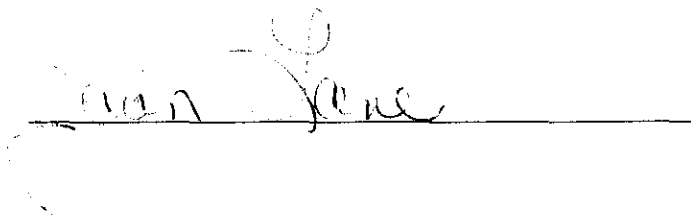
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### AFFIDAVIT OF SERVICE

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 12, 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.



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