

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	
)	PCB No. 11-50
The CITY OF MORRIS, an Illinois)	
municipal corporation, and)	(Enforcement-Land)
COMMUNITY LANDFILL COMPANY, INC.,)	
a dissolved Illinois corporation,)	
)	
)	
Respondents.)	


NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that we have today, June 22, 2011, filed Complainant's Reply to the City of Morris's Affirmative Defenses, by electronic filing. A true and accurate copy of the document so filed is attached herewith and served upon you.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

BY:


CHRISTOPHER GRANT
Environmental Bureau
Assistant Attorney General
69 W. Washington Street, #1800
Chicago, Illinois 60602
(312) 814-5388

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	
)	PCB No. 11-50
The CITY OF MORRIS, an Illinois)	
municipal corporation, and)	(Enforcement-Land)
COMMUNITY LANDFILL COMPANY, INC.,)	
a dissolved Illinois corporation,)	
)	
)	
Respondents.)	

REPLY TO CITY OF MORRIS'S AFFIRMATIVE DEFENSES

Now Comes Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and Replies to Respondent CITY OF MORRIS'S ("Morris's") four affirmative defenses, as follows.

First Affirmative Defense

1. *On July 1, 1982, the City of Morris, Illinois, a municipal corporation, and Community Landfill Company ("CLC"), an Illinois corporation, entered into a Lease Agreement ("Lease") whereby the City of Morris leased to CLC the land commonly known as the Morris Community Landfill, in order for CLC to use said land exclusively during the term of said Lease for the sole purpose of operating a regional pollution control facility in accordance with and pursuant to all laws, rules and regulations promulgated and adopted by all agencies of the federal, state and county governments, including the Illinois Environmental Protection Agency ("IEPA"). A copy of the Lease is attached hereto as Exhibit B.*

REPLY

Complainant admits that Morris and CLC executed a lease agreement in 1982, and that Illinois EPA subsequently transferred the operating permit for the Landfill from Morris to CLC, with Morris remaining as permitted owner of the Landfill. Complainant denies that the document attached as Exhibit B is a complete and accurate copy of the lease agreement between Morris and CLC, which was modified, amended, and supplemented many times after July 1,

1982, and expired in July, 2010.

2. *Pursuant to the terms of the Lease, the City of Morris transferred all permitted rights for operation of the facility to CLC. IEPA approved transfer of all such permitted rights in the facility from the City to CLC in July of 1982. A true and accurate copy of such approval marked Exhibit B and attached hereto and incorporated by this reference. The terms of the Lease made clear that CLC's obligation for the payment of any rent under the terms of the Lease was contingent upon CLC receiving an operating permit for the use of the facility as a Class II sanitary landfill under and pursuant to the terms, provisions, rules and regulations of the IEPA. See Section VIII of Lease.*

REPLY

Complainant denies that the document attached as Exhibit B is a complete and accurate copy of the lease agreement between Morris and CLC, which was modified, amended, and supplemented many times after July 1, 1982, and expired in July, 2010. Complainant also denies that Morris transferred all permitted rights to the Landfill. Morris applied for and obtained numerous Landfill permits after July 1, 1982, including the two permits that are the subject matter of this case. Complainant also notes that, as a matter of law, Morris has been the sole 'operator' of the Landfill since at least July, 2010.

3. *Pursuant to the terms of the Lease, CLC agreed to assume all responsibility for the operation of the Landfill.*

REPLY

Complainant denies that the document attached as Exhibit B is a complete and accurate copy of the lease agreement between Morris and CLC, which was modified, amended, and supplemented many times after July 1, 1982, and expired in July, 2010. Complainant further states that the document attached as Exhibit B speaks for itself, and has no bearing on Morris's obligations under the Act, applicable landfill regulations, or the Landfill's Permits.

4. *On April 25, 2007, IEPA issued Permit No. 2000-155-LFM, Modification No.9 ("2007 Parcel A Permit") to Morris, as owner, and CLC, as operator, of the Landfill.*

REPLY

Admitted.

5. *Condition VIII. 10 of the 2007 Parcel A Permit, as set forth in paragraph 13 of Count I of the State's Complaint, makes clear that, "The operator shall collect samples from all of the monitoring points listed in Condition VIII.9, test the samples for the parameters listed in Condition VIII.12 (lists G1 and G2), and report the results to the Illinois EPA " (Emphasis added).*

REPLY

Denied. Complainant admits that the quoted language (without emphasis) is contained in Condition VIII.10 of the 2007 Parcel A Permit.

6. *Condition VIII. 10 of the 2007 Parcel A Permit placed no condition upon the City of Morris.*

REPLY

Denied.

7. *By the transfer of all permitted rights for operation of the Landfill to CLC, and the terms of the Permit relied upon by the State in Count I of the Complaint, the City of Morris, which is not the operator of the Landfill, is not and cannot be held liable for failure to perform groundwater testing on Parcel A of the Landfill.*

REPLY

Denied.

8. *Inasmuch as the City of Morris was under no obligation, under the terms of the 2007 Parcel A Permit, to collect samples, perform testing, and report results to IEPA at anytime from July 15, 2007, to the date of the State's filing of the Complaint, the City of Morris did not violate Conditions VIII.10, VIII.12, or VIII.17 of the 2007 Parcel A Permit, and thus did not violate Section 21(d)(1) of the Act.*

REPLY

Denied.

Second Affirmative Defense

1-4. Respondent City of Morris repeats paragraphs 1 through 4 of Affirmative Defense Number One as if fully stated herein.

REPLY

Complainant repeats and realleges its Replies to paragraphs 1 through 4 of Affirmative Defense Number One.

5. Condition VIII.27 of the 2007 Parcel A Permit, as set forth in paragraph 18 of Count II of the State's Complaint, provides, in pertinent part, that, "The operator shall conduct the groundwater monitoring assessment program for wells G120 [and] ... G121 ... beginning 4th Quarter 2006 and ending 3d Quarter 2007 " (Emphasis added).

REPLY

Complainant admits that paragraph 18 of Count II of the Complaint provides as follows:

18. Condition VIII.27 of the 2007 Parcel A Permit provides, in pertinent part, as follows:

The operator shall conduct the groundwater monitoring assessment program for wells G120 (total ammonia, dissolved ammonia, dissolved chloride, and total chloride), G121 (total ammonia, dissolved ammonia, and total potassium)...beginning 4th Quarter 2006 and ending 3d Quarter 2007, as proposed in Log Nos. 2006-139, 2006-265, and 2006-402. Groundwater monitoring wells shall be monitored in accordance with the schedule proposed in Log No. 2006-402.

* * *

6. Condition VIII.27 of the 2007 Parcel A Permit, as further set forth in paragraph 18 of the State's Complaint, provides, in pertinent part, that, "The operator shall submit the results of the assessment monitoring program to the Illinois EPA in the form of a significant modification application by October 15,2007." (Emphasis added).

REPLY

Complainant admits that the quoted language (without emphasis) is contained in Condition VIII.27 of the 2007 Parcel A Permit.

7. *Condition VIII.27 of the 2007 Parcel A Permit placed no condition upon the City of Morris.*

REPLY

Denied.

8. *By the transfer of all permitted rights for operation of the Landfill to CLC, and the terms of the Permit relied upon by the State in Count II of the Complaint, the City of Morris, which is not the operator of the Landfill, is not and cannot be held liable for failure to perform groundwater monitoring assessment on Parcel A monitoring wells.*

REPLY

Denied.

9. *Inasmuch as the City of Morris was under no obligation, under the terms of the 2007 Parcel A Permit, to perform a groundwater monitoring assessment on the groundwater monitoring wells installed for Parcel A of the Landfill, or to report the results of said assessments to the IEPA, or to submit an application for significant modification of the 2007 Parcel A Permit, at anytime from October 1, 2006, to the date of the State's filing of the Complaint, the City of Morris did not violate Condition VIII.27 of the 2001 Parcel A Permit, and thus did not violate Section 21(d)(1) of the Act.*

REPLY

Denied.

Third Affirmative Defense

1-3. *Respondent City of Morris repeats paragraphs 1 through 4 [sic] of Affirmative Defense Number One as if fully stated herein.*

REPLY

Complainant repeats and realleges its Replies to paragraphs 1 through 3 of Affirmative Defense Number One.

4. *On April 25, 2007, IEPA issued Permit No. 2000-156-LFM, Modification No.9 ("2007 Parcel B Permit") to the City of Morris, as owner, and CLC, as operator, of the Landfill.*

REPLY

Admitted.

5. Condition VIII.10 [sic] of the 2007 Parcel B Permit, as set forth in paragraph 16 of Count III of the State's Complaint, makes clear that, 'The operator shall collect samples from all of the monitoring points listed in Condition VIII. 9, test the samples for the parameters listed in Condition VIII.12 (lists G1 and G2), and report the results to the Illinois EPA ' (Emphasis added).

REPLY

Denied. Condition VIII.10 of the 2007 Parcel B Permit relates to the Respondents' obligations to remove gas monitoring probes at the end of the post-closure period. Paragraph 16 of Count III provides, as follows:

16. Condition VII.10 of the 2007 Parcel B Permit provides, in pertinent part, as follows:

The monitoring program, approved by Permit No. 2000-156-LFM, shall continue for a minimum period of thirty (30) years after closure and shall not cease until the conditions described in 35 Ill. Adm. Code, 811.319(a)(1)(C) have been achieved. The operator shall collect samples from all of the monitoring points listed in Condition VII.9, test the samples for the parameters listed in Condition VII.12 (lists G1 and G2), and report the results to the Illinois EPA, all in accordance with the schedule in Condition VII.17....

6. Condition VIII.10 of the 2007 Parcel B Permit placed no condition upon the City of Morris.

REPLY

Denied, as to both Condition VIII.10 and Condition VII.10

7. By the transfer of all permitted rights for operation of the Landfill to CLC, and the terms of the Permit relied upon by the State in Count III of the Complaint, the City of Morris, which is not the operator of the Landfill, is not and cannot be held liable for failure to perform groundwater testing on Parcel B of the Landfill.

REPLY

Denied.

8. Inasmuch as the City of Morris was under no obligation, under the terms of the 2007 Parcel B Permit, to collect samples, perform testing, and report results to IEP A at anytime from July 15, 2007, to the date of the State's filing of the Complaint, the City of Morris did not

violate Conditions VIII.10 [sic], VIII.12 [sic], or VIII.17 [sic] of the 2007 Parcel B Permit, and thus did not violate Section 21(d)(I) of the Act.

REPLY

Conditions VIII.12 and VIII.17 are not present in the 2007 Parcel B. Permit.

Complainant denies the allegations in Affirmative Defense 3.8, as to the conditions cited, and to Conditions VII.10, VII.12, and VII.17 of the Parcel B Permit.

Fourth Affirmative Defense

1-4. Respondent City of Morris repeats paragraphs 1 through 4 of Affirmative Defense Number Three as if fully stated herein.

REPLY

Complainant repeats and realleges its Replies to paragraphs 1 through 4 of Affirmative Defense Number Three.

5. Condition VIII.27 [sic] of the 2007 Parcel B Permit, as set forth in paragraph 18 of Count IV of the State's Complaint, provides, in pertinent part, that, "The operator shall conduct the groundwater monitoring assessment program for wells G120 [sic] [and] ... G121 ... beginning 4th Quarter 2006 and ending 3d Quarter 2007 .. .," (Emphasis added).

REPLY

Denied. The 2007 Parcel B Permit has no condition number VIII.27. Moreover, the well numbers cited are not listed in the 2007 Parcel B Permit. Paragraph 18 of Count IV of the Complaint provides, as follows:

18. Condition VII.26 of the 2007 Parcel B Permit provides, in pertinent part, as follows:

The operator shall conduct the groundwater monitoring assessment program for wells G130 (total ammonia, dissolved ammonia, dissolved chloride, and total nickel), G131 (total ammonia, dissolved ammonia, total chloride, dissolved chloride, specific conductance, dissolved boron, and total nickel)...beginning 4th Quarter 2006 and ending 3d Quarter 2007, as proposed in Log Nos. 2006-139, 2006-266, and 2006-403. Groundwater monitoring wells shall be monitored in accordance with the schedule proposed in Log No. 2006-403.

* * *

The operator shall submit the results of the assessment monitoring program to the Illinois EPA in the form of a significant modification application by October 15, 2007. The application shall include, at a minimum, available historical data and analyses for the constituents of concern, 40 CFR 258 Appendix II results, and conclusions demonstrating whether the exceeding parameter concentrations in parcel B wells are attributable to the facility. If the facility is determined to be the source of impacts, the application shall include a proposal for further assessment in accordance with 35 Ill. Adm. Code 811.319(b)(3).

6. Condition VIII.27 of the 2007 Parcel B Permit, as further set forth in paragraph 18 of the State's Complaint, provides, in pertinent part, that, "The operator shall submit the results of the assessment monitoring program to the Illinois EPA in the form of a significant modification application by October 15,2007." (Emphasis added).

REPLY

Denied. The 2007 Parcel B Permit has no condition number VIII.27. See: reply to Affirmative Defense 4.5.

7. Condition VIII.27 of the 2007 Parcel B Permit placed no condition upon the City of Morris.

REPLY

Denied on the basis that The 2007 Parcel B Permit has no condition number VIII.27, and further on the basis that all requirements of both the 2007 Parcel A Permit and the 2007 Parcel B Permit bind the City of Morris.

8. By the transfer of all permitted rights for operation of the Landfill to CLC, and the terms of the Permit relied upon by the State in Count IV of the Complaint, the City of Morris, which is not the operator of the Landfill, is not and cannot be held liable for failure to perform groundwater monitoring assessment on Parcel B monitoring wells.

REPLY

Denied.

9. Inasmuch as the City of Morris was under no obligation, under the terms of the 2007 Parcel B Permit, to perform a groundwater monitoring assessment on the groundwater monitoring wells installed for Parcel B of the Landfill, or to report the results of said

assessments to the IEPA, or to submit an application for significant modification of the 2007 Parcel B Permit, at anytime from October 1, 2006, to the date of the State's filing of the Complaint, the City of Morris did not violate Condition VIII.27 of the 2007 Parcel B Permit, and thus did not violate Section 21(d)(1) of the Act.

REPLY

Denied.

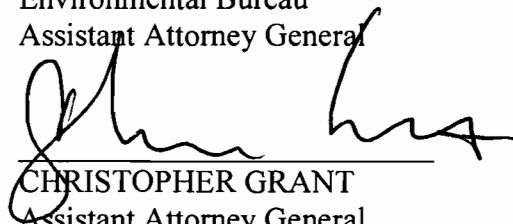
Respectfully Submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos Litigation Division

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY:



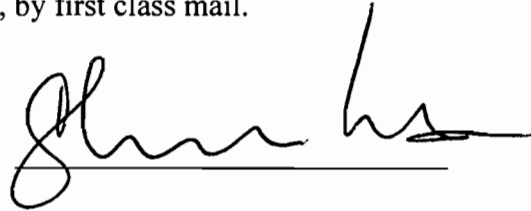
CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Floor
Chicago, Illinois 60602
(312) 814-5388

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	
)	PCB No. 11-50
The CITY OF MORRIS, an Illinois)	
municipal corporation, and)	(Enforcement-Land)
COMMUNITY LANDFILL COMPANY, INC.,)	
a dissolved Illinois corporation,)	
)	
)	
Respondents.)	

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 22d day of June, 2011 the foregoing Complainant's Reply to City of Morris's Affirmative Defenses, and Notice of Filing, upon the persons listed below, by first class mail.



CHRISTOPHER GRANT

Service List:

Mr. Mark LaRose
LaRose & Bosco, Ltd.
200 N La Salle Street, Suite 2810
Chicago, IL 60601-1131

Mr. Bradley P. Halloran
Illinois Pollution Control Board
100 W. Randolph Drive
Chicago, Illinois 60601 (hand delivery)

Mr. Charles F. Helsten
Mr. Richard S. Porter
Hinshaw & Culbertson, LLP
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61105-1389

Mr. Scott Belt
Scott Belt and Associates, PC
105 East Main Street, Suite 206
Morris, Illinois 6045