

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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DEC 12 2008

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
GARY SIMMONS, individually, and)
LAWRENCE COUNTY DISPOSAL)
CENTRE, INC., an Illinois corporation,)
)
Respondents.)

PCB NO. 06-159
(Enforcement)

NOTICE OF FILING


To: Gary Simmons
2101 South Sievers Road
Vincennes, IN 47591

Lawrence County Disposal Centre, Inc.
C/o National Registered Agents, Inc.
200 West Adams Street
Chicago, IL 60606

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, COMPLAINT'S BRIEF, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,
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: 
Phillip McQuillan
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 10, 2008

CERTIFICATE OF SERVICE

I hereby certify that I did on December 10, 2008, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument entitled CLAIMANT'S BRIEF

To: Gary Simmons
2101 South Sievers Road
Vincennes, IN 47591

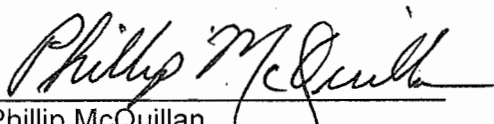
Lawrence County Disposal Centre, Inc.
C/o National Registered Agents, Inc.
200 West Adams Street
Chicago, IL 60606

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument:

To: John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, IL 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid

To: Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794


Phillip McQuillan
Sr. Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney General)
of the State of Illinois,)
))
Complainant,)
vs.)
))
GARY SIMMONS, individually, and)
LAWRENCE COUNTY DISPOSAL CENTRE, INC.,)
an Illinois corporation,)
))
Respondents.)

No. 06-159
(Enforcement)

COMPLAINANT'S BRIEF

Complainant, PEOPLE OF THE STATE OF ILLINOIS, 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" or "Agency") filed a six count Complaint on April 17, 2006, against Respondents, GARY SIMMONS, individually, and LAWRENCE COUNTY DISPOSAL CENTRE, INC., an Illinois corporation (involuntarily dissolved within the past two years by the Secretary of State). A Hearing was conducted on October 29, 2008. The People respectfully tender the following arguments in support of the violations alleged and the relief sought:

I. INTRODUCTION

Respondent, Gary Simmons, is and was, at all times relevant, the owner and operator of the general municipal refuse landfill (the "facility" or "landfill") which is located near Sumner, Lawrence County, Illinois. Respondent, Lawrence County Disposal Centre, Inc., was an Illinois corporation which was authorized to do business in the State of Illinois. The facility consists of approximately 27 acres and has been designated by the Illinois EPA as site number

1018020002.

On May 17, 1999, the Illinois EPA certified the closure of the facility and issued Supplemental Permit No. 1997-033-LFM (People's Exhibit 8) to the Respondents, regarding the post-closure care of the facility. The permit noted that the thirty year post-closure care period began October 1, 1998. From the time that the landfill was certified as closed, the Ambraw Valley Solid Waste Management Agency ("Ambraw Valley") has performed numerous inspections pursuant to a delegation agreement with the Illinois EPA.

During a number of inspections of the landfill during 2001, 2002, 2003, 2004, 2005, and 2006, Bob Gher, who is employed as an inspector by Ambraw Valley, inspected the facility to determine compliance with the permit obligations and post-closure care plan. The inspector observed inadequate fencing, gates, or other measures to control access to site. The inspector also observed erosion problems in different areas of the landfill and several areas of failed vegetation. Groundwater monitoring reports were not being performed or filed. The groundwater monitoring wells were not being maintained. Landfill gas monitoring reports were not being performed or filed. Mr. Gher observed that gas vapors with a strong methane odor were being emitted from the gas monitoring wells into the atmosphere. Mr. Gher observed that the gas monitoring wells were unlocked and not being maintained.

After each inspection Mr. Gher would mail an inspection report to Mr. Simmons. Mr. Gher was never contacted by Mr. Simmons in response to the violations cited in each inspection report. Respondents did not take any actions to comply with the post-closure permit, to comply with the applicable statutes, or to comply with the applicable rules and regulations of the Pollution Control Board.

In 2007 the Illinois EPA was able to collect a post-closure performance bond and use the bond proceeds to perform required work at the facility. The Illinois EPA hired Environmental

Restoration, LLC of St. Louis, Missouri to perform remediation work at the facility. As indicated in People's Exhibit 20 Environmental Restoration, LLC was paid \$91,927.26 for work done from January 16, 2007 to February 25, 2007 and \$14,348.70 for work done from February 25, 2007 to March 26, 2007. Illinois EPA incurred additional costs of \$5,277.56 in Fiscal Year 2006 and \$6868.38 in Fiscal Year 2007. All of these amounts add up to \$118,421.90.

**II. VIOLATIONS OF CLOSURE PERMIT, STATUTORY PROVISIONS,
AND POLLUTION CONTROL BOARD RULES**

A. Count I of the Complaint–Post-closure Care Violations

1. Section 21 of the Act, 415 ILCS 5/21 (2006), provides, in pertinent part, as follows:

No person shall:

* * *

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

(1) without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities as may be necessary to assure compliance with the Act and with regulations and standards adopted thereunder; or

(2) In violation of any regulations or standards adopted by the Board under this Act;

* * *

2. Section 22.17 of the Act, 415 ILCS 5/22.17 (2006), provides, in the pertinent part, as follows:

(a) The owner and operator of a sanitary landfill site . . . shall monitor gas, water and settling at the completed site for a period of 15 years after the site is completed or closed. . . .

* * *

(b) The owner and operator of a sanitary landfill site . . . shall take whatever remedial action is necessary to abate any gas, water or settling problems which appear during such period of time specified in subsection (a). . . .

3. Section 811.107(e) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.107(e), provides as follows:

* * *

e) Maintenance.

The operator must maintain and operate all systems and related appurtenances and structures in a manner that facilitates proper operations in compliance with this Part.

* * *

4. Section 811.109(a) and (b) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.109(a) and (b), provides as follows:

a) Access to the open face area of the unit and all other areas within the boundaries of the facility shall be restricted to prevent unauthorized entry at all times.

b) A permanent sign shall be posted at the entrance to the facility stating that disposal of hazardous waste is prohibited . . .

* * *

5. Section 811.111(c) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.111(c), provides as follows:

* * *

c) Maintenance and Inspection of the Final Cover and Vegetation:

1) Frequency of Inspections:

A) The operator shall conduct a quarterly inspection of all vegetated surfaces for a minimum of five years after closure, and after five years, the operator may reduce the frequency of annual inspections until settling has stopped and there are no eroded or scoured areas.

* * *

6. Section 811.112(c), (e), (f), and (g) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.112(c), (e), (f), and (g), provides as follows:

The owner or operator of a MSWLF [Municipal Solid Waste Land Fill] unit shall record and retain near the facility in an operating record or in some alternative location specified by the Agency, the information submitted to the Agency pursuant to 35 Ill. Adm. Code 812 and 813, as it becomes available. At a minimum, the operating record shall contain the following information, even if such information is not required by 35 Ill. Adm. Code 812 or 813;

* * *

c) Gas monitoring results and any remediation plans required by Sections 811.310 and 811.311;

* * *

e) Any demonstration, certification, monitoring results, testing, or analytical data relating to the groundwater monitoring program required by Sections 811.319, 811.324, 811.325, and 811.326 and 35 Ill. Adm. Code 812.317, 813.501 and 813.502;

f) Closure and post-closure care plans and any monitoring, testing, or analytical data required by Sections 811.110 and 811.111, and 35 Ill. Adm. Code 812.114(h), 812.115 and 812.313; and

g) Any cost estimates and financial assurance documentation required by Subpart G of this Part.

7. Section 811.310(a),(b), (c), and (d) of the Pollution Control Board's Land

Pollution Regulations, 35 Ill. Adm. Code 811.310(a), (b), (c), and (d) provides as follows:

- a) This Section applies to all units that dispose putrescible wastes.
- b) Location and Design of Monitoring Wells.
 - 1) Gas monitoring devices must be placed at intervals and elevations within the waste to provide a representative sampling of the composition and buildup of gases within the unit.
 - 2) Gas monitoring devices must be placed around the unit at locations and elevations capable of detecting migrating gas from the ground surface to the lowest elevation of the linear system or the top elevation of the groundwater, whichever is higher.
 - 3) A predictive gas flow model may be utilized to determine the optimum placement of monitoring points required for making observations and tracing the movement of gas.
 - 4) Gas monitoring devices must be constructed from materials that will not react with or be corroded by the landfill gas.
 - 5) Gas monitoring devices must be designed and constructed to measure pressure and allow collection of a representative sample of gas.
 - 6) Gas monitoring devices must be constructed and maintained to minimize gas leakage.
 - 7) The gas monitoring system must not interfere with the operation of the liner, leachate collection system, or delay the construction of the final cover system.
 - 8) At least three ambient air monitoring locations must be chosen

and samples must be taken no higher than 0.025 meter (1 inch) above ground and 30.49 m (100 feet) downward from the edge of the unit or at the property boundary, whichever is closer to the unit.

c) Monitoring Frequency.

1) All gas monitoring devices, including the ambient air monitors must be operated to obtain samples on a monthly basis for the entire operating period and for a minimum of five years after closure.

2) After a minimum of five years after closure, monitoring frequency may be reduced to quarterly sampling intervals.

3) The sampling frequency may be reduced to yearly sampling intervals upon the installation and operation of a gas collection system equipped with a mechanical device such as a compressor to withdraw gas.

4) Monitoring must be continued for a minimum period of: thirty years after closure at MSWLF units, except as otherwise provided by subsections (c)(5) and (c)(6) of this Section; five years after closure at Landfills, other than MSWLF units, which are used exclusively for disposing of wastes generated at the site; or fifteen years after closure at all other landfills regulated under this Part. Monitoring, beyond the minimum period may be discontinued if the following conditions have been met at least one year:

A) The concentration of methane is less than five percent of the lower explosive limit in air for four consecutive quarters at all monitoring points outside the unit; and

B) Monitoring points within the unit indicate that methane is no longer being produced in quantities that would result in migration from the unit and exceed the standards of subsection (a)(1) of this Section.

5) The Agency may reduce the gas monitoring period at an MSWLF unit upon a demonstration by the owner or operator that the reduced period is sufficient to protect human health and environment.

6) The owner or operator of an MSWLF unit must petition the Board for an adjusted standard in accordance with Section 811.303, if the owner or operator seeks a reduction of the postclosure care monitoring period for all of the following requirements:

A) Inspection and maintenance (Section 811.111);

B) Leachate collection (Section 811.309);

- C) Gas monitoring (Section 811.310);
 - D) Groundwater monitoring (Section 811.319).
- d) Parameters to be monitored.
- 1) All below ground monitoring devices must be monitored for the following parameters at each sampling interval:
 - A) Methane;
 - B) Pressure;
 - C) Oxygen; and
 - D) Carbon dioxide.
 - 2) Ambient air monitors must be sampled for methane only when the average wind velocity is less than eight kilometers (five miles) per hour at a minimum of three downwind locations 30.49 meters (100 feet) from the edge of the unit or the property boundary, whichever is closer to the unit.
 - 3) All buildings within a facility must be monitored for methane by utilizing continuous detection devices located at likely points where methane might enter the building.

* * *

8. Section 811.312(c) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.312(c), provides as follows:

* * *

c) No gas may be discharged directly to the atmosphere unless treated or burned onsite prior to discharge in accordance with a permit issued by the Agency pursuant to 35 Ill. Adm. Code 200 through 245.

* * *

9. Section 811.405 of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.405, provides:

The solid waste management facility operator shall retain copies of any special waste profile identification sheets, special waste recertifications, certifications of representative sample, special waste laboratory analyses, special waste analysis

plans, and any waivers of requirements (prohibitions, special waste management authorization, and operating requirements) at the facility until the end of the postclosure care period.

10. Section 811.705 of the Pollution Control Board's Land Pollution Regulations, 35

III. Adm. Code 811.705, provides:

a) The owner or operator shall revise the current cost estimates for closure and postclosure care in each new application for permit renewal or where a facility modification results in an increase of the cost estimate.

b) The owner or operator shall review the closure and postclosure care plans prior to filing a revised cost estimate in order to determine whether they are consistent with current operations, and the requirements of the Subchapter. The owner or operator shall either certify that the plans are consistent, or shall file an application incorporating new plans pursuant to 35 III. Adm. Code 813.

c) The owner or operator shall prepare new closure and postclosure cost estimates reflecting current prices for the items included in the estimates when submitting any new applications for permit renewal. The owner or operator shall file revised estimates even if the owner or operator determines that there are not changes in the prices.

d) The owner or operator of a MSWLF unit shall adjust the cost estimates of closure, postclosure, and corrective action for inflation on an annual basis during the following time period:

- 1) The active life of the unit for closure;
- 2) The active life and postclosure care period, for postclosure; or
- 3) Until the corrective action program is completed in accordance with Section 811.326, for corrective action.

B. Count II of the Complaint—Site Security and Maintenance Violations

1. Section 745.201 of the Pollution Control Board's Land Pollution Regulations, 35 III. Adm. Code 745.201, provides, in pertinent part, as follows:

* * *

b) No site owner or other named permittee shall cause or allow operation of a waste disposal site unless the site chief operator has prior conduct certification.

2. Section 811.109(a) and (b) of the Pollution Control Board's Land Pollution

Regulations, 35 Ill. Adm. Code 811.109(a) and (b), provides as follows:

- a) Access to the open face area of the unit and all other areas within the boundaries of the facility shall be restricted to prevent unauthorized entry at all times.
- b) A permanent sign shall be posted at the entrance to the facility stating that disposal of hazardous waste is prohibited . . .

3. Section 811.111(c) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.111(c), provides as follows:

* * *

- c) Maintenance and Inspection of the Final Cover and Vegetation:
 - 1) Frequency of Inspections:
 - A) The operator shall conduct a quarterly inspection of all vegetated surfaces for a minimum of five years after closure, and after five years, the operator may reduce the frequency of annual inspections until settling has stopped and there are no eroded or scoured areas.

C. Count III of the Complaint-Permit Violations

- 1. Supplemental Permit No. 1997-033-LFM expired on June 30, 2001.
- 2. Condition I. 1. c. on page 7 of the permit provides:
 - 1. The operator of this solid waste disposal facility shall not conduct the operations in a manner which results in any of the following:
 - c. failure to submit reports required by permits or Board regulations.
- 3. Section 813.501 of the Pollution Control Board's Land Pollution Regulations, 35

Ill. Adm. Code 813.501, provides as follows:

All permitted landfills shall submit an annual certification to the Agency during operation and for the entire postclosure monitoring period. Such certification shall be signed by the operator or duly authorized agent as specified in 35 Ill. Adm. Code 815.102, shall be filed each year by the first day of the month chosen and specified by the Agency in the facility permit, and shall state as follows:

- a. All records required to be submitted to the Agency pursuant to

35 Ill. Adm. Code 858.207 and 858.308 have been timely and accurately submitted; and

b. All applicable fees required by the Act have been paid in full.

4. Condition I. 5. on page 7 of the permit provides:

5.. Access to the facility shall be controlled by use of fences, gates and natural barriers to prevent unauthorized entry at all times.

5. Condition I. 6. on page 7 of the permit provides:

6. A sign shall be maintained at the facility entrance containing the applicable information required under 35 Ill. Adm. Code 811.109(b).

6. Condition III. 1. on page 8 of the permit provides:

1. The annual certification shall be submitted to the Illinois EPA during the entire postclosure monitoring period. The certification shall be signed by the operator or duly authorized agent and shall be filed each year by May 1st the following year.

3. All groundwater monitoring data shall be submitted to the Illinois EPA on a quarterly basis in accordance with the schedule in Special Condition XI. 11. of the water monitoring program of this permit pursuant to 35 Ill. Adm. Code 813.502.

7. Condition IV. on pages 9 and 10 of the permit provides:

1. Information developed by the operator, but not yet forwarded to the Illinois EPA in a quarterly or annual report shall be kept at or near the facility for inspection by the Illinois EPA upon request.

2. A daily summary report shall be prepared by the CQA officer, or under the direct supervision of the CQA officer in accordance with 35 Ill. Adm. Code 811.505(a)(1-8) during each day of activity requiring CQA officer supervision.

3. Inspections of the closed landfill shall be conducted in accordance with the approved post-closure care plan. Records of field investigations, inspections, sampling and corrective action taken are to be maintained at the site and made available to Illinois EPA personnel. During the post-closure care period, those records are to be maintained at the office of the site operator.

4. The owner or operator shall record and retain near the facility in an operating record or in some alternative location specified by the Illinois

EPA, the information submitted to the Illinois EPA pursuant to 35 Ill. Adm. Code 812 and 813, as it becomes available. The operating record for this facility shall be retained at the site engineer's office at Lamac Engineering Co. In Mt. Carmel, Illinois. At a minimum, the operating record shall contain the following information, even if such information is not required by 35 Ill. Adm. Code 812 or 813:

- a. Any location restriction demonstration required by Section 811.302(e) and 35 Ill. Adm. Code 812.109, 812.110, 812.303, and 812.305.
- b. Gas monitoring results and any remediation plans required by Sections 811.310 and 811.311.
- c. Any MSWLF unit design documentation for placement of leachate or gas condensate in a MSWLF unit required by Section 811.107(m).
- d. Any demonstration, certification, monitoring results, testing, or analytical data relating to the groundwater monitoring program required by Sections 811.319, 811.324, 811.325, 811.326, 812.317, 813.501 and 813.502.
- e. Post-closure care plans and any monitoring, testing or analytical data required by Sections 811.110, 811.111, 812.114(h), 812.115 and 812.313; and
- f. Any cost estimates and financial assurance documentation required by Subpart G of 35 Ill. Adm. Code Part 811.

8. Condition V. 7. on page 11 of the permit provides:

7. The results from gas monitoring for each year, ending December 31, shall be submitted to the Illinois EPA in the annual report required by 35 Ill. Adm. Code 813.501 as specified in Special Condition III.2 under Reporting (above).

9. Condition IX. 1. on page 13 of the permit provides:

1. Any application for renewal of a permit shall be filed with the Illinois EPA at least 90 days prior to the expiration date of the existing permit.

10. Condition IX. 3. on page 14 of the permit provides:

3. The operator shall revise the current cost estimate for post-closure care in each new application for permit renewal or where a facility

modification results in an increase of the cost estimate. The operator shall either certify that the plans are consistent with current operations or shall file an application incorporating new plans pursuant to 35 Ill. Adm. Code, Part 813. The owner or operator shall adjust the cost estimate of post-closure care on an annual basis during the design period. The owner or operator shall provide financial assurance to the Illinois EPA utilizing one or more of the mechanisms listed in 35 Ill. Adm. Code 811.706(a). The owner or operator shall provide continuous coverage until the owner or operator is released from the financial assurance requirements pursuant to 35 Ill. Adm. Code 813.403(b) or 35 Ill. Adm. Code 811.326.

11. Condition XI. 9. on page 16 of the permit provides:

9. Background groundwater quality shall be determined using upgradient well G121. Background shall be established for pH and all chemical parameters in List G1 and G2.

The background values for all constituents, listed in G1 and G2 shall be calculated using a minimum of four (4) consecutive quarters of groundwater monitoring data and employing the statistical method described in Section 3.6.3 Background Monitoring. All background values shall be submitted to the Illinois EPA in a significant permit modification no later than November 15, 1998.

To date, the operator of this facility has not complied with Special Condition XI.9 of Modification No. 1 to Permit No. 1997-033-LFM, dated August 27, 1998. Issuance of this revised permit does not relieve the operator of violations incurred due to non-compliance with previous permit conditions.

12. Condition XI. 11. on page 22 of the permit provides:

11. The approved monitoring program, shall begin during the July-August 1997 sampling event and continue for at least thirty (30) years after closure and shall not cease until the conditions described in 35 IAC, 811.319(a)(1)(C) have been achieved. The operator shall collect samples from all of the monitoring points listed in Special Condition XI.10 and report the analytical results to the Illinois EPA in accordance with the following schedule:

<u>Sampling Period</u>	<u>Parameter List</u>	<u>Report Due Date</u>
January or February	List G1	April 15
April or May	List G1 and G2	July 15
July or August	List G1	October 15
October or November	List G1	January 15

13. Condition XI. 13. on page 23 of the permit provides:

13. Pursuant to 35 IAC 811.319(a)(4)(A), any of the following events shall constitute an observed increase only if the concentration of the constituents monitored can be measured at or above the practical quantitation limit (PQL):

- a. The concentration of any quarterly indicator parameter given in List G1 shows a progressive increase over four (4) quarters.
- b. The concentration of any constituent given in List G1 or G2 exceeds the Class I groundwater quality standards listed in 35 IAC 620 Subpart D, or the Groundwater Standards as provided in 35 IAC 814.402(b)(3) at an established monitoring point.
- c. The concentration of any organic constituent in List G2 monitored in accordance with Condition 11 of this Section exceeds the preceding measured concentration at any established point.
- d. The concentration of any constituent in List G1 or G2 exceeds its background concentration.

14. Condition XI. 17. on page 24 of the permit provides:

17. Annually, the operator shall prepare an evaluation of the groundwater flow direction and the hydraulic gradients at the facility using the groundwater surface elevations (Storet #71993) determined for each monitoring event. This assessment shall be submitted with the monitoring results due on July 15.

D. Count IV of the Complaint–Groundwater Monitoring Violations

1. Section 21 of the Act, 415 ILCS 5/21 (2006), provides, in the pertinent part, as follows:

No person shall:

* * *

- (d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:
 - (1) without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities as may be necessary to assure compliance with the Act and with regulations and standards adopted thereunder; or
 - (2) In violation of any regulations or standards adopted by the

Board under this Act;

* * *

2. Section 22.17 of the Act, 415 ILCS 5/22.17 (2006), provides, in the pertinent part, as follows:

(a) The owner and operator of a sanitary landfill site . . . shall monitor gas, water and settling at the completed site for a period of 15 years after the site is completed or closed. . . .

* * *

(b) The owner and operator of a sanitary landfill site . . . shall take whatever remedial action is necessary to abate any gas, water or settling problems which appear during such period of time specified in subsection (a). . . .

3. Section 811.318(a) and (e) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.318(a) and (e), provides:

a) All potential sources of discharges to groundwater within the facility, including, but not limited to, all waste disposal units and the leachate management system, shall be identified and studied through a network of monitoring wells operated during the active life of the unit and for the time after closure specified in accordance with Section 811.319. Monitoring wells designed and constructed as part of the monitoring network shall be maintained along with records that include, but are not limited to, exact well locations, well size, type of well, the design and construction practice used in its installation and well and screen depths.

* * *

e) Standards for Sample Collection and Analysis

1) The groundwater monitoring program shall include consistent sampling and analysis procedures to assure that monitoring results can be relied upon to provide data representative of groundwater quality in the zone being monitored.

2) The operator shall utilize procedures and techniques to insure that collected samples are representative of the zone being monitored and that prevent cross contamination of samples from other monitoring wells or from other samples. At least 95 percent of a collected sample shall consist of groundwater from the zone being monitored.

3) The operator shall establish a quality assurance program that provides quantitative detection limits and the degree of error for analysis of each chemical constituent.

4) The operator shall establish a sample preservation and shipment

procedure that maintains the reliability of the sample collected for analysis.

5) The operator shall institute a chain of custody procedure to prevent tampering and contamination of the collected samples prior to completion of analysis.

6) At a minimum, the operator shall sample the following parameters at all wells at the time of sample collection and immediately before filtering and preserving samples for shipment:

- A) The elevation of the water table
- B) The depth of the well below ground
- C) pH
- D) The temperature of the sample
- E) Specific Conductance.

7) In addition to the requirements of subsections (e)(1) through (e)(6), the following requirements shall apply to MSWLF units:

A) Each time groundwater is sampled, and owner or operator of a MSWLF unit shall:

i) Measure the groundwater elevations in each well immediately prior to purging; and

ii) Determine the rate and direction of groundwater flow.

B) An owner or operator shall measure groundwater elevations in wells which monitor the same waste management area within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow rate and direction.

4. Section 811.319(a)(1) of the Pollution Control Board's Land Pollution

Regulations, 35 Ill. Adm. Code 811.319(a)(1), provides:

a) Detection Monitoring Program. Any use of the term maximum allowable predicted concentration in this Section is a reference to Section 811.318(c). The operator shall implement a detection monitoring program in accordance with the following requirements:

1) Monitoring Schedule and Frequency.

A) The monitoring period shall begin as soon as waste is placed into the unit of a new landfill or within one year of the

effective date of this Part for an existing landfill. Monitoring shall continue for a minimum period of fifteen years after closure, or in the case of MSWLF units, a minimum period of 30 years after closure, except as otherwise provided by subsection (a)(1)(C) of this Section. The operator shall sample all monitoring points for all potential sources on contamination on a quarterly basis except as specified in subsection (a)(3), for a period of five years from the date of issuance of the initial permit for significant modification under 35 Ill. Adm. Code 814.104 or a permit for a new unit pursuant to 35 Ill. Adm. Code 813.104. After the initial five-year period, the sampling frequency for each monitoring point shall be reduced to a semi-annual basis, provided the operator has submitted the certification described in 35 Ill. Adm. Code 813.304(b). Alternatively, after the initial five-year period, the Agency shall allow sampling on a semi-annual basis where the operator demonstrates that monitoring effectiveness has not been compromised, that sufficient quarterly data has been collected to characterize groundwater, and that leachate from the monitored unit does not constitute a threat to groundwater. For the purposes of this Section, the source shall be considered a threat to groundwater if the results of the monitoring indicate either that the concentrations of any of the constituents monitored within the zone on attenuation is above the maximum allowable predicted concentration for that constituent or, for existing landfills, subject to 35 Ill. Adm. Code 814, Subpart D, that the concentration of any constituent has exceeded the applicable standard at the compliance boundary as defined in 35 Ill. Adm. Code 814.402(b)(3).

5. Section 811.320(d)(1) of the Pollution Control Board's Land

Pollution Regulations, 35 Ill. Adm. Code 811.320(d)(1), provides:

d) Establishment of Background Concentrations

1) The initial monitoring to determine background concentrations shall commence during the hydrogeological assessment required by Section 811.315. The background concentrations for those parameters identified in Sections 811.315(e)(1)(G) and 811.319(a)(2) and (a)(3) shall be established based on quarterly sampling of wells for one year, monitored in accordance with the requirements of subsections (d)(2), (d)(3) and (d)(4), which may be adjusted during the operation of a facility. Statistical tests and procedures shall be employed, in accordance with subsection (e), depending on the number, type and frequency of samples collected from the wells, to establish the background concentrations. Adjustments to the background concentrations shall be made only if changes in the concentrations of constituents observed in upgradient

wells over time are determined, in accordance with subsection (e), to be statistically significant. Background concentrations determined in accordance with this subsection shall be used for the purposes of establishing groundwater quality standards, in accordance with this subsection. The operator shall maintain such a list at the facility, shall submit a copy of the list to the Agency for establishing standards in accordance with subsection (a), and shall provide updates to the list within ten days of any change to the list.

* * *

6. Section 813.502(a) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 813. 502(a), provides:

a) All groundwater monitoring data shall be submitted to the Agency at the same frequency as established for groundwater detection monitoring pursuant to Section 811.319(a), in a form prescribed by the Agency, and in accordance with a schedule approved in the permit.

* * *

7. Condition III. 3. on page 9 of the permit provides:

3. All groundwater monitoring data shall be submitted to the Illinois EPA on a quarterly basis in accordance with the schedule in Special Condition XI. 11. of the water monitoring program of this permit pursuant to 35 Ill. Adm. Code 813.502.

8. Condition XI. 9. on page 16 of the permit provides:

9. Background groundwater quality shall be determined using upgradient well G121. Background shall be established for pH and all chemical parameters in List G1 and G2.

The background values for all constituents, listed in G1 and G2 shall be calculated using a minimum of four (4) consecutive quarters of groundwater monitoring data and employing the statistical method described in Section 3.6.3 Background Monitoring. All background values shall be submitted to the Illinois EPA in a significant permit modification no later than November 15, 1998.

To date, the operator of this facility has not complied with Special Condition XI.9 of Modification No. 1 to Permit No. 1997-033-LFM, dated August 27, 1998. Issuance of this revised permit does not relieve the

operator of violations incurred due to non-compliance with previous permit conditions.

9. Condition XI. 11. on page 22 of the permit provides:

11. The approved monitoring program, shall begin during the July-August 1997 sampling event and continue for at least thirty (30) years after closure and shall not cease until the conditions described in 35 IAC, 811.319(a)(1)(C) have been achieved. The operator shall collect samples from all of the monitoring points listed in Special Condition XI.10 and report the analytical results to the Illinois EPA in accordance with the following schedule:

<u>Sampling Period</u>	<u>Parameter List</u>	<u>Report Due Date</u>
January or February	List G1	April 15
April or May	List G1 and G2	July 15
July or August	List G1	October 15
October or November	List G1	January 15

10. Condition XI. 17. on page 24 of the permit provides:

17. Annually, the operator shall prepare an evaluation of the groundwater flow direction and the hydraulic gradients at the facility using the groundwater surface elevations (Storet #71993) determined for each monitoring event. This assessment shall be submitted with the monitoring results due on July 15.

E. Count V of the Complaint-Gas Monitoring Violations

1. Section 21 of the Act, 415 ILCS 5/21 (2006), provides, in the pertinent part, as follows:

No person shall:

* * *

- (d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:
 - (1) without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities as may be necessary to assure compliance with the Act and with regulations and standards adopted thereunder; or

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

* * *

2. Section 22.17 of the Act, 415 ILCS 5/22.17 (2006), provides, in the pertinent part, as follows:

- (a) The owner and operator of a sanitary landfill site . . . shall monitor gas, water and settling at the completed site for a period of 15 years after the site is completed or closed. . . .

* * *

- (b) The owner and operator of a sanitary landfill site . . . shall take whatever remedial action is necessary to abate any gas, water or settling problems which appear during such period of time specified in subsection (a). . . .

* * *

3. Section 811.112(c) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.112(c), provides as follows:

The owner or operator of a MSWLF [Municipal Solid Waste Land Fill] unit shall record and retain near the facility in an operating record or in some alternative location specified by the Agency, the information submitted to the Agency pursuant to 35 Ill. Adm. Code 812 and 813, as it becomes available. At a minimum, the operating record shall contain the following information, even if such information is not required by 35 Ill. Adm. Code 812 or 813;

* * *

- c) Gas monitoring results and any remediation plans required by Sections 811.310 and 811.311;

* * *

4. Section 811.310(a),(b), (c), and (d) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.310(a), (b), (c), and (d) provides as follows:

- a) This Section applies to all units that dispose putrescible wastes.
- b) Location and Design of Monitoring Wells.
 - 1) Gas monitoring devices must be placed at intervals and elevations

within the waste to provide a representative sampling of the composition and buildup of gases within the unit.

- 2) Gas monitoring devices must be placed around the unit at locations and elevations capable of detecting migrating gas from the ground surface to the lowest elevation of the linear system or the top elevation of the groundwater, whichever is higher.
- 3) A predictive gas flow model may be utilized to determine the optimum placement of monitoring points required for making observations and tracing the movement of gas.
- 4) Gas monitoring devices must be constructed from materials that will not react with or be corroded by the landfill gas.
- 5) Gas monitoring devices must be designed and constructed to measure pressure and allow collection of a representative sample of gas.
- 6) Gas monitoring devices must be constructed and maintained to minimize gas leakage.
- 7) The gas monitoring system must not interfere with the operation of the liner, leachate collection system, or delay the construction of the final cover system.
- 8) At least three ambient air monitoring locations must be chosen and samples must be taken no higher than 0.025 meter (1 inch) above ground and 30.49 m (100 feet) downward from the edge of the unit or at the property boundary, whichever is closer to the unit.

c) Monitoring Frequency.

- 1) All gas monitoring devices, including the ambient air monitors must be operated to obtain samples on a monthly basis for the entire operating period and for a minimum of five years after closure.
- 2) After a minimum of five years after closure, monitoring frequency may be reduced to quarterly sampling intervals.
- 3) The sampling frequency may be reduced to yearly sampling intervals upon the installation and operation of a gas collection system equipped with a mechanical device such as a compressor to withdraw gas.
- 4) Monitoring must be continued for a minimum period of: thirty years after closure at MSWLF units, except as otherwise provided by subsections (c)(5) and (c)(6) of this Section; five years after closure at Landfills, other than MSWLF units, which are used exclusively for

disposing of wastes generated at the site; or fifteen years after closure at all other landfills regulated under this Part. Monitoring, beyond the minimum period may be discontinued if the following conditions have been met at least one year:

A) The concentration of methane is less than five percent of the lower explosive limit in air for four consecutive quarters at all monitoring points outside the unit; and

B) Monitoring points within the unit indicate that methane is no longer being produced in quantities that would result in migration from the unit and exceed the standards of subsection (a)(1) of this Section.

5) The Agency may reduce the gas monitoring period at an MSWLF unit upon a demonstration by the owner or operator that the reduced period is sufficient to protect human health and environment.

6) The owner or operator of an MSWLF unit must petition the Board for an adjusted standard in accordance with Section 811.303, if the owner or operator seeks a reduction of the postclosure care monitoring period for all of the following requirements:

A) Inspection and maintenance (Section 811.111);

B) Leachate collection (Section 811.309);

C) Gas monitoring (Section 811.310);

D) Groundwater monitoring (Section 811.319).

d) Parameters to be monitored.

1) All below ground monitoring devices must be monitored for the following parameters at each sampling interval:

A) Methane;

B) Pressure;

C) Oxygen; and

D) Carbon dioxide.

2) Ambient air monitors must be sampled for methane only when the average wind velocity is less than eight kilometers (five miles) per hour at a minimum of three downwind locations 30.49 meters (100 feet) from the edge of the unit or the property boundary, whichever is closer to the

unit.

3) All buildings within a facility must be monitored for methane by utilizing continuous detection devices located at likely points where methane might enter the building.

* * *

5. Section 811.311(b) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.311(b), provides as follows:

b) If methane gas levels exceed the limits specified in subsections (a)(1) or (a)(2), an operator of a MSWLF shall:

- 1) Notify the Agency in writing, within two business days, of an observed exceedance; and
- 2) Implement the requirements of this Section to ensure the protection of human health.

6. Section 811.312(c) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.312(c), provides as follows:

* * *

c) No gas may be discharged directly to the atmosphere unless treated or burned onsite prior to discharge in accordance with a permit issued by the Agency pursuant to 35 Ill. Adm. Code 200 through 245.

* * *

7. Condition III. 2. a. on page 8 of the permit provides:

2. The operator shall submit an annual report for each calendar year to the Illinois EPA by May 1st of the following year pursuant to 35 Ill. Adm. Code 813.504. The annual report shall include:

a. Information relating to monitoring data from any leachate collection system, the groundwater monitoring network, gas monitoring system, and any other monitoring data specified in this permit including:

1. Summary of monitoring data for the calendar year;
2. Dates of submittal of comprehensive monitoring data to the Illinois EPA during the calendar year;
3. Statistical summaries and analysis of trends;

4. Changes to the monitoring program; and
5. Discussion of error analysis, detection limits and observed trends.

F. Count VI of the Complaint–Air Pollution Violations

1. Section 9 of the Act, 415 ILCS 5/9 (2006), provides, in pertinent part, as follows:

No person shall:

- (a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act.

* * *

2. Section 3.115 of the Act, 415 ILCS 5/3.115 (2006), provides that:

"Air pollution" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

3. Section 811.312(c) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.312(c), provides as follows:

* * *

- c) No gas may be discharged directly to the atmosphere unless treated or burned onsite prior to discharge in accordance with a permit issued by the Agency pursuant to 35 Ill. Adm. Code 200 through 245.

III. PROOF OF VIOLATIONS

The facility at issue was inspected by Ambraw Valley Solid Waste Management ("Ambraw Valley") through a delegation agreement with the Illinois EPA. Ambraw Valley is a local government created entity consisting of Lawrence County, Crawford County and Richland

County. (Tr., p7). Bob Gher, who works for Ambraw Valley, conducted the inspections to determine if the facility was in compliance with the permit which specified the conditions imposed upon the closed facility. People's Exhibit 8 specified the closure conditions. (Tr., p 10 & 11).

Christian Liebman, who manages the Solid Waste Unit in the Illinois EPA, identified People's Exhibit 8 as the permit that pertains to the closing of the facility at issue. Among other provisions, the permit requires the operator to secure the boundaries and access to the facility, maintain the final cover, monitor the groundwater, and monitor gas migration. Failure to comply with the provisions of the permit constitutes a violation of the permit, a violation of applicable statutory provisions and a violation of applicable rules and regulations of the Pollution Control Board. (Tr., p 49-51).

On February 19, 2001, Bob Gher of Ambraw Valley, inspected the facility to determine compliance with the permit obligations and post-closure care plan. The inspector observed that access to site was not controlled by a fence or gate and that no sign was posted as required by the permit. The inspector also observed failures in the ground cover that caused erosion problems in different areas of the landfill and several areas of failed vegetation. (Tr. p 10 & 11). Groundwater monitoring was not being performed. Groundwater monitoring reports were not being filed. Landfill gas monitoring was not being performed. Landfill gas monitoring reports were not being filed. The inspector observed that gas vapors with a strong methane odor were being emitted from the unmarked and unlocked monitoring wells into the atmosphere. (Tr. p 12 & 13). All of this was noted in Mr. Gher's inspection report. See People's Exhibit 1.1. (Tr. p 10-13). The worst erosion area was near the access road and consisted of an area 10 feet wide, 10 feet deep, and 40 feet long. (Tr. p 14). Another area on the north slope was 1 foot wide, 1 foot deep, and 4-5 feet long (Tr. p 14). Mr. Gher mailed a copy of the inspection report

to Respondent, Mr. Simmons. Mr. Gher did not receive a response from Mr. Simmons.

On May 9, 2001, Bob Gher again inspected the facility. The facility still had the same violations that were observed in the earlier inspection. Mr. Gher prepared an inspection report which noted the conditions and violations. See People's Exhibit 1.2. (Tr. p 14). Mr. Gher later mailed the inspection report to Respondent, Mr. Simmons. Mr. Gher did not receive a response from Mr. Simmons.

On July 5, 2001, Bob Gher again inspected the facility. The facility still had the same violations that were observed in the earlier inspection. Mr. Gher prepared an inspection report which noted the conditions and violations. See People's Exhibit 1.3. (Tr. p 17). Mr. Gher later mailed the inspection report to Respondent, Mr. Simmons. Mr. Gher did not receive a response from Mr. Simmons.

On November 12, 2001, Bob Gher again inspected the facility. The facility still had the same violations that were observed in the earlier inspection. Mr. Gher prepared an inspection report which noted the conditions and violations. See People's Exhibit 1.4. (Tr. p 18). Mr. Gher later mailed the inspection report to Respondent, Mr. Simmons. Mr. Gher did not receive a response from Mr. Simmons.

On May 10, 2002, Bob Gher again inspected the facility. The facility still had the same violations that were observed in the earlier inspection. Mr. Gher prepared an inspection report which noted the conditions and violations. In addition there was exposed refuse on the northeast slope of the facility. The area of the exposed refuse was 5 feet wide by 10 feet long. See People's Exhibit 2.1. (Tr. p 19 & 20). Mr. Gher later mailed the inspection report to Respondent, Mr. Simmons. Mr. Gher did not receive a response from Mr. Simmons.

On November 8, 2002, Bob Gher again inspected the facility. The facility still had the same violations that were observed in the earlier inspection. There were instances of exposed

refuse and there were other areas with failed vegetation. Mr. Gher prepared an inspection report which noted the conditions and violations. See People's Exhibit 2.2. (Tr. p 22). Mr. Gher later mailed the inspection report to Respondent, Mr. Simmons. Mr. Gher did not receive a response from Mr. Simmons.

On February 20, 2003, Bob Gher again inspected the facility. The visibility during the inspection was hampered by snow cover. The inspector observed that access to site was not controlled by a fence or gate and that no sign was posted as required by the permit. Groundwater monitoring was not being performed. Groundwater monitoring reports were not being filed. Landfill gas monitoring was not being performed. Landfill gas monitoring reports were not being filed. The inspector observed that gas vapors with a strong methane odor were being emitted from the unmarked and unlocked monitoring wells into the atmosphere. All of this was noted in Mr. Gher's inspection report. See People's Exhibit 3.1. (Tr. p 23). Mr. Gher later mailed the inspection report to Respondent, Mr. Simmons. Mr. Gher did not receive a response from Mr. Simmons.

On April 3, 2003, Bob Gher again inspected the facility. There was no snow cover during this inspection. The facility still had the same violations that were observed in the earlier inspections without snow cover. There were instances of exposed refuse and there were other areas with failed vegetation. Mr. Gher prepared an inspection report which noted the conditions and violations. See People's Exhibit 3.2. (Tr. p 25). Mr. Gher later mailed the inspection report to Respondent, Mr. Simmons. Mr. Gher did not receive a response from Mr. Simmons.

On September 9, 2003, Bob Gher again inspected the facility. The facility still had the same violations that were observed in the earlier inspections. There were instances of exposed refuse and there were other areas with failed vegetation. Mr. Gher prepared an inspection report which noted the conditions and violations. See People's Exhibit 3.3. (Tr. p 26). Mr.

Gher later mailed the inspection report to Respondent, Mr. Simmons. Mr. Gher did not receive a response from Mr. Simmons.

On February 6, 2004, Bob Gher again inspected the facility. The facility still had the same violations that were observed in the earlier inspection. There were instances of exposed refuse and there were other areas with failed vegetation. Mr. Gher prepared an inspection report which noted the conditions and violations. In addition a groundwater review was performed by Doug Hayward, Kent Johnson, and Sheila Williams, of the Illinois EPA, Bureau of Land, Marion Field Office. See People's Exhibit 4.1. (Tr. p 27). Mr. Gher later mailed the inspection report to Respondent, Mr. Simmons. Mr. Gher did not receive a response from Mr. Simmons.

On May 11, 2004, Bob Gher again inspected the facility. The facility still had the same violations that were observed in the earlier inspections. There were instances of exposed refuse and there were other areas with failed vegetation. Mr. Gher prepared an inspection report which noted the conditions and violations. See People's Exhibit 4.2. (Tr. p 28). Mr. Gher later mailed the inspection report to Respondent, Mr. Simmons. Mr. Gher did not receive a response from Mr. Simmons.

On November 9, 2004, Bob Gher again inspected the facility. (There is a typographical error on the date of the report which says "11/09/2002" which should be 11/09/2004). The facility still had the same violations that were observed in the earlier inspections. There were instances of exposed refuse and there were other areas with failed vegetation. Mr. Gher prepared an inspection report which noted the conditions and violations. See People's Exhibit 4.3. (Tr. p 29). Mr. Gher later mailed the inspection report to Respondent, Mr. Simmons. Mr. Gher did not receive a response from Mr. Simmons.

People's Exhibit 4.4 (Tr. p 31) is a copy of the letter sent to Mr. Simmons regarding the

November 9, 2004, inspection. People's Exhibit 4.5 (Tr. p 31) is a narrative account of the November 9, 2004, inspection.

On January 6, 2005, Bob Gher again inspected the facility. The facility still had the same violations that were observed in the earlier inspections. There were instances of exposed refuse and there were other areas with failed vegetation. Mr. Gher prepared an inspection report which noted the conditions and violations. See People's Exhibit 5.1. (Tr. p 31). Mr. Gher later mailed the inspection report to Respondent, Mr. Simmons. Mr. Gher did not receive a response from Mr. Simmons.

On May 11, 2005, Bob Gher again inspected the facility. The facility still had the same violations that were observed in the earlier inspections. There were instances of exposed refuse and there were other areas with failed vegetation. Mr. Gher prepared an inspection report which noted the conditions and violations. See People's Exhibit 5.2. (Tr. p 33). Mr. Gher later mailed the inspection report to Respondent, Mr. Simmons. Mr. Gher did not receive a response from Mr. Simmons.

On September 8, 2005, Bob Gher again inspected the facility. The facility still had the same violations that were observed in the earlier inspections. There were instances of exposed refuse and there were other areas with failed vegetation. Mr. Gher prepared an inspection report which noted the conditions and violations. See People's Exhibit 5.3. (Tr. p 34). Mr. Gher later mailed the inspection report to Respondent, Mr. Simmons. Mr. Gher did not receive a response from Mr. Simmons.

People's Exhibit 9 (Tr. p 36), People's Exhibit 10 (Tr. p 37), People's Exhibit 11 (Tr. p 38), and People's Exhibit 12 (Tr. p 38) are examples of violation notice letters regarding inspection reports—all of which were sent by Mr. Gher to Mr. Simmons.

It is important to point out that the conditions at the facility were deteriorating as time

passed. Mr. Gher makes this clear in the following exchange on direct examination:

Q. Mr. Gher, from the time that you were inspecting this landfill, from the time of People's Exhibit 1.1, through Exhibit 5.3, were the conditions deteriorating over those years?

A. Yes, they were. (Tr. p 40, ln. 3-7).

There are consequences to an operator failing to conduct post-closure care at a landfill facility. As refuse sits in a landfill it forms leachate which is a variety of compounds and chemicals that liquify and mix with groundwater. Leachate can be very detrimental to groundwater which can negatively affect drinking water. (Tr. p 40 & 41). Failure to maintain the cover or cap of the landfill creates erosion which exposes the refuse in the landfill. The exposed refuse can attract wildlife and can be toxic to wildlife. (Tr. p 41). The failure to restrict access to the landfill enables trespassers to gain access. Mr. Gher noted that four wheeler (all terrain vehicles) got in the facility, at least on one occasion. (Tr. p 42).

The Illinois EPA ultimately collected on the financial assurance bond for post-closure care. The Illinois EPA used the bond proceeds to perform remedial post-closure care at the facility. The Illinois EPA hired Environmental Restoration, LLC of St. Louis, Missouri to perform remediation work at the facility. As indicated in People's Exhibit 20 Environmental Restoration, LLC was paid \$91,927.26 for work done from January 16, 2007 to February 25, 2007 and \$14,348.70 for work done from February 25, 2007 to March 26, 2007. Illinois EPA incurred additional costs of \$5,277.56 in Fiscal Year 2006 and \$6868.38 in Fiscal Year 2007. All of these amounts add up to \$118,421.90. The bond proceeds covered these remediation costs.

Under cross-examination by Mr. Simmons, Mr. Gher testified that there are still post-closure violations occurring at the landfill even after the remediation work was performed by Illinois EPA through use of the bond proceeds. (Tr. p 44). These violations involve erosion of the cap, the lack of mowing, and the lack of maintenance. (Tr. p 47 & 48).

Mr. Simmons was called to testify, as an adverse witness through provisions of the Civil Practice Act. Mr. Simmons testified that he was the owner and operator of the facility. (Tr. p 54). Mr. Simmons also testified that he was the sole stockholder of Lawrence County Disposal Centre, Inc. (Tr. p 54). Mr. Simmons testified that he did not disagree with any of the inspection reports prepared by Mr. Gher in Exhibits 1.1 through 6.1. (Tr. p 55). Mr. Simmons testified that he received the inspection reports, but he did not perform any remediation work. (Tr. p 55). Mr. Simmons acknowledged in his testimony that the violations noted in all of the inspections beginning with People's Exhibit 1.1 through all the subsequent inspections constituted violations of the closure permit (People's Exhibit 8), violations of the applicable statutes, and violations of the applicable regulations. (Tr. p 55 & 56). The following exchange took place:

- Q. Mr. Simmons, referring to People's Exhibit 19, are any of the allegations in that complaint false?
- A. No, sir, as far as I can tell.
- Q. I'm sorry?
- A. I believe its correct. (Tr. p 57, ln 10-14).

People's Exhibit 19 is a copy of the complaint filed in this matter.

In Mr. Simmons direct testimony, he apologized for the circumstances at the facility and stated that he never intended that these things would occur. (Tr. p 62-64).

IV. ARGUMENT

A. Ownership of the Source of Pollution Imposes Liability

Courts have affirmed that ownership of property, when the owner passively allows pollution to enter the environment is sufficient for liability und the Environmental Protection Act ("Act"). *Perkinson v. Illinois Pollution Control Board*, 187 Ill.App.3d 689, 543 N.E.2d 901, 135 Ill.Dec. 333 (1989); *Ryan v. McFalls*, 313 Ill.App.3d 223, 728 N.E.2d 1152, 245 Ill.Dec. 795

(2000). Additionally, proof of guilty knowledge or intentional harm is not necessary to establish a violation nor can lack of knowledge or mens rea establish a valid defense for a violations of the Act. *Bath, Inc. v. Pollution Control Board*, 10 Ill.App.3d 507, 294 N.E.2d 778 (1973); *Meadowlark Farms, Inc., v. Illinois Pollution Control Board*, 17 Ill., App. 3d 851, 308 N.E.2d 829 (1974); *Freeman Coal Mining Corporation v. Illinois Pollution Control Board*, 21 Ill. App.3d 157, 313 N.E. 2d 616 (1974); *Hindman v. Environmental Protection Agency*, 42 Ill.App.3d 766, 356 N.E.2d 669, 1 Ill. Dec. 481 (1976).

Where a party owns the source of the pollution, it is liable for the resulting violations of the Act. *Meadowlark Farms, Inc.*, 302 N.E.2d 829 at 835-36

Petitioner [Meadowlark Farms] argues that it has not caused, threatened or allowed the discharge of contaminants within the meaning of section 12(a) of the Act (Ill. Rev. Stat. 1971, ch. 111 ½, § 1012(a)). Petitioner contends that its mere ownership of the surface estate from which the discharge originates is the only relationship to the transaction responsible for the discharge and that to expect the petitioner to exercise control to prevent pollution would be unreasonable. In conjunction, the petitioner states that its lack of knowledge that the discharge of contaminants was occurring is a defense to the complaint. We find these arguments without merit. To clarify this issue, it should be noted that the petitioner was charged with causing or allowing the discharge of contaminants so as to cause or tend to cause water pollution in Brushy Creek and tributary in violation of Section 12(a) of the Environmental Protection Act and certain rules of SWB-14 of the Sanitary Water Board's rules and regulations. Petitioner was not charged with creating the refuse piles or with the responsibility for the operation of the Peabody 43 mine which resulted in the creation of the refuse pile. The

Pollution Control Board merely found that the petitioner had ownership of the surface rights of the property which was the source of the violation, that the evidence showed that the pollution had its source on that property and that fish were killed, and that the petitioner had the capability of controlling the pollutorial discharge. Therefore, petitioner was found to have violated section 12(a) of the Act, as well as violating the other rules and regulations related to water pollution. The findings of the Board were correct.

Mr. Simmons has owned and continues to own the source of the pollution and violations. Mr. Simmons has been the sole stockholder of Lawrence County Disposal Centre and has been the operator in-fact regarding this facility. Mr. Simmons' failure to properly perform post closure care, site security and maintenance, follow permit regulations, perform ground water and gas monitoring, and prevent air pollution make him liable under the Act. With the ownership of land comes the responsibility to control the pollution on that land. Since Mr. Simmons owned the land on which the landfill sits, Mr. Simmons is responsible for the pollution that he failed to control on that site.

B. The Evidence Establishes the Violations Alleged in the Complaint

The Respondents' failure to follow the terms and conditions of the permit; provide post-closure care to the facility; perform site security and maintenance; follow permit guidelines; perform ground water monitoring; perform gas monitoring; and prevent air pollution are violations of the Act. Mr. Gher's testimony, the inspection reports, and Mr. Simmons' testimony and acknowledgments all demonstrate that the allegations of the complaint have been proven.

1. Count I

The Respondents' failed to provide post-closure care to the facility. The Respondents failed to monitor gas, water, and settling at the landfill site as required by Section 22.17(a) of

the Act, 415 ILCS 5/22.17(a) (2006). The Respondents failed to take remedial action necessary to abate gas, water, and settling problems as required by Section 22.17(b) of the Act, 415 ILCS 5/22.17(b) (2006). The Respondents failed to implement adequate measures to monitor and control the emission of landfill gas in violation of Section 811.312(c) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.312(c), thereby violating Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2006).

2. Count II

The Respondents failed to provide adequate fencing, gates, or other measures to control access to site as required by Section 811.109(a) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.109(a). The Respondents failed to post a permanent sign at the entrance to the facility stating that disposal of hazardous waste is prohibited as required by Section 811.109(b) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.109(b). The Respondents failed to conduct quarterly inspections of all vegetated surfaces after closure as required by Section 811.111(c)(1)(A) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.111(c)(1)(A). The Respondents failed to fill rills, gullies and crevices six inches or deeper which have been identified by Ambraw Valley as required by Section 811.111(c)(2) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.111(c)(2). The Respondents failed to revegetate those areas with failed or eroded vegetation in excess of 100 square feet as required by Section 811.111(c)(5) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.111(c)(5).

3. Count III

The Respondents failed to submit reports required by Permit No. 1997-033-LF in violation of Condition I. 1. c. of Permit No. 1997-033-LF, thereby violating Section 21(d)(1) of

the Act, 415 ILCS 5/21(d)(1) (2006). The Respondents failed to prevent unauthorized entry to the landfill by means of a fence or gate or a natural barrier in violation of Condition I. 5. of Permit No. 1997-033-LF, thereby violating Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006). The Respondents failed to post a sign at the entrance to the landfill that provides notice required by Permit No. 1997-033-LF and in violation of Condition I. 6. of Permit No. 1997-033-LF and by 35 Ill. Adm. Code 811.109(b) of the Pollution Control Board's Land Pollution Regulations, 35, Ill. Adm. Code 811.109(b), thereby violating Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006). The Respondents failed to submit to the Illinois EPA by May 1st of each year an annual certification signed by the operator or a duly authorized agent required by Permit No. 1997-033-LF in violation of Condition III.1. and Condition III. 2 of Permit No. 1997-033-LF and by 35 Ill. Adm. Code 813.504 of the Pollution Control Board's Land Pollution Regulations, 35, Ill. Adm. Code 813.504, thereby violating Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006). The Respondents failed to submit to the Illinois EPA on a quarterly basis all groundwater monitoring data required by Permit No. 1997-033-LF and in violation of Condition III. 3. of Permit No. 1997-033-LF and by 35 Ill. Adm. Code 813.502 of the Pollution Control Board's Land Pollution Regulations, 35, Ill. Adm. Code 813.502, thereby violating Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006). The Respondents failed to keep operating records required by Permit No. 1997-033-LF and in violation of Condition IV. 4. of Permit No. 1997-033-LF and by 35 Ill. Adm. Code 812 and 813 of the Pollution Control Board's Land Pollution Regulations, 35, Ill. Adm. Code 812 and 813, thereby violating Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006). The Respondents failed to submit to the Illinois EPA the results from gas monitoring for each year, ending on December 31 as required by Permit No. 1997-033-LF and in violation of Condition V. 7. and in accordance with Special Condition III. 2. of Permit No. 1997-033-LF and by 35 Ill. Adm. Code 813.501 of the Pollution Control Board's

Land Pollution Regulations, 35, Ill. Adm. Code 813.501, thereby violating Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006). The Respondents failed to file an application to renew Permit No. 1997-033-LF which expired on June 30, 2001, as required by Permit No. 1997-033-LF in violation of Condition IX. 1. c. of Permit No. 1997-033-LF, thereby violating Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006). The Respondents failed to revise the current cost estimates for post-closure care as required by Permit No. 1997-033-LF in violation of Condition IX. 3. of Permit No. 1997-033-LF, thereby violating Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006). The Respondents failed to determine background groundwater quality as required by Permit No. 1997-033-LF in violation of Condition XI. 9. of Permit No. 1997-033-LF, thereby violating Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006). The Respondents failed to collect groundwater samples on a quarterly basis each year as required by Permit No. 1997-033-LF in violation of Condition XI. 11. of Permit No. 1997-033-LF, thereby violating Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006). The Respondents failed to annually prepare an evaluation of the groundwater flow direction and the hydraulic gradients at the facility using the groundwater surface elevations and by failing to report this information to the Illinois EPA by July 15th of each year as required by Permit No. 1997-033-LF in violation of Condition XI. 17. of Permit No. 1997-033-LF, thereby violating Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006). The Respondents failed to properly conduct post-closure care at this waste-storage or waste-disposal facility in violation of the permit, the Respondent has violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006).

4. Count IV

The Respondents failed to determine background concentrations for those constituent parameters identified in Sections 811.315(e)(1)(G) and 811.319(a)(2) and (a)(3) to establish background groundwater quality in violation of Section 811.320(d)(1) of the Pollution Control

Board's Land Pollution Regulations, 35, Ill. Adm. Code 811.320(d)(1), thereby violating Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2006). The Respondents failed to perform quarterly groundwater monitoring during any time during calendar years 1999, 2000, 2001, 2002, 2003, 2004, and 2005 in violation of Section 811.319(a)(1) of the Pollution Control Board's Land Pollution Regulations, 35, Ill. Adm. Code 811.319(a)(1), thereby violating Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2006). The Respondents failed to submit all groundwater monitoring data a violation of Condition III. 3. and in accordance with the schedule in Special Condition XI. 11. of Permit No. 1997-033-LF and of Section 811.319(a) and 813.502(a) of the Pollution Control Board's Land Pollution Regulations, 35, Ill. Adm. Code 811.319(a) and 813.502(a), thereby violating Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2006). The Respondents failed to monitor groundwater at the facility a violation of Section 22.17(a) of the Act, 415 ILCS 5/22.17(a) (2006). The Respondents failed to determine background groundwater quality and to submit to the Illinois EPA the groundwater monitoring data required by Permit No. 1997-033-LF in violation of Condition XI. 9. of Permit No. 1997-033-LF, thereby violating Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006). The Respondents failed to collect groundwater samples on a quarterly basis each year and by failing to submit to the Illinois EPA the groundwater monitoring data as required by Permit No. 1997-033-LF in violation of Condition XI. of Permit No. 1997-033-LF, thereby violating Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006). The Respondents failed to annually prepare an evaluation of the groundwater flow direction and the hydraulic gradients at the facility using the groundwater surface elevations and by failing to report this information to the Illinois EPA by July 15th of each year as required by Permit No. 1997-033-LF in violation of Condition XI. 17. of Permit No. 1997-033-LF, thereby violating Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006).

5. Count V

The Respondents caused or allowed the emission of landfill gas directly into the environment as prohibited by Section 811.312(c) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.312(c) and have violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2006). The Respondents failed to check gas monitoring devices and by failing to obtain ambient air samples on a monthly basis as required by Section 811.310(c) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.310(c) and have violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2006). The Respondents failed to submit to the Illinois EPA the results from gas monitoring for each year, ending on December 31, in the annual report as required by Special Condition III. 2., Respondents have violated Condition V. 7. of Permit No. 1997-033-LF and Section 813.501 of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 813.501; have thereby violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006). The Respondents failed to monitor gas at the facility as required by Section 22.17(a) of the Act, 415 ILCS 5/22.17(a) (2006).

6. Count VI

The Respondents caused or allowed the emission of landfill gas into the environment so as to cause or tend to cause air pollution in violation of Section 811.312(c) of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 811.312(c), thereby violating Section 9(a) and 21(d)(2) of the Act, 415 ILCS 5/9(a); 21(d)(2) (2006).

V. RELIEF REQUESTED

The evidence demonstrates that numerous violations of the Act and regulations have occurred. Section 42(a) of the Act permits the Board to impose penalties against those who violate any provision of the Act or regulation adopted by the Board, 415 ILCS 5/42(a) (2006).

The Board may impose a maximum penalty of \$50,000.00 for each violation of the Act, and an additional \$10,000.00 penalty for each day the violation continues, 415 ILCS 5/42(a) (2006).

The Board has broad discretionary powers to assess civil penalties under the statutory authority vested by the Act, *Southern Illinois Asphalt Company v. Pollution Control Board*, 60 Ill. 2d 104, 326 N.E. 2d 406 (1975). Courts have traditionally upheld the imposition of civil penalties where it will "aid in the enforcement of the Act," but not where it is shown to be merely "punitive." *Southern Illinois Asphalt Company*, 326 N.E.2d at 412; see also, *City of Monmouth v. Pollution Control Board*, 57 Ill. 2d 482, 313 N.E. 2d 161 (1974) (punitive considerations for civil penalties are secondary). Amendments to Section 33 of the Act, 415 ILCS 5/33 (2006) and Section 42 of the Act, 415 ILCS 5/42 (2006), all of which were subsequent to the aforementioned cases and all of which increased the penalty amounts subsequent to the aforementioned cases, make it clear that the Board has the power and authority to assess a penalty in this matter.

In the last thirty years of enforcement under the Act, civil penalties assessed by the Board or Illinois courts have fallen between two ends of a spectrum. On the one end, little or no civil penalties have been deemed necessary because of pertinent facts that weighed heavily upon the nature of the violations or the extent of the alleged pollution. Technical or paperwork violations, such as the failure to obtain permits or submit reports, have frequently been afforded this treatment. See, *Park Crematory, Inc. v. Pollution Control Board*, 201 Ill. Dec. 931, 637 N.E.2d 520 (1st Dist. 1994); *Trilla Steel Drum Corporation v. Pollution Control Board*, 180 Ill. App.3d 1010, 536 N.E.2d 788 (1st Dist. 1989). Similarly, the inadvertence of the defendant, *Southern Illinois Asphalt Company*, supra, the good faith efforts of a defendant to bring about compliance prior to the filing of a complaint, *Park Crematory, Inc., supra*; *Bressler Ice Cream Company v. Pollution Control Board*, 21 Ill.App.3d 560, 315 N.E.2d 619 (1st Dist. 1974), and

lack of any economic benefit from noncompliance, *Park Crematory, Inc.*, *supra*, have figured prominently in cases involving low or nominal civil penalties. Again, amendments to Section 33 of the Act, 415 ILCS 5/33 (2006) and Section 42 of the Act, 415 ILCS 5/42 (2006), all of which were subsequent to the aforementioned cases and all of which increased the penalty amounts subsequent to the aforementioned cases, make it clear that the Board has the power and authority to assess a penalty in this matter.

On the other end of the spectrum, some enforcement actions brought under the authority of the Act have resulted in substantial monetary penalties. In these cases, circumstances showing the unreasonableness of the defendant's conduct or its lack of good faith, *ESG Watts, Inc., v. Pollution Control Board*, 282 Ill. App. 3d 43, 668 N.E.2d 1015 (4th Dist. 1996), the seriousness and lengthy duration attributed to the violations, *People v. John Prior and Industrial Salvage, Inc.*, PCB No. 97-111 (November 20, 1997); *People v. Panhandle Eastern Pipeline Company*, PCB No. 99-191 (November 15, 2001), the need for deterrence, *People v. Waste Hauling Landfill, Inc and Waste Hauling, Inc.*, PCB No. 95-91 (May 21, 1998), or the accrual of a significant economic benefit, *Panhandle*, *supra*, have been important considerations in the penalty determination.

Of course, most litigated cases fall somewhere in the middle of the aforementioned spectrum. The determination as the amount of the penalty is dependent on the unique facts of each case, as no exact "formula" for arriving at a penalty exists. *People v. Bernice Kershaw and Darwin Dale Kershaw*, PCB No. 92-164 (April 20, 1995); *People v. ESG Watts, Inc.*, PCB No. 96-233 (February 5, 1998). As to Respondent, Lawrence County Disposal Centre, Inc., the People contend that this case should be ranked at the mid-range of the penalty spectrum. As to the Respondent, Gary Simmons, the People contend that this case should be ranked at the lower end of the penalty spectrum.

In making its orders, the Board is required to consider any matters of record concerning the reasonableness of the alleged pollution, including those factors identified in Section 33(c). The Board is also authorized by the Act to consider any matters of record concerning the mitigation or aggravation of penalty, including those matters specified in Section 42(h). See, *People v. Bernice Kershaw and Darwin Kale Kershaw d/b/a Kershaw Mobil Home Park*, PCB 92-164 (April 20, 1994). The People will outline its penalty demand in two parts: first, a consideration of the Section 33(c) factors and secondly, a consideration of the Section 42(h) factors.

A. Section 33(c) Factors

Section 33(c) of the Act, 415 ILCS 5/33(c)(2006), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

1. The character and degree of injury or interfere

The failure to perform post-closure maintenance of a landfill facility holds the potential for great harm. There are consequences to an operator failing to conduct post-closure care at a landfill facility. As refuse sits in a landfill it forms leachate which is a variety of compounds and chemicals that liquify and mix with groundwater. Leachate can be very detrimental to

groundwater which can negatively affect drinking water. (Tr. p 40 & 41). Failure to maintain the cover or cap of the landfill creates erosion which exposes the refuse in the landfill. The exposed refuse can attract wildlife and can be toxic to wildlife. (Tr. p 41). The failure to restrict access to the landfill enables trespassers to gain access. Mr. Gher noted that four wheeler (all terrain vehicles) got in the facility, at least on one occasion. (Tr. p 42). Failure to follow the terms and conditions of a permit "undermine[s] the permitting process set up through the Act and Board regulations. . ." *People v. Sure-Tan, Inc.*, PCB 90-62, page 9 (April 11, 1991). This factor should weigh against Respondents.

The evidence demonstrates that numerous violations of the Act and regulations have occurred. Sections 42(a) and (b) and 33(c) of the Act authorize the imposition of penalties for those violations. The threat of continued violations remains. Penalties should be imposed to aid in the enforcement of the Act.

2. There is social and economic benefit to the facility

There is social and economic benefit to a properly sited and permitted landfill facility. The facility had a closure permit which imposed post-closure care and maintenance conditions. Unfortunately, the post-closure care was not performed. Failure to perform post-closure care and maintenance is a detriment to the site and to the area.

3. Operation of the facility was suitable for the area in which it occurred

Operation of the facility was suitable for the area and site. This facility was closed. The permit called for post-closure care and maintenance. The suitability of the site for a landfill is not the issue. There was a closure permit issued for the site

4. Compliance the terms of the permit is both technically practicable and economically reasonable.

The landfill facility was closed. A cap was in place, groundwater monitoring wells were in place, gas monitoring wells were in place. Following the post-closure permit and maintaining

this closed facility was technically practicable and economically reasonable. More importantly the care and maintenance is mandatory for the monitoring and the protection of the environment. There are consequences to an operator failing to conduct post-closure care at a landfill facility. As refuse sits in a landfill it forms leachate which is a variety of compounds and chemicals that liquify and mix with groundwater. Leachate can be very detrimental to groundwater which can negatively affect drinking water. (Tr. p 40 & 41). Failure to maintain the cover or cap of the landfill creates erosion which exposes the refuse in the landfill. The exposed refuse can attract wildlife and can be toxic to wildlife. (Tr. p 41). The failure to restrict access to the landfill enables trespassers to gain access. Mr. Gher noted that four wheeler (all terrain vehicles) got in the facility, at least on one occasion. (Tr. p 42). Performing the maintenance work was economically feasible. The condition of this landfill deteriorated over time. The Illinois EPA ultimately collected on the financial assurance bond for post-closure care. The Illinois EPA used the bond proceeds to perform remedial post-closure care at the facility. The Illinois EPA hired Environmental Restoration, LLC of St. Louis, Missouri to perform remediation work at the facility. As indicated in People's Exhibit 20 Environmental Restoration, LLC was paid \$91,927.26 for work done from January 16, 2007 to February 25, 2007 and \$14,348.70 for work done from February 25, 2007 to March 26, 2007. Illinois EPA incurred additional costs of \$5,277.56 in Fiscal Year 2006 and \$6868.38 in Fiscal Year 2007. All of these amounts add up to \$118,421.90. The bond proceeds covered these remediation costs. It would have been economically wiser for Respondents to have maintained the facility all along rather than do nothing and end up with a large expenditure being made all at once.

5. Respondents have not complied with the Act or Board regulations

Respondents have not complied with the permit, with the Act or with the Board regulations. Yes, the remediation work has finally been performed, but the work was performed

after this cause of action was filed and after the post-closure assurance bond was collected. The Illinois EPA had the remediation work performed with the bond proceeds. It should not be deemed a mitigating factor if compliance is achieved only after enforcement proceedings are initiated. *ESG Watts, Inc. v. IPCB*, 282 Ill. App. 3d 43, 52-53 (4th Dist. 1996). ("Evidence. . . presented regarding petitioner's failure to comply with many regulations until after enforcement proceedings were initiated, of the hardship imposed upon the Agency in collecting monies due & the necessity of deadlines to ensure the smooth operation of the Agency. The Board's decision that a stiff penalty was warranted to deter future violations was neither arbitrary nor capricious.").

B. Section 42(h) Factors

Section 42(h) of the Act, 415 ILCS 5/42(h)(2006), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection I of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to

undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

1. The duration and gravity of the violation

A civil penalty imposed under the Act must "bear some relationship to the seriousness of the infraction or conduct" of the polluter. *Southern Illinois Asphalt Company, supra; Trilla Steel Drum Corp. v. Pollution Control Board*, 180 Ill. App. 3d 1010, 1013 (1989) (penalty should be "commensurate with the seriousness of the infraction"). The Act "authorizes the Board to assess civil penalties for violations regardless of whether these violations resulted in actual pollution." *ESG Watts v. Illinois Pollution Control Board*, 282 Ill. App. 3d 43, 51 (4th Dist. 1996). In this case, the evidence establishes violations of long duration. This Board should find that the duration of the violations to be a factor in aggravation of the penalty amount.

2. The presence or absence of due diligence on the part of the violator

The condition of this landfill deteriorated over time. The Illinois EPA ultimately collected on the financial assurance bond for post-closure care. The Illinois EPA used the bond proceeds to perform remedial post-closure care at the facility. The Illinois EPA hired Environmental Restoration, LLC of St. Louis, Missouri to perform remediation work at the facility. As indicated in People's Exhibit 20 Environmental Restoration, LLC was paid \$91,927.26 for work done from January 16, 2007 to February 25, 2007 and \$14,348.70 for work done from February 25, 2007 to March 26, 2007. Illinois EPA incurred additional costs of \$5,277.56 in Fiscal Year 2006 and \$6868.38 in Fiscal Year 2007. All of these amounts add up to \$118,421.90. The bond proceeds covered these remediation costs. The Respondents did not comply with the permit, the Act, or the Board regulations. Complainant therefore recommends that the Board find the absence of due diligence on the part of the Respondents to be a factor in aggravation of the penalty.

3. An economic benefit was accrued by the Respondents because of delay

The time cost of money and other abstract concepts may, of course, be considered by the Board. However, the People would urge that the Board consider the evidence presented at hearing regarding the actual costs Respondents have avoided by failing to comply with the permit, the Act, and applicable Board regulations.

Respondents have avoided certain costs, particularly those associated with sampling, monitoring, and maintenance. From at least the beginning of the year 2001 through the time at which the Illinois hired Environmental Restoration, LLC, of St. Louis, Missouri to perform the necessary remediation work in 2007, Respondents did not incur any costs or expend any money in complying with the permit, the Act, or the Board regulations. The Respondents saved approximately \$118,421.90 which are the costs incurred by the Illinois EPA and paid out of the financial assurance bond proceeds which were collected by the Illinois EPA. Complainant submits that Respondents' savings amount to the time uses value of the money over the approximate six year time period. The interest value of this money should be assessed against Respondents as a penalty. The interest should be computed by using the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003. This Board should find that Respondents have saved money as a result of their noncompliance, and these savings should be considered by the Board in reaching its final order and opinion.

4. Amount of monetary penalty which will serve to deter further violations

The violations in this matter were long-standing. Neither the sending of the inspection reports to the Respondents, nor the threat of legal action brought about any change in Respondents' actions. Compliance was only achieved through the Illinois EPA obtaining the assurance bond funds. The Illinois EPA then used the bond funds to have the remediation work done at this facility. Mr. Gher testified that violations still occur at the facility even after the

compliance work that was done in early 2007. Complainants recommend a civil penalty assessment of \$1,000 be assessed against Respondent, Gary Simmons. Complainants recommend a civil penalty assessment of \$10,000 be assessed against Lawrence County Disposal Centre, Inc. Complainant submits that these penalty amounts are necessary to deter further violations.

5. Previously adjudicated violations of this Act

In 1993 a complaint was filed against Gary Simmons, individually, and Lawrence County Disposal Centre, Inc., in Lawrence County Circuit Court case number 93-CH-12. Other than fulfilling our obligation to disclose this prior action to the Board, Complainant is not submitting this prior action as a factor in aggravation.

6. Self-disclosure of violations

There was no self-disclosure in this case.

7. Supplemental Environmental Projects

There are no supplemental environmental projects in this matter.

VI. Conclusion

As proven by the evidence admitted and the testimony presented during the hearing, the Respondents, Gary Simmons, individually, and Lawrence County Disposal Centre, Inc., have violated the closure permit, the Act and Board regulations. The Board should order the Respondents to immediately cease and desist from further violations. As sanctions for the violations, and in view of the factors under Section 33(c) of the Act, 415 ILCS 5/33(c), and under Section 42(h) of the Act, 415 ILCS 415 ILCS 5/42(h), the Board should grant the following relief:

- 1) Mandate the Respondents to perform post-closure maintenance and monitoring

of the facility; mandate the Respondents to renew the closure permit;

2) Impose a civil penalty of \$1,000 to be paid by Respondent, Gary Simmons, individually;

3) Impose a civil penalty of \$10,000 to be paid by Lawrence County Disposal Centre, Inc.;

4) Impose an additional penalty against Lawrence County Disposal Centre, Inc., regarding the time use value of the money Respondent saved—the interest value on approximately \$118,421.90. The interest value of this money should be assessed against Respondent as a penalty. The interest should be computed by using the maximum interest rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003;

5) Award attorney's fees and costs as supported by an affidavit of time and other expenditures in the prosecution of this case.

6) Grant such other relief as the Board deems appropriate.

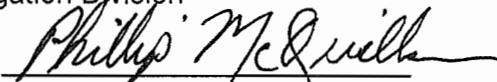
WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully submits this Brief in support of its case and requests that the Board enter a final order finding the violations alleged in the complaint to have been committed, and to have caused adverse environmental impacts, and award the relief requested herein.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois,

MATTHEW J. DUNN, Chief
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BY:



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