

ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, ex)
rel. LISA MADIGAN, Attorney General of the)
State of Illinois,)
))
Complainant,)
))
v.)
))
COMMUNITY LANDFILL CO., an Illinois)
Corporation, and the CITY OF MORRIS, an)
Illinois municipal corporation,,)
))
Respondents)

PCB 03-191
(Enforcement – Land)

NOTICE OF ELECTRONIC FILING

Please take notice that on October 29, 2009, we will have caused to be filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the City of Morris' motion for leave to file reply in support of the motion for stay, tendering the reply and exhibits with the motion for leave to file.

CERTIFICATE OF SERVICE

I, the undersigned, an attorney certify that I will have caused to be served on October 29, 2009 the foregoing motion for leave to file reply in support of the motion for stay and the tendered reply and exhibits on all persons on the attached service list by U.S. Mail with proper postage prepaid at approximately 5:00 p.m.

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(815) 490-4900

/s/ Charles F. Helsten
One of the attorneys for the City of Morris

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SERVICE LIST

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(via U.S. Mail and electronic filing)

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ILLINOIS POLLUTION CONTROL BOARD

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PCB 03-191
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**MOTION OF THE CITY OF MORRIS FOR LEAVE TO FILE A
REPLY TO THE STATE’S RESPONSE TO THE CITY’S MOTION FOR STAY**

Respondent City of Morris request this Board to grant leave to file a reply to the State’s response opposing the City’s motion for stay pending appeal pursuant to 35 Ill.Adm.Code 101.500(e), for the following reasons.

1. The City seeks a stay pending appeal as the Illinois Supreme Court Rule 335 and § 101.906(c) of this Board’s regulations permit. The State has responded, objecting to the stay.

2. In the attached reply, tendered with this motion, the City has endeavored to limit its reply to those issues and facts raised in the State’s response. The City seeks to respond to the State’s statements of fact and to its legal arguments.

3. Among other points, the City seeks to reply to the State’s assertion that the City failed to make any assurance regarding whether there is any threat of harm posed by a stay. The City has provided such assurance in an affidavit submitted with the motion for reconsideration as exhibit C. In its reply, the City attaches this affidavit (again as exhibit C) to demonstrate the fallacy of the State’s statement. It also updates this information, specifically showing that

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according to Shaw Environmental, Inc., which has been monitoring the Landfill since 2005, there still is no current risk to human health or to the environment (*see* Exhibits A and C attached to the reply, both of which are incorporated herein by reference).

4. In its response, the State erroneously asserted that the City is seeking a stay of this Board's requirement that revised cost estimates be submitted. In fact, the City already submitted these revised cost estimates (*see* Exhibit A attached to the reply and incorporated herein by reference).

5. The State also claims that the City is permitting continued dumping at the Community Landfill, and the City seeks to reply to that statement. In October 2002, the Mayor prohibited any City employee from any dumping at the Community Landfill (City Mo/reconsideration, Exhibit E, incorporated by reference herein). The Mayor continues to enforce that directive (*see* Exhibit E attached to the tendered reply and incorporated by reference herein). The City still prohibits any dumping at the Community Landfill – it is only allowed at an unrelated landfill (Environtech) (*see* Exhibit E, attached to the tendered reply and incorporated by reference herein).

6. The State also claims that the City dumped waste water sludge at the Landfill in 2007 and 2009. Starting 2006, however, the City started to use a sludge filter press, which creates a semi-dry product that is are deposited at an unrelated landfill (Environtech) (Reply exhibit E). Any liquid sludge cannot therefore be from the City of Morris; however, the CLC operator told the mayor that other communities have dumped sludge at Community Landfill (Exhibit E).

6. In its reply, the City also seeks to rebut the State's claims regarding dumping by submitting the affidavit of Warren Olson (*see* Exhibit D, attached to the reply and incorporated herein by reference). Mr. Olson explains that the conclusions of the State's employee, Mark Retzlaff, that there is dumping in the Community Landfill is incorrect. Rather, there was a "drive-by" dumping incident on City-owned land outside of the Landfill boundaries (*see* Exhibit D). The City has now taken steps to secure that area of land to stop any further "drive-by" dumping.

7. In addition, the City seeks to include an excerpt of this Board's findings in the case of *People v. CLC & Prium*, PCB Cons. Nos. 97-193, 04-207 (August 20, 2009), pages 26, 48, to establish that CLC and its employee, James Pelnarsh, Sr., not the City, who makes the decisions on where to dump and controls the daily operations of that landfill (*see* Exhibit B, attached to the reply and incorporated by reference herein).

For these reasons, the City of Morris requests that this Board grant leave to file the attached reply and for such other relief as is proper.

Dated: October 29, 2009

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Respectfully submitted

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Attorneys for Respondent the City of Morris

ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, ex)
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Respondents)

**CITY OF MORRIS’S REPLY IN SUPPORT OF ITS
MOTION TO STAY PENDING APPEAL**

The Illinois Legislature has given litigants an appeal as of right from decisions of this Board. 415 ILCS 5/42. Entering a stay pending appeal is routinely allowed where, as here, the movant is a government entity. This is not a situation where the City is going to flee the country or dissipate the funds. Rather, the City is simply exercising its right to appeal this Board’s decision. If it does not prevail after its appellate rights are exhausted, then it will obviously comply with this Court’s order. The City respectfully requests this Board to enter a stay pending appeal.

I. The State Repeatedly Misstates the City’s Position, the Record, and this Board’s Decision.

In opposing the stay, the State makes multiple misrepresentations for reasons that are unclear. It distorts this Board’s order, the record, and the City’s position in seeking a stay, as shown below.

First, it is false that the City of Morris “seeks to shield [Community Landfill Company] CLC from compliance” – the opposite is true (State Resp. p. 4 n.12). The City sought a stay on its own behalf without a bond. There can be no doubt that the City was

not attempting to represent or protect CLC's interests. The City's motion to stay expressly states: "If this Board believes that an appeal bond is needed, in light of its ultimate holding in the matters noted immediately above, it should require ***CLC and the Pruims to*** post the bond and ***comply with the orders***, not the municipality" (City Mo/Stay p.9, emphasis added). The State has then completely misrepresented the City's motion and position.

Second, the State falsely claims that the City is seeking a stay of the Board's order to provide revised cost estimates within 60 days; this misstates the facts known to the State (State Resp. 3). The City is not seeking a stay of the revised cost estimates because it submitted them before they were due. The PCB rules provide that an order is automatically stayed when a motion to reconsider is filed, so the first deadline of August 17 was suspended, as this Board expressly recognized in its order (9/17/09 Order p.2). 35 Ill.Adm.Code §101.902. Here, a timely motion for reconsideration was filed, and upon ruling on the motion, this Board held the "deadline date for performance is now November 16, 2009" (9/17/09 Order p.2). The City submitted the revised cost estimates on August 17, 2009, within the original deadline, and three months before the current deadline (*see* attached Exh. A, Varsho affidavit). On September 15, 2009, the EPA required CLC, as the operator, to sign the estimates within 35 days, which was also done ahead of schedule, on October 9, 2009 (*id.*) As such, the City is not seeking a stay of the revised cost estimates, they were submitted some time ago.

A third misrepresentation is the State's argument that the "closure of Parcel B of the Landfill was due in 1996" (Resp. 4). This deliberately ignores this Board's order, which expressly declined to order the closure of Parcel B: "[T]he Board does not order

immediate closure of the portion of the Landfill known as Parcel B. The record in this case does not support such relief” (6/18/09 Order p.3). Moreover, there was testimony in 2007 that the EPA never directed CLC (much less the City) to close Parcel B (9/11/07 Tr. 235-37).

A fourth gross misrepresentation by the State (again unsupported by citation to the record) is that the City has authorized dumping in the Landfill (State Resp. pp. 3-4). Over seven years ago, the City’s Mayor prohibited any dumping (City’s Mo/Reconsider Exh. E). The mayor’s directive was to “all City employees” and stated: “Effective immediately, there will be no more dumping of any kind by the City of Morris at the Community Landfill site on Ashley Road. This is inclusive of both sides of the road, Parcel A (east side) or Parcel B (west side)” (City Mo/Reconsider Exh. E). This directive is still in effect and enforced by the City and its Mayor (*see* attached Exh. E, Kopczick affidavit).

Notably, the State’s assertion that the City has been dumping at the Landfill is without citation to the record (State Resp. p.3 n.8). To the extent that the State is relying on the affidavit by Mark Retzlaff¹ which the State submitted with its June 3, 2009 request for final ruling, and Retzlaff’s photos,² it has misplaced its reliance. The State buries in a footnote (again, notably, without citation to the record) that there was testimony at the 2007 hearing that the City “had” continued to dump its water treatment plant sludge” (State Resp. 3 n.8). This use of the past tense is deliberate. The State

¹ This Board denied that motion as moot, declining to consider the evidentiary materials in entering its final order (6/18/09 Order p.17). The State again attached this affidavit to its response to the City’s motion to reconsider as exhibit 2.

² Upon receiving the State’s request for final order, the City requested and obtained a copy of Retzlaff’s report on the inspection, which included photos.

knows that the City does not dump anything at this Landfill under the Mayor's 2002 order (Exh. E; City Mo/reconsider exh. E). The City uses an unrelated landfill (Environtech), not Community Landfill (Exh. E).

Mr. Retzlaff stated he saw waste water sludge and other refuse at the Landfill in 2007 and 2009, but he erred in assuming that this was from the City of Morris. As shown in the Mayor's affidavit, sludge from the City of Morris is not dumped in liquid form. Starting in 2006, a sludge filter press has been used by the City. This machine presses liquid sludge and solidifies it into a semi-dry product that has the consistency of play dough (Exh. E). This product (as well as all other refuse, street sweepings and other materials from the City) are then deposited in the Environtech landfill, not the Community Landfill.

Regardless of what Mr. Retzlaff saw, he is incorrect in presuming it came from the City (Exh. E). CLC's on-site operator, James Pelnarsh, Sr., admitted to the Mayor that other communities, not the City of Morris, dumped wastewater sludge at Community (Exh. E). It may be that Mr. Pelnarsh said that the refuse and sludge was from the "city," and Mr. Retzlaff assumed it was the City of Morris.³

Retzlaff also stated he had personally seen a single instance where a City truck dumped unidentified materials into the Landfill in April 2009 (State Resp. to City's Mo/Reconsideration Exh. 2 ¶12). Once the City learned of this claim from Retzlaff's affidavit, it promptly investigated. Five days after Retzlaff's affidavit and photos were

³ Regardless, Retzlaff's statements regarding out-of-court statements by CLC's employee, James Pelnarsh, Sr., are hearsay, which is incompetent evidence (State Resp. to City's Mo/Reconsideration Exh. 2 ¶10). *Beauvoir v. Rush-Presbyterian-St. Lukes Med. Ctr.*, 137 Ill.App.3d 294, 302, 484 N.E.2d 841, 846 (1st Dist. 1985) (hearsay statements are incompetent evidence and do not create a material fact issues for summary judgment).

provided to the City, the Mayor asked Warren Olson (a principal in the City's outside civil engineering firm) to verify Retzlaff's claims (*see* attached Exh. D). Olson took Retzlaff's photographs and had the area surveyed to determine the Landfill's boundary (Exh. D). Olson verified that, contrary to Retzlaff's claims, the material was dumped on City property, "well outside the boundary of [the] landfill" (Exh. D ¶¶4-7).⁴ The "drive-by" dumping incidents depicted in the Retzlaff photographs show dumping that apparently occurred on the City-owned property adjacent to the Landfill facility, referred to as the "head-end" site (Exh. D). After the City became aware of this situation, it placed a padlocked gateway and erected signs to warn "would-be dumpers" to keep out (Exh. D ¶¶8-9). These steps stopped further incidents of drive-by dumping in this area (Exh. D ¶9).

The State continues to conflate CLC and the City in claiming the City permits dumping (State Resp. 3). As this Board expressly noted in *State v. CLC & Pruim* PCB Cons. Nos. 97-193, 04-207, "***only the Pruims could decide to stop accepting waste at the landfill***" (*see* attached Exh. B, *State v. CLC and Pruim*, PCB Cons. Nos. 99-193, 04-207 Order of Aug. 20, 2009, p.48, emphasis added). CLC controls the daily operations and has a full-time employee, James Pelnarsh, Sr., who has made all the daily operations decisions, including where to place waste (Exh. B p.26). The City is not the guarantor of a private company's actions – and it cannot control CLC's actions.

Fifth, the State falsely claims that the City is not overseeing or monitoring the Landfill (State Resp. 3, 4). The State's claim that the City should be regularly monitoring

⁴ At the 2007 hearing, Retzlaff testified certain material was deposited outside the edge of the permitted area; he then admitted he made no effort to identify the location of the edge of the permitted area to determine whether the material was, in fact, within that permitted area (Tr. 9/11/07 at 91-92, 96, 112).

the Landfill (and that a stay should be conditioned on this) ignores the fact that the City has been monitoring the Landfill conditions for years (State's Resp. 2-4). Over four years ago, the City, on its own initiative, decided to conduct periodic testing at the Landfill to monitor if there was any risk to the public or the environment (Exh. A ¶¶2-4; Exh. C ¶¶4-11; City Mo/Reconsider Exh. A, Egner Affidavit). Starting in 2005, experienced environmental professionals from Shaw Environmental, Inc. have spent over 1,000 man hours and performed over 10,000 air and groundwater tests (*see* attached Exh. A, C). Monthly monitoring of the permitted perimeter below grade landfill gas probes occurs to determine whether below grade gas migration is taking place at the site (Exh. C ¶8). The below-grade landfill gas concentrations are not increasing (Exh. C ¶8). Methane levels are within regulatory limits and comply with the appropriate state regulations (Exh. C ¶9).

In painting the City as indifferent to the safety of its citizens, the State ignores uncontroverted evidence of the City's ongoing, voluntary efforts to protect public safety, which includes not simply hiring Shaw to test and monitor the Landfill, but also accumulating soil for the eventual cover that will be needed for the Landfill (City Mo/Reconsider Exh. A, Enger Affidavit ¶¶7-8).

A repetitive theme of the State's response is that if there is a stay, it "would threaten harm to the public" and to the environment (State Response 1, 2 & n.6, 3, 3-4, 4). The State falsely claims that the City failed to provide assurance that human health and the environment will be protected (State Resp. 3). A multitude of tests have established, and continued to establish, that there is no current threat to the health and safety of the public (*see* attached Exh. A & C, Varso Affidavits). The City made this

demonstration in July 2009 with its Motion to Reconsider (Exh. C), and has updated this assurance that there is no threat to human or environmental safety in this Reply (Exh. A). It must be remembered that if this Board believed there was a reason to close Parcel B, it would have closed it (6/18/09 Order p.3). The State's claim that the Landfill is "deteriorating" and poses a threat to human health and the environment is pure speculation and conjecture and made without citation to the record (State's Resp. 2, 3-4). Shaw's tests establish that this Landfill does not present a threat to human health or to the environment (*see* attached Exh. A, C, Varsho 2009 Affidavits).

To claim that a stay should be conditioned on requiring the City to take "repair or emergency response efforts" ignores the issues of this case which this Board resolved. The State sued for "Failure to Provide Adequate Financial Assurance" in a one-count complaint (Cmplt p.1). The State asked this Board to require "Respondents to immediately obtain, and provide to Illinois EPA, landfill closure and post-closure financial assurance" and to order the respondents to "cease and desist" from violating the *financial assurance* statutes and regulations (*id.* p. 7 ¶¶3-4, emphasis added). It must be remembered that State did not sue for any alleged violation of regulations regarding the repair or maintenance of the Landfill. Rather, it elected to sue only to enforce the financial assurance regulations that provide funding for closure and post-closure costs (State Resp.2-4), and this Board expressly declined to order closure (6/18/09 Order p.3).

Again, this Board did not order the City (or CLC for that matter) to undertake maintenance, repairs or other action on the Landfill (State Resp. 4). It ordered the City to post financial assurance, or submit paperwork. Submission of paperwork by a city, which is going nowhere because it is a government entity that owns the land, does not

promote the health, safety and welfare of the public, as the State suggests when it claims that a stay pending appeal “threatens the public welfare” – a claim that is unsupported by this record and refuted by the affidavits of Shaw’s environmental professional who continue to monitor the Landfill (State Resp.4; Exh.A, C).

While the posting of financial assurance or an appeal bond by CLC – the privately-owned landfill operator – is appropriate, it is not appropriate for the City (*see* City’s Mo/Reconsideration, Exhs. A, D). The State’s suggestion that the City, which owns the land, might “abandon” the Landfill is ludicrous (State Resp. 2 n.6). A city cannot disappear.

II. This Board Should Not Abdicate Its Statutory Duties in Ruling on a Stay.

The State suggests that this Board should abdicate its responsibility for ruling to the motion for stay and should just leave this decision to the appellate court (State Resp. 2, 4-5). This Board should not abdicate its statutory responsibilities or decline to rule on a motion for stay that its own regulations expressly authorize. 35 Ill.Adm.Code § 201.906(c).

The State is wrong in claiming that this Board lacks any procedures to decide the stay motion. The Illinois Supreme Court has provided for guidelines in ruling on a motion for stay. *Stacke v. Bates*, 138 Ill.2d 295, 304-05, 562 N.E.2d 192, 196 (1990).

The State misleadingly claims in its title for § III that “An Appropriate Bond Will Be Set by the Appellate Court,” although elsewhere the State in fact admits that Rule 305(i) permits waiver of any bond for appeals by public agencies (*compare* State Resp. 4 *with* 5). Rule 305(I) provides:

- (i) Appeals by Public Agencies. If an appeal is prosecuted by a public, municipal, governmental, or quasi municipal corporation, or by a public officer in that person’s official capacity for the benefit of the public, the

circuit court, or the reviewing court, or a judge thereof, may stay the judgment pending appeal without requiring that any bond or other form of security be given.

What is notable is that nowhere does Rule 305 state that an appellate court has the authority to “condition grant of a stay on proper maintenance of the Landfill” as the State asks and which is far beyond the issues in this case (State Resp. 5).

This Board is familiar with the record and is charged with enforcement of its regulations. The State’s concern that there is no formulaic process to determine the amount of the bond misapprehends that this Board, like the appellate court, has the discretion to decide whether to require any bond whatsoever. This is a small community that has a limited ability to generate revenue. Its current funds already have designated purposes such as city operations, including police protection and paying the city employees, and pre-existing contractual obligations (City Mo/Reconsider, Exh. A, Enger affidavit).

Financial assurance is intended to provide funds for closure and post-closure costs. Neither Parcel A or B have been ordered to be closed. This Board refused to order Parcel B closed, and Parcel A still has available capacity. If the City does not prevail on appeal, it can then initiate procedures regarding financial assurance. But at this point, the Landfill has not been ordered to be closed, and there is no urgency to provide funding for the eventual closure of this Landfill. Under the circumstances of this case, if the requirement to post financial assurance is stayed, no risk is created and no harm is threatened. Not requiring a bond is appropriate given the fact that the City is a government entity.

Conclusion

For these reasons, the City of Morris requests this Board to stay its order pending appeal and for other relief as this Board deems proper.

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(815)941-4675

/s/ Charles F. Helsten
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Attorneys for the Respondent City of Morris

EXHIBIT LIST

Exhibit	Description
A	Jesse P. Varso Affidavit (with attached October 9, 2009 Community Landfill Company Response to the EPA's September 15, 2009 letter).
B	<i>People v. Community Landfill Company & Prium</i> , PCB Cons. Nos. 97-193, 04-207, excerpt of August 20, 2009 PCB Order, pp. 26, 48.
C	Jesse P. Varso affidavit (filed with City of Morris motion to reconsider as Exhibit C).
D	Warren Olson affidavit (filed with City of Morris motion for leave to file reply in support of motion to reconsider as Exhibit B).
E	Richard P. Kopczick Affidavit

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Plaintiff,

v.

COMMUNITY LANDFILL CO., an Illinois
Corporation, and the CITY OF MORRIS, an
Illinois Municipal Corporation,,

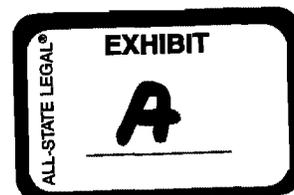
Defendants.

PCB 03-191
(Enforcement - Land)

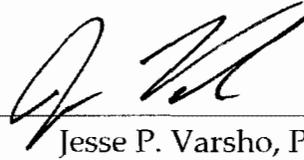
AFFIDAVIT OF JESSE P. VARSHO

I, Jesse P. Varsho, hereby certify pursuant to 735 ILCS 5/1-109 as follows:

1. I signed an affidavit dated 7/22/09 discussing the site conditions of the Morris Community Landfill. My opinions regarding the conditions of the Landfill have not changed since I signed that affidavit.
2. Starting in 2005, Shaw has been conducting on-site visits and reviewing the IEPA file. Since June 2005, Shaw has actively monitored the Landfill.
3. Since July 22, 2009, when I signed my first affidavit, Shaw Environmental, Inc. (Shaw) has continued to monitor the conditions at the Landfill. There has been no significant change in the condition of the Landfill. It still does not pose a current threat to the public health, safety & welfare.
4. The City of Morris continues to pay Shaw to monitor the Landfill conditions and perform other work.
5. On or before August 17, 2009, I submitted revised cost estimates to the IEPA. On September 15, 2009, the IEPA required Community Landfill Company (CLC) as the operator to sign the estimates. CLC complied with this directive and returned the documentation to the IEPA as required within 35 days on October 9, 2009. CLC's attorney sent me a copy on October 9, 2009, a true and correct copy of which is attached to this affidavit.
6. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated



to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Jesse P. Varsho, P.E., P.G.

OCT 26 2009

FAX TRANSMISSION

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Confidential Information: This fax contains confidential information which also may be legally privileged and which is intended for the use of only the addressee(s) named below. If you are not the intended recipient of this fax, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this fax is strictly prohibited. If you have received this fax in error, please immediately notify us by telephone and return the original fax to us at the above address via the U.S. Postal Service. Thank you.

To: Scott Belt
815-941-4677

Date: October 9, 2009

Charles Helsten
815-490-4901

Pages: 15, including this cover sheer.

Jesse Varsho
(630) 762-1402

From: Mark A. LaRose

Subject: Community Landfill -- Parcels A & B
0630600001 -- Grundy County
Permit Applications for revised closure/post-closure care cos

COMMENTS:

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*ADMITTED IN MICHIGAN ALSO
**ADMITTED IN WISCONSIN ONLY

By Federal Express

Illinois Environmental Protection Agency
Bureau of Land - #33
Permit Section
1021 North Grand Avenue East
Springfield, IL 62794-9276
ATTN: Mr. Stephen F. Nightingale, P.E.

Re: **0630600001 – Grundy County
Community Landfill – Parcel A
Log No. 2009-424
Permit Landfill 810-817 File
Permit DOI**

Dear Mr. Nightingale:

We are in receipt of your letter dated September 15, 2009 (copy enclosed) requesting additional information to complete the permit application submitted by Shaw Environmental, Inc. on August 17, 2009, and received by the IEPA on August 18, 2009 in the above matter. Please note we are enclosing the requested information for both **Parcel A and Parcel B** as follows:

Parcel A

•An original and 3 copies of the signature page to the General Application Permit (LPC-PA1). This page has been signed and dated by the operator and his signature has been notarized.

•An original and 3 copies of the Certification of Authenticity of Official Forms (to be inserted as the last page of "Attachment 1"). This page has been signed and dated by the operator and his signature has been notarized.

Illinois Environmental Protection Agency
October 9, 2009
Page 2 of 2

Parcel B

•An original and 3 copies of the signature page of the General Application Permit (LPC-PA1). This page has been signed and dated by the operator and his signature has been notarized.

•An original and 3 copies of the Certification of Authenticity of Official Forms (to be inserted as the last page of "Attachment 1"). This page has been signed and dated by the operator and his signature has been notarized.

Pursuant to your letter, we have marked this additional information "revised 10/9/09" on the bottom, right hand corner of each of the pages. For your convenience, we have also enclosed copies of the August 17, 2009 cover letters which were submitted with each of the permit applications (Parcel A and Parcel B).

We trust that the above information satisfies the deficiency noted in your September 15, 2009 correspondence. If you have any questions regarding this submittal, please feel free to contact me.

Very truly yours,


Mark A. LaRose

MAL/mk
Enclosures

cc: Community Landfill Co.
Mr. Scott Belt (by fax (815) 941-4677)
Mr. Charles F. Helsten (by fax (815) 490-4901)
Mr. Jesse Varsho, P.E., P.G., Shaw Environmental, Inc. (by fax (630) 762-1402)



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/524-3300

September 15, 2009

Certified Mail
7002 3150 0000 1111 1018
7002 3150 0000 1111 1025

OWNER

City of Morris
Attn: Mayor Richard Kopczick
320 Wauponsee Street
Morris, Illinois 60450

OPERATOR

Community Landfill Company
Attn: Mr. Robert J. Pruim
1501 S. Ashley Road
Morris, Illinois 60450

Re: 0630600001 -- Grundy County
Community Landfill - Parcel A
Log No. 2009-424
Permit Landfill 810-817 File
Permit DOI

Dear Mayor Kopczick and Mr. Pruim:

Pursuant to 35 IAC 813.103(b), the Illinois Environmental Protection Agency has reviewed, for purposes of completeness only, the application referenced above, dated August 17, 2009 and received August 18, 2009. This review has revealed that the application does not contain the information described below and therefore is incomplete. This determination of incompleteness is based on the omission of the following item(s):

1. The application was not signed by the operator. Pursuant to 35 IAC Section 812.104, all permit applications shall be signed by a duly authorized agent of the operator and property owner.

Within 35 days after the date of mailing of this Illinois EPA final decision, the applicant may petition for a hearing before the Illinois Pollution Control Board to contest the decision of the Illinois EPA, however, the 35-day period for petitioning for a hearing may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Illinois EPA within the 35-day initial appeal period.

If you submit additional information addressing the deficiencies identified within 35 days of the date of this letter, the Illinois EPA shall review it for completeness in conjunction with the information contained in the application deemed incomplete. If additional information is submitted, this new application will be considered to have been filed on the day that the additional information was received by the Illinois EPA. Please be aware that any additional information should:

Rockford • 4302 N. Main St., Rockford, IL 61103 • (815) 987-7760
Eggs • 595 S. State, Eggs, IL 60123 • (847) 908-3131
Barron of Land - Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5462
Collinsville • 2009 Main Street, Collinsville, IL 62234 • (618) 346-5120

Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60016 • (847) 294-4000
Peoria • 5413 N. University St., Peoria, IL 61614 • (309) 693-5463
Champaign • 2125 E. First St., Champaign, IL 61820 • (217) 278-5800
Marion • 2309 W. Main St., Suite 116, Marion, IL 62959 • (618) 993-7200

Page 2

- ✓ 1. be in a format which allows incorporation of the new information into the appropriate sections of the current application;
- ✓ 2. include a cross-reference indicating where in the new information each deficiency, identified above, has been addressed;
- ✓ 3. have the date of the revision on each page and on each drawing;
- ✓ 4. include an original and at least three copies; and
- ✓ 5. be submitted to the address below.

Illinois Environmental Protection Agency
Bureau of Land -- #33
Permit Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

If you do not submit additional information within 35 days, you will need to submit a new permit application in its entirety.

If you have any questions regarding this letter, please contact Christine Roque at 217/524-3299.

Sincerely,



Stephen F. Nightingale, P.E.
Manager, Permit Section
Bureau of Land

CJL
SFN:CMR/bjh\091132s.doc

cc: Jesse P. Varsho, P.E. - Shaw Environmental, Inc.



A World of Solutions™

August 17, 2009

Stephen F. Nighthingale, P.E.
Permit Section Manager
Illinois Environmental Protection Agency
Bureau of Land
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

Re: Site ID No. 0630600001
Morris Community Landfill - Parcel A (Permit No. 200-155-LFM)

Dear Mr. Nighthingale:

Shaw Environmental (Shaw) is submitting this permit application to revise closure and post-closure cost estimates for the Morris Community Landfill - Parcel A. The narrative below and the included attachments provide explanation of the closure and post-closure cost estimate revisions and all supporting documentation. The original and 4 copies are provided; the appropriate IEPA forms are provided in Attachment 1.

Narrative

Shaw has revised the closure and post-closure cost estimates for Morris Community Landfill - Parcel A. The revised cost estimates represent the most current costs required to complete closure of Parcel A and to fund post closure care activities as required by the applicable regulations. Tables summarizing the tasks and costs associated with the closure and post-closure care of Parcel A are included in Attachment 2. The closure and post-closure care cost tables include both the quantities required along with the appropriate unit costs and references for the unit costs.

An operating plan supporting the revised closure and post-closure cost estimates for Parcel A has been developed and is included in Attachment 3.

On November 14, 1994, the City of Morris passed an ordinance that prohibited the disposal of any waste material with the exception of inert C&D materials. This ordinance is provided in Attachment 4. Since Parcel A unit has taken only inert waste, therefore the applicable regulations are 35 Ill. Adm. Code Subpart A (811.100) and Subpart B (811.200).

The closure and post-closure care cost estimates include a revised final cover design that meets the requirements of 35 Ill. Adm. Code 811.204. Additionally, the post-closure cost for 100 years of groundwater treatment has been removed since 35 Ill. Adm. Code 811.317 is no longer applicable.

Mr. Stephen Nightingale
IEPA - Bureau of Land

Page 2 of 2
August 17, 2009

Groundwater, leachate and perimeter landfill gas probe sampling are included in the post-closure cost estimates even though not required by the regulations. This additional sampling will be an additional safety factor to ensure protection of the public health, welfare and safety.

We look forward to working with the IEPA to resolve all the of IEPA concerns with this permit application in a timely manner. If you have any questions, please contact me at (630) 762-1400.

Sincerely,

Shaw Environmental, Inc.



Jesse Varsho, P.E., P.G.
Project Manager

cc: Mayor Richard Kopczick - City of Morris
Chuck Helsten - Hinshaw & Culberston



A World of Solutions™

August 17, 2009

Stephen F. Nightingale, P.E.
Permit Section Manager
Illinois Environmental Protection Agency
Bureau of Land
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

Re: Site ID No. 0630600001
Morris Community Landfill - Parcel B (Permit No. 200-156-LFM)

Dear Mr. Nightingale:

Shaw Environmental (Shaw) is submitting this permit application to revise closure and post-closure cost estimates for the Morris Community Landfill - Parcel B. The narrative below and the included attachments provide explanation of the closure and post-closure cost estimate revisions and all supporting documentation. The original and 4 copies are provided; the appropriate IEPA forms are provided in Attachment 1.

Narrative

Shaw has revised the closure and post-closure cost estimates for Morris Community Landfill - Parcel B. The revised cost estimates represent the most current costs required to complete closure of Parcel B and to fund post closure care activities as required by the applicable regulations. Tables summarizing the tasks and costs associated with the closure and post-closure care of Parcel B are included in Attachment 2. The closure and post-closure care cost tables include both the quantities required along with the appropriate unit costs and references for the unit costs.

An operating plan supporting the revised closure and post-closure cost estimates for Parcel B has been developed and is included in Attachment 3.

The revised closure and post-closure cost estimates for Parcel B do not include costs for 100 years of leachate treatment. Under 35 Ill. Adm. Code 814.402, landfills that initiate closure within seven years of January 13, 1994 are exempt from developing a groundwater impact assessment.

Parcel B of Morris Community Landfill initiated closure activities within this seven year time period and is therefore exempt from developing a groundwater impact assessment model. Documentation of the placement of the final cover prior to 2000 is provided in Attachment 4. Additionally, Parcel B has not received waste since the early 1990s.

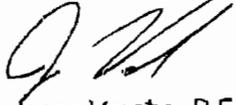
Mr. Stephen Nightingale
IEPA - Bureau of Land

Page 2 of 2
August 17, 2009

We look forward to working with the IEPA to resolve all the of IEPA concerns with this permit application in a timely manner. If you have any questions, please contact me at (630) 762-1400.

Sincerely,

Shaw Environmental, Inc.



Jesse Varsho, P.E., P.G
Project Manager

cc: Mayor Richard Kopczick - City of Morris
Chuck Helsten - Hinshaw & Culberston

Site I.D. No. 0630600001

**MORRIS COMMUNITY LANDFILL – PARCEL A
(Permit No. 200-155-LFM)**

**ADDITIONAL INFORMATION
SUBMITTED 10/9/09**

•An original and 3 copies of the signature page to the General Application Permit (LPC-PA1). This page has been signed and dated by the operator and his signature has been notarized.

•An original and 3 copies of the Certification of Authenticity of Official Forms (to be inserted as the last page of "Attachment 1"). This page has been signed and dated by the operator and his signature has been notarized.

IV. COMPLETENESS REQUIREMENTS

The following items must be checked Yes, No or N/A. Each item will be reviewed by the log clerk. Blank items will result in rejection of the application. Please refer to the instructions for further guidance.

- 1. Have all required public notice letters been mailed in accordance with the LPC-PA16 instructions? [X] Yes [] No [] N/A
2. a. Is the Siting Certification Form (LPC-PA8) completed and enclosed? [] Yes [] No [X] N/A
b. Is siting approval currently under litigation? [] Yes [] No [X] N/A
3. a. Is a closure, and if necessary a post closure, plan covering these activities being submitted, or
b. has one already been approved? (Provide permit number 2000-155-LFM) [X] Yes [] No [] N/A
4. a. For waste disposal sites only: Has any employee, owner, operator, officer or director of the owner or operator had a prior conduct certification denied, canceled or revoked? [] Yes [X] No [] N/A
b. Have you included a demonstration of how you comply or intend to comply with 35 Ill. Adm. Code Part 745? [] Yes [X] No [] N/A
5. a. Is land ownership held in beneficial trust? [] Yes [X] No [] N/A
b. If yes, is a beneficial trust certification form (LPC-PA9) completed and enclosed? [] Yes [] No [X] N/A
6. a. Does the application contain information or proposals regarding the hydrogeology; groundwater monitoring, modeling or classification; a groundwater impact assessment; or vadose zone monitoring for which you are requesting approval? [] Yes [X] No [] N/A
b. If yes, have you submitted a third (3rd) copy of the application (4 total) and supporting documents?

V. SIGNATURES (Original signatures required. Signature stamps or applications transmitted electronically or by facsimile are not acceptable.)

All applications shall be signed by the person designated below as a duly authorized representative of the owner and/or operator. Corporation - By a principal executive officer of at least the level of vice-president. Partnership or Sole Proprietorship - By a general partner or the proprietor, respectively. Government - By either a principal executive officer or a ranking elected official.

A person is a duly authorized representative of the owner and operator only if:

- 1. They meet the criteria above or the authorization has been granted in writing by a person described above; and
2. is submitted with this application (a copy of a previously submitted authorization can be used).

I hereby affirm that all information contained in this Application is true and accurate to the best of my knowledge and belief.

I do herein swear that I am a duly authorized representative of owner/operator and I am authorized to sign this permit application form.

Owner Signature: [Signature] Title: [Signature] Date: 8-17-09
Owner FEIN or S.S. Number: 36-3158585

Operator Signature: [Signature] Title: PRESIDENT Date: 10-9-09
Operator FEIN or S.S. Number: 36-3158585

Notary: Subscribe and sworn before me this 17 day of August 2009
Notary Signature: [Signature] Notary Seal: [Seal]
My commission expires on: 11-17-09

Engineer Signature: [Signature] Title: [Signature] Date: 8-13-09
Engineer Address: 1607 E. Main St.
St. Charles, IL 60174

Engineer Phone No: 630-762-1400

Official Seal: Wm. J. Cheshareck, Notary Public, State of Illinois, My Commission Exp. 11/17/2009
Official Seal: LOREANE M DUNLAP, Notary Public - State of Illinois, My Commission Expires May 29, 2011
Official Seal: JESSE PAUL VARSHO, LICENSED PROFESSIONAL ENGINEER, 062-059069

All information submitted as part of the Application is available to the public except when specifically designated otherwise in accordance with Section 7(d) of the Freedom of Information Act and applicable Rules and Regulations of the Illinois Pollution Control Board and applicable Illinois EPA rules and guidelines.

"Revised"



Illinois Environmental Protection Agency

Bureau of Land 1021 North Grand Avenue East Box 19276 Springfield, IL 62794-9276

Certification of Authenticity of Official Forms

This form must accompany any application submitted to the Illinois EPA Bureau of Land, Division of Land Pollution Control, Permit Section on forms other than the official copy printed and provided by the Illinois EPA. The only allowed changes to the form are in spacing, fonts, and the addition of the information provided. Any additions must be underlined. The forms would not be considered identical if there is any change to, addition or deletion of words on the form or to the language of the form.

The same individuals that sign the application form it accompanies must sign the following certification.

I hereby certify under penalty of law that I have personally examined, and am familiar with the application form or forms and all included supplemental information submitted to the Illinois EPA herewith, and that the official Illinois Environmental Protection Agency application form or forms used herein is or are identical in all respects to the official form or forms provided by the Illinois EPA Bureau of Land Permit Section, and has not or have not been altered, amended, or otherwise modified in any way. I further certify under penalty of law that any attached or included electronic data version of the application form or forms complies with the official Illinois EPA's Electronic version thereof, and is or are identical in all respects to the official electronically downloadable form or forms provided by the Illinois EPA Bureau of Land Permit Section, and has not or have not been altered, amended or otherwise modified in any way.

[Signature] Owner Signature

8-17-09 (date)

[Signature] Title

[Signature] Operator Signature

PRESIDENT Title

[Signature] Engineer Signature (if necessary)

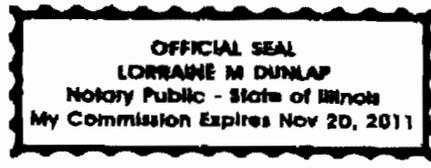
MARY KARSON MY COMMISSION EXPIRES FEBRUARY 17, 2013 10-9-09 (date) [Signature]

JESSE PAUL VARSHO 062-059069 8-13-09 (date) LICENSED PROFESSIONAL ENGINEER STATE OF ILLINOIS

Subscribed and Sworn to Before Me, a Notary Public in and for the above-mentioned County and State,

[Signature] Notary Public for Jesse Paul Varsho

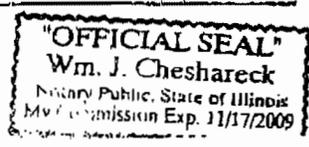
My Commission Expires, 11/20/2011



[Notary Seal]

10/9/2009 10:00 AM

[Signature] 10-17-09



Revised 10-9-09

Site I.D. No. 0630600001

**MORRIS COMMUNITY LANDFILL - PARCEL B
(Permit No. 200-156-LFM)**

**ADDITIONAL INFORMATION
SUBMITTED 10/9/09**

- An original and 3 copies of the signature page to the General Application Permit (LPC-PA1). This page has been signed and dated by the operator and his signature has been notarized.
- An original and 3 copies of the Certification of Authenticity of Official Forms (to be inserted as the last page of "Attachment 1"). This page has been signed and dated by the operator and his signature has been notarized.

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b. Is siting approval currently under litigation? [] Yes [] No [X] N/A
3. a. Is a closure, and if necessary a post closure, plan covering these activities being submitted, or
b. has one already been approved? [X] Yes [] No [] N/A
4. a. For waste disposal sites only: Has any employee, owner, operator, officer or director of the owner or operator had a prior conduct certification denied, canceled or revoked? [] Yes [X] No [] N/A
b. Have you included a demonstration of how you comply or intend to comply with 35 Ill. Adm. Code Part 745? [] Yes [X] No [] N/A
5. a. Is land ownership held in beneficial trust? [] Yes [X] No [] N/A
b. If yes, is a beneficial trust certification form (LPC-PA9) completed and enclosed? [] Yes [] No [X] N/A
6. a. Does the application contain information or proposals regarding the hydrogeology, groundwater monitoring, modeling or classification; a groundwater impact assessment; or vadose zone monitoring for which you are requesting approval? [] Yes [X] No [] N/A
b. If yes, have you submitted a third (3rd) copy of the application (4 total) and supporting documents? [] Yes [X] No [] N/A

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All applications shall be signed by the person designated below as a duly authorized representative of the owner and/or operator. Corporation - By a principal executive officer of at least the level of vice-president. Partnership or Sole Proprietorship - By a general partner or the proprietor, respectively. Government - By either a principal executive officer or a ranking elected official.

A person is a duly authorized representative of the owner and operator only if:

- 1. They meet the criteria above or the authorization has been granted in writing by a person described above; and
2. is submitted with this application (a copy of a previously submitted authorization can be used).

I hereby affirm that all information contained in this Application is true and accurate to the best of my knowledge and belief.

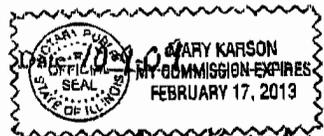
I do herein swear that I am a duly authorized representative of owner/operator and I am authorized to sign this permit application form.

Owner Signature: [Signature] Title: Mayor Date: 8-17-09

Owner FEIN or S.S. Number: 36-600-6005

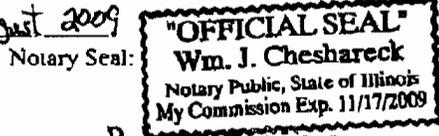
Operator Signature: [Signature] Title: PRESIDENT

Operator FEIN or S.S. Number: 36-3158585



Notary: Subscribe and sworn before me this 17 day of August 2009

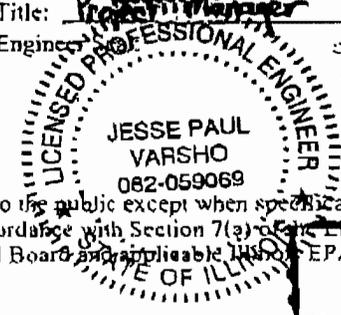
Notary Signature: [Signature] My commission expires on: 11-17-2009



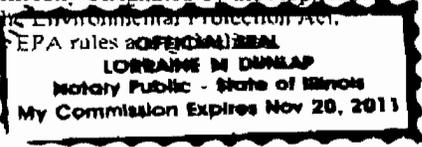
Engineer Signature: [Signature] Title: Project Manager Date: 8-13-09

Engineer Address: 1607 E. Main Street, St. Charles, IL 60174

Engineer Phone No. 630 760-1400



Handwritten notes: Mary Karson Notary Public for Robert Drum 10/9/09, Jesse P Varsho Notary Public for [Signature]



Handwritten note: "Removed" 10-9-09

All information submitted as part of the Application is available to the public except when specifically designated by the Applicant to be treated confidentially as a trade secret or secret process in accordance with Section 7(a) of the Environmental Protection Act, applicable Rules and Regulations of the Illinois Pollution Control Board and applicable US EPA rules.



Illinois
Environmental
Protection Agency

Bureau of Land
1021 North Grand Avenue East
Box 19276
Springfield, IL 62794-9276

Certification of Authenticity of Official Forms

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The same individuals that sign the application form it accompanies must sign the following certification.

I hereby certify under penalty of law that I have personally examined, and am familiar with the application form or forms and all included supplemental information submitted to the Illinois EPA herewith, and that the official Illinois Environmental Protection Agency application form or forms used herein is or are identical in all respects to the official form or forms provided by the Illinois EPA Bureau of Land Permit Section, and has not or have not been altered, amended, or otherwise modified in any way. I further certify under penalty of law that any attached or included electronic data version of the application form or forms complies with the official Illinois EPA's Electronic version thereof, and is or are identical in all respects to the official electronically downloadable form or forms provided by the Illinois EPA Bureau of Land Permit Section, and has not or have not been altered, amended or otherwise modified in any way.

Richard P. Kopczick
Owner Signature

8-17-09
(date)

Mayer
Title

Robert Pruitt
Operator Signature

PRESIDENT
Title

J. Paul
Engineer Signature
(if necessary)

10-9-09
(date)
Mary Karson
Notary Public for
Robert Pruitt 10-9-09

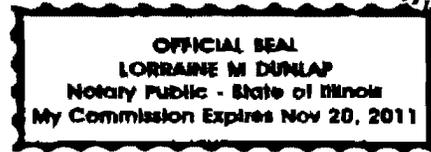


8-13-09
(date)



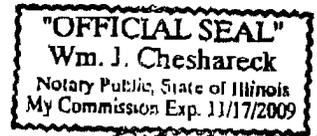
*Subscribed and Sworn to Before Me,
a Notary Public in and for the
above-mentioned County and State.*

Lorraine M. Dunlap
Notary Public for *Jesse P. Varsho*
My Commission Expires: 11/20/2011



[Notary Seal]

Wm J Cheshareck 8-17-09
for Richard P. Kopczick



"Revised 10-9-09"

ILLINOIS POLLUTION CONTROL BOARD
August 20, 2009

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 97-193
)	(Enforcement - Land)
COMMUNITY LANDFILL COMPANY,)	(consolidated)
INC,)	
)	
Respondent.)	

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 04-207
)	(Enforcement - Land)
EDWARD PRUIM and ROBERT PRUIM,)	
)	
Respondents.)	

CHRISTOPHER J. GRANT AND JENNIFER VAN WIE OF THE OFFICE OF THE ATTORNEY GENERAL APPEARED ON BEHALF OF THE PEOPLE OF THE STATE OF ILLINOIS.

MARK A. LAROSE OF LAROSE & BOSCO, LTD. AND CLARISSA Y. CUTLER OF THE LAW OFFICES OF CLARISSA Y. CUTLER APPEARED ON BEHALF OF THE RESPONDENTS;

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

SUMMARY OF THE OPINION

The Office of the Attorney General, on behalf of the People of the State of Illinois (People) filed two separate enforcement actions, which were consolidated by the Board at the request of the parties. The first case brought in 1997, with amended complaints filed in 1998, and 1999, was filed against Community Landfill Company, Inc. (CLC). In 2004, the People brought a second case against Edward Pruum and Robert Pruum (collectively the Pruims), as owners of CLC. CLC operates a permitted landfill, known as Morris Community Landfill (the site or landfill), located at 1501 Ashley Road in Morris, Grundy County. The approximate 119-



tested on the gas system when Ms. Kovaszny was present, but Mr. Pelnarsh conceded that the operators of the gas system did not report to him. 12/4Tr. at 23, Resp.Exh.9 at 3.

Mr. Pelnarsh did not have the authority to cease operations at the site. 12/4Tr. at 24-25. Mr. Pelnarsh did not submit landfill capacity certification forms to the Agency and the overheight was not his responsibility. *Id.* Mr. Pelnarsh does believe that there is available capacity in Parcel B, and believed that space was available when waste stopped being accepted in Parcel B. 12/4Tr. at 26. Mr. Pelnarsh does not recall ever being directed by the Pruims to place waste in Parcel B above the permitted height. *Id.*

In 1994, 1995, and 1996, Mr. Pelnarsh decided where to place waste in Parcel B and he did not discuss that decision with the Pruims. 12/4Tr. at 27. Mr. Pelnarsh has been deciding where to place the waste at the site since the time he started working at the site, without any input from the Pruims. *Id.* Mr. Pelnarsh is the operator and he has made the decisions on the day-to-day operations of the landfill. 12/4Tr. at 28. Mr. Pelnarsh had on occasion made a decision to close the landfill. *Id.*

When Mr. Pelnarsh found out that Parcel B was allegedly overheight, Mr. Pelnarsh was not placing waste in Parcel B. 12/4Tr. at 29-30. Mr. Pelnarsh has never personally verified that Parcel B was overheight or filled beyond the capacity. 12/4Tr. at 30. Mr. Pelnarsh believes that there is still capacity in Parcel B and there is no waste in that area today. 12/4Tr. at 31. Mr. Pelnarsh indicated that dirt was being moved from Parcel B to Parcel A for daily cover for over two years and estimates that over 100,000 yards of dirt was moved. *Id.*

Testimony of Robert Pruim

Robert Pruim is president and one of two owners of CLC. 12/4Tr. at 35. CLC was formed to operate Morris CLC and the offices were located in Riverdale and Crestwood. 12/4Tr. at 37. Robert Pruim has been involved in various businesses that were engaged in waste hauling, disposal and transportation. 12/4Tr. at 36-37. After 1985, the Pruims managed CLC except that they did not "have anything to do with the site operations." 12/4Tr. at 39.

The Pruims personally guaranteed royalties to Morris in the CLC lease agreements and between 1990 and 2000 personally guaranteed bank loans and surety bonds on behalf of CLC. 12/4Tr. at 41. Tipping fees were based on other landfills in the area and with input from Mr. Pelnarsh, tipping fees were set at the site. 12/4Tr. at 41-42. The credit applications were approved at the Crestwood office and the Pruims hired Andrews. 12/4Tr. at 43-44.

Robert Pruim and Edward Pruim signed documents as owners and officers of CLC, including landfill capacity certifications. 12/4 at 45-47, Comp.Exh. 14d and 14e. Robert Pruim believes that Parcel B has available space and there is nothing in the landfill capacity certification forms signed by Robert Pruim which indicates the elevation. *Id.* Robert Pruim believes that the space where the garage office is located is permitted space and he did not understand that the forms he signed indicated there was not space available. 12/4Tr. at 48. Robert Pruim disputed the information with the engineer and believes the issue was corrected on the form filed in 1997. 12/4Tr. at 49-50, Comp.Exh. 14f.

any kind” that Parcel B was actually filled above 580 feet and in fact the capacity forms do not talk about permitted elevations or the amount of waste above permitted elevations. Resp.Br. at 19. The respondents argue that based on the evidence the Board should find that the Pruims did not have direct and personal involvement in acts leading to the violations. Resp.Br. at 20.

People's Reply

The People note that the Board has already found that CLC was in violation of the Act and Board rules by dumping waste outside the permitted boundaries. Reply at 3. The People argue that substantial evidence was submitted at hearing corroborating the Board's earlier finding and that the Pruims knowingly continued to dump waste after Parcel B had reached capacity. *Id.* The People reiterate that landfill capacity certification forms and permit applications support the People's allegations and respondents claims are “merely an attempt to avoid an appropriate civil penalty.” Reply at 3-4. Furthermore, the signatures of the Pruims on the forms and applications establish that the Pruims are responsible for the alleged violations. Reply at 4.

Board's Findings on Counts VII, VIII, IX, and X as Alleged Against the Pruims

The record establishes that the Pruims were signing landfill capacity certification forms that indicated no space was left in the landfill and yet the landfill remained open accepting waste. Mr. Pelnarsh may have been able to close the landfill for a day or so due to weather, but the testimony establishes that only the Pruims could decide to stop accepting waste at the landfill. Thus, the Pruims were personally involved in signing reports that no space was available, while continuing to accept waste at the landfill. The Board finds that the actions of the Pruims were not merely those of a corporate officers, but that the Pruims were actively participating in acts that resulted in the landfill being filled beyond the permitted capacity. Therefore the Board finds that the Pruims violated Sections 21(a), 21(d)(1) and 21(o)(9) of the Act (415 ILCS 5/21(a), 21(d)(1), and 21(o)(9) (2008)) by allowing the placement of waste in the landfill above the permitted height of the landfill.

Count XIX (Closure Estimates)

The Board notes that on October 3, 2002, the Board found that CLC violated Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) and Section 807.623(a) of the Board's landfill regulations (35 Ill. Adm. Code 807.623) by failing to provide cost estimates. Count XIX alleges that the Pruims violated Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) and Section 807.623(a) of the Board's landfill regulation (35 Ill. Adm. Code 807.623(a)) because the Pruims failed to provide a revised cost estimate. 04Comp. at 48-49. The Board will summarize the parties' arguments and then make a finding on this count.

People's Arguments

The People assert that the Pruims failed to cause the filing of the revised cost estimates as only they had the authority to file the revised cost estimates. Br. at 29. The People argue that the Pruims are persons under the Act and they made all of the significant decisions related to

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Plaintiff,

v.

COMMUNITY LANDFILL CO., an Illinois
Corporation, and the CITY OF MORRIS, an
Illinois Municipal Corporation,,

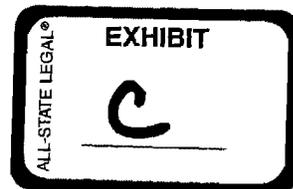
Defendants.

PCB 03-191
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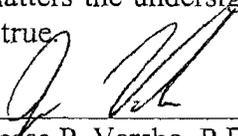
AFFIDAVIT OF JESSE P. VARSHO

I, Jesse P. Varsho, being first duly sworn on oath, do depose and state as follows:

1. I am currently employed as the Head of Landfill Engineering for the St. Charles, Illinois office of Shaw Environmental, Inc. (Shaw), located at 1607 E. Main Street, St. Charles, Illinois 60174. Shaw is an international engineering and consulting firm.
2. I am a Professional Engineer and Geologist, with over eight years of experience in the area of geological, geotechnical and environmental engineering.
3. My practice focuses on the siting, permitting, construction/development/operation and closure of pollution control facilities (most notably landfills), as well as remedial aspects of operation and closure of pollution control facilities, and I have been involved in the siting, permitting, and due diligence review of over twenty (20) landfills across the country.
4. I was retained in December of 2004 by the City of Morris to undertake a comprehensive investigation and evaluation, on an ongoing basis, of conditions at the Morris Community Landfill.
5. In my role as Project Manager for the Morris Community Landfill ("the landfill" or "the Site"), I was responsible for supervising the review of the IEPA operating record, which consisted of thousands of pages of information.
6. Working under my supervision, other Shaw personnel (including other professional engineers, professional geologist, geological engineers and other licensed experts in the area of solid waste management), performed numerous site inspections, and, based upon those site inspections, developed work plans for the characterization and evaluation of site conditions and possible corrective action measures.



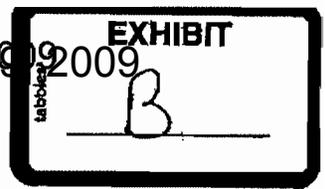
7. The effort by Shaw at the Site has entailed more than 1,000 man hours, and over 10,000 groundwater and air monitoring tests have been performed over the past 4 years.
8. Monthly monitoring of the permitted perimeter below-grade landfill gas probes previously installed on the landfill property by CLC began in June of 2005, to determine whether below grade gas migration is occurring at the Site. Readings for landfill gas within perimeter below-grade landfill probes indicate that the below-grade landfill gas concentrations are not increasing.
9. The majority of landfill surface scans taken since January 2007 did not detect methane levels above 500 ppm background levels (i.e. the regulatory limit). Surface scans that did measure methane levels above 500 ppm background levels during the original scan did not confirm the methane levels during the mandatory re-sampling period, and therefore comply with the appropriate state regulations.
10. Since the beginning of 2009, over 140 LEL measurements have been performed and only one below-grade perimeter landfill probe has recorded a LEL (Lower Explosive Limit) greater than 50% for methane. This is significant because the LEL is the percentage of methane within the air that could cause explosion and thereby a potential threat to human health and safety.
11. Based upon Shaw's review of the IEPA regulatory file on this matter, field inspections and investigations, numerous analytical and field test results, and my professional knowledge and experience, it is my professional opinion that the current conditions at the Morris Community Landfill do not constitute a present, and immediate or imminent and substantial or material threat to human health or the environment, and that conditions at the landfill can be more than adequately addressed by the routine corrective action measures called for by the state and federal regulations governing the landfill in question.
12. We are currently at work on the revised cost estimates and believe they can be completed by mid-August. However, additional work is needed in order to develop the schedule of the required work for the closure and post-closure plans. I estimate that Shaw can complete both tasks in not less than two months, or by mid-September, although three to four months would be much better for Shaw which has other conflicts.
13. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Jesse P. Varsho, P.E., P.G.

7-22-09

Date



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

Plaintiff,

v.

COMMUNITY LANDFILL CO., an Illinois Corporation, and the CITY OF MORRIS, an Illinois Municipal Corporation,

Defendants.

PCB 03-191
(Enforcement - Land)

AFFIDAVIT OF WARREN OLSON

I, Warren Olson, being first duly sworn on oath, do depose and state as follows:

1. I am a project manager for Chamlin & Associates, Inc., and have been employed in that capacity since 1985.
2. Chamlin & Associates, Inc., has been the city engineer for the City of Morris since approximately 1955.
3. I am primarily responsible for engineering liaison to the City of Morris, and I am familiar with the geography and appearance of the Morris Community Landfill and surrounding property, including the adjacent property commonly referred to as the "head-end" site. The head-end site is owned by the City of Morris, consists of approximately 5 acres, and formerly housed equipment for an area cable television service.
4. On June 8, 2009, I was asked by Mayor Kopczick to determine whether materials depicted in photographs attached to the Affidavit of Mark Retzlaff had been dumped within the landfill.
5. On June 8, 2009, the Mayor and I walked the property adjacent to the parcel A, known as the "head-end site."
6. I initiated the assistance of my field crew to survey the head-end site determine its boundary line, and on June 9, 2009 and June 10, 2009, Chamlin field crews worked at the site, locating and staking its corners.
7. The survey by Chamlin field crews revealed that the material depicted in the Retzlaff photographs was NOT located on parcel A, but was instead dumped on the head-end site, well outside the boundary of landfill.



8. I am aware that the City of Morris has initiated placement of a padlocked gateway to block the access road to prevent future unauthorized dumping, as well as erection of signage that warns would-be dumpers to keep out.
9. To my knowledge, there have been no further incidents of drive-by dumping since installation of the padlocked gateway and signage.
10. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Warren Olson

Dated: August 28th, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Plaintiff,

v.

COMMUNITY LANDFILL CO., an Illinois
Corporation, and the CITY OF MORRIS, an
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Defendants.

PCB 03-191
(Enforcement - Land)

AFFIDAVIT OF RICHARD P. KOPCZICK

I, Richard P. Kopczick, certify as follows:

1. I am the Mayor of the City of Morris. I am aware that Mr. Retzlaff, the State's inspector, has concluded that the City of Morris has continued to dump general refuse as well as sludge from the City of Morris water treatment plant in 2007 and 2009. While I do not and cannot dispute that there could have been general refuse and sludge at the Community Landfill, I do dispute that it was from the City of Morris.

2. Around 2005, the City of Morris bought a sludge filter press which was activated in 2006. This machine presses liquid sludge and solidifies it into a semi-dry product that has the consistency of play dough ("Play Doh"). The City does not deposit this product at Community Landfill, but at an unrelated landfill, the Environtech Landfill. Thus, Mr. Retzlaff's statements that the wastewater *liquid* sludge that he saw in 2007 and April 2009 came from the City is incorrect. By the end of 2006, the sludge from the City of Morris treatment plant was already being pressed and deposited in another landfill (Environtech Landfill).



3. I was made aware of Mr. Retzlaff's statement that there was sludge found in April 2009. The City's investigation revealed that this sludge was not from the City of Morris, but from another community. I was told this by Community Landfill's operator, James Pelnarsh, Sr., who told me that this sludge was from another city but not the City of Morris. I have been told that Mr. Retzlaff stated in an affidavit that Mr. Pelnarsh told him that there was street sweepings and wastewater treatment sludge coming from the City of Morris. I presume that this is a mistake, given the fact that the City of Morris presses its sludge, so it is not liquid, and I prohibited dumping in the Community Landfill in October 2002. It may be that Mr. Retzlaff may have assumed that when Mr. Pelnarsh referred to a "City" that this meant the City of Morris. However, I know that Mr. Pelnarsh told me that this was *not* from the City of Morris.

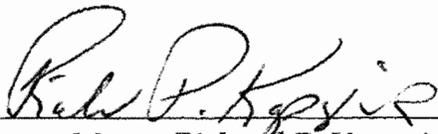
4. The City of Morris currently uses the Environtech Landfill, not Community Landfill, for all of its disposal needs. This includes street sweepings, which are dumped at the Environtech Landfill at no extra cost to the City. The City has no incentive or reason to use the Community Landfill for street sweepings.

5. As Mayor, I have continued to enforce my written directive to all city employees in my October 7, 2002 memo. I have been told that this memo was filed with the PCB as exhibit E to the City's motion for reconsideration filed on July 22, 2009. When claims have been made that the City was continuing to dump, I have investigated and ordered that my directive be enforced. I do not spend 24 hours a day guarding the Community Landfill, but I have continued to prohibit use of the Community Landfill

by the city of Morris. However, I cannot control Mr. Pelnarsh or CLC, and I cannot prevent Mr. Pelnarsh from accepting waste from other cities and towns.

6. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: October 28, 2009



Mayor Richard P. Kopczick