BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:	)
	)
MAHOMET VALLEY WATER AUTHORITY,	)
CITY OF CHAMPAIGN, ILLINOIS, a municipal	)
corporation, DONALD R. GERARD,	)
CITY OF URBANA, ILLINOIS, a municipal corporation,	)
LAUREL LUNT PRUSSING,	)
CITY OF BLOOMINGTON, ILLINOIS,	)
a municipal corporation, COUNTY OF CHAMPAIGN,	)
ILLINOIS, COUNTY OF PIATT, ILLINOIS,	)
TOWN OF NORMAL, ILLINOIS, a municipal	)
corporation, VILLAGE OF SAVOY, ILLINOIS,	)
a municipal corporation, and CITY OF DECATUR,	)
ILLINOIS, a municipal corporation,	)
	)
Complainants,	)
	) PCB 2013 - 022
v.	)
	) (Enforcement - Land)
CLINTON LANDFILL, INC.,	)
an Illinois corporation,	)
	)
Respondent.	)

NOTICE OF ELECTRONIC FILING

TO: All Parties of Record

PLEASE TAKE NOTICE that on December 5, 2012, I filed the following documents electronically with the Clerk of the Pollution Control Board of the State of Illinois:

1. Entry of Appearance
2. Motion to Dismiss
3. Notice of Electronic Filing

Copies of the above-listed documents were served upon you via U.S. Mail, First Class Postage Prepaid, sent on December 5, 2012, as is stated in the Certificates of Service attached to each document.

Respectfully submitted,

CLINTON LANDFILL, INC.
Respondent

By: _____
One of its attorneys

Brian J. Meginnes, Esq. (bmeginnes@emrslaw.com)
Janaki Nair, Esq. (jnair@emrslaw.com)
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912-1078

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:	)
	)
MAHOMET VALLEY WATER AUTHORITY, CITY OF CHAMPAIGN, ILLINOIS, a municipal corporation, DONALD R. GERARD, CITY OF URBANA, ILLINOIS, a municipal corporation, LAUREL LUNT PRUSSING, CITY OF BLOOMINGTON, ILLINOIS, a municipal corporation, COUNTY OF CHAMPAIGN, ILLINOIS, COUNTY OF PIATT, ILLINOIS, TOWN OF NORMAL, ILLINOIS, a municipal corporation, VILLAGE OF SAVOY, ILLINOIS, a municipal corporation, and CITY OF DECATUR, ILLINOIS, a municipal corporation,	)
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Complainants,	)
	) PCB 2013 - 022
v.	)
	) (Enforcement - Land)
CLINTON LANDFILL, INC., an Illinois corporation,	)
	)
Respondent.	)

ENTRY OF APPEARANCE

TO: Clerk of the Illinois Pollution Control Board and All Parties of Record

Please enter our appearance as counsel of record in this case for

CLINTON LANDFILL, INC.

Respectfully submitted,

ELIAS, MEGINNES, RIFFLE & SEGHETTI, P.C.

By: _____
Brian J. Meginnes, Esq.

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	)
Complainants,	)
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v.	)
	) (Enforcement - Land)
CLINTON LANDFILL, INC., an Illinois corporation,	)
	)
Respondent.	)

MOTION TO DISMISS

NOW COMES the Respondent, Clinton Landfill, Inc. ("CLI"), by and through its undersigned attorneys, and as and for its Motion to Dismiss the Complaint filed in this case by the Complainants, MAHOMET VALLEY WATER AUTHORITY, CITY OF CHAMPAIGN, ILLINOIS, a municipal corporation, DONALD R. GERARD, CITY OF URBANA, ILLINOIS, a municipal corporation, LAUREL LUNT PRUSSING, CITY OF BLOOMINGTON, ILLINOIS, a municipal corporation, COUNTY OF CHAMPAIGN, ILLINOIS, COUNTY OF PIATT, ILLINOIS, TOWN OF NORMAL, ILLINOIS, a municipal corporation, VILLAGE OF SAVOY, ILLINOIS, a municipal corporation, and CITY OF DECATUR, a municipal

corporation (collectively, the "Complainants"), pursuant to the Illinois Environmental Protection Act, 415 ILCS §5/1 *et seq.* and 35 Ill. Admin. Code §101.506, and other applicable regulations, states as follows:

INTRODUCTION

The Pollution Control Board (the "Board") lacks jurisdiction to hear this case. All four counts of the Complaint are based on a single incorrect legal theory, namely, that local siting approval is a pre-condition to development, construction, or operation of a landfill and for disposal at a facility. In fact, local siting approval is ***only*** a pre-condition to ***permitting*** of a landfill. Thus, the Complainants are actually challenging the issuance of IEPA Permit No. 2005-070-LF, as subsequently modified (collectively, the "Permit"), by the Illinois Environmental Protection Agency (the "Agency") to CLI. As the Courts and the Board have reiterated over and over, the issuance of permits by the Agency ***cannot be appealed*** by third-parties. Because the Complainants lack standing to bring this appeal, the case must be dismissed for want of jurisdiction.

ARGUMENT

The Complaint

In their Complaint, the Complainants purport to state four counts, namely, Count I for "Development, Construction and Operation of Chemical Waste Unit Without Local Siting Authority," Count II for "Disposal of TSCA Regulated PCB Waste Without Local Siting Authority," Count III for "Disposal of MGP Waste Exceeding Regulatory Levels of 35 Ill. Admin. Code 721.124(b) Without Local Siting Authority," and Count IV for "Disposal of Hazardous Waste (MGP Waste Exceeding Regulatory Levels of 35 Ill. Admin. Code 721.124(b)) Without RCRA Permit." All four counts are based on the Complainants' basic contention that

CLI was required to seek local siting approval from the DeWitt County Board for the development and construction of a chemical waste landfill or unit in Clinton Landfill No. 3. CLI expressly denies the truth of this contention. However, for the purposes of this Motion to Dismiss, even taking the Complainants' contention as true (which it is not), the Complaint must be dismissed.

Pursuant to Section 31 of the Illinois Environmental Protection Act, 415 ILCS §5/1, *et seq.* (the "Act"), "Any person may file with the Board a complaint ... against any person allegedly violating this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order." 415 ILCS §5/31(d)(2). The Complainants do not allege at any point in the Complaint that CLI has acted in violation of the Permit (which, of course, CLI has not). The Complainants concede that the Permit for Clinton Landfill No. 3 was issued on March 2, 2007 (Complaint, ¶35; Exhibit A thereto), that the initial permit was modified thereafter to permit the development, construction, and operation of the Chemical Waste Unit at Clinton Landfill No. 3 (Complaint, ¶¶48-52; Exhibit D thereto), and that the modified permit was subsequently renewed with additional modifications (Complaint, ¶58; Exhibit E thereto). In addition, the Complainants do not allege that CLI's development, construction, or operation of the landfill violates any rule or regulation under the Act, or threatens the environment.

Instead, the Complainants allege that "[t]he Permit Renewal and Permit Modification Nos. 9 and 29 so dramatically changed the nature, extent and scope of the 'proposed facility', its 'design' and 'plan of operations,' and the type of wastes it would accept, that the facility described in the [siting] Application approved by the DeWitt County Board in 2002 is a substantially different facility than what is set forth in the Permit Renewal and Permit

Modification Nos. 9 and 29. 415 ILCS 5/39.2(a)(ii)." (Complaint, ¶64). The Complainants argue that, based on this contention, CLI should have sought additional local siting approval before applying to the Agency for the modifications to and renewal of the Permit, and that CLI's failure to do so was erroneous. (Complaint, ¶¶92-100).

The obligation to obtain local siting approval is solely found in Section 39(c) of the Act, which provides that "***no permit*** for the development or construction of a new pollution control facility ***may be granted by the Agency*** unless the applicant submits proof to the Agency that the location of the facility has been approved by the County Board of the county if in an unincorporated area, or the governing body of the municipality when in an incorporated area, in which the facility is to be located in accordance with Section 39.2 of this Act." 415 ILCS §5/39(c) (emphasis added). Nowhere in the Act is the operator of a pollution control facility required to obtain local siting approval for ***development, construction, or operation*** of a facility, or for ***disposal*** at a facility. Obtaining local siting approval is a condition to issuance of a permit by the IEPA; it is not a condition to development, construction, or operation of a facility, or for disposal at a facility.

Therefore, the Complainants' true allegation of error is that pursuant to Section 39(c) of the Act, the Agency should have required new local siting approval before issuing Permit Modifications 9 and 29 and the Permit Renewal. Thus, ***the Complaint is an attack on the Permit.***

Count IV of the Complaint attacks the Permit from a slightly different angle than Counts I through III. In Count IV, the Complainants allege that the Agency should have required CLI to obtain a RCRA permit to dispose of manufactured gas plant (or "MGP") waste, which would have mandated another local siting approval (Count IV, ¶127), rather than providing for the

disposal of same pursuant to the Permit. *See* Exhibit D to the Complaint (Modification No. 9), pg. 3 ("Manufactured Gas Plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) is among the waste that may be accepted at the CWU"). This is clearly an attack on the Permit, as are Counts I through III of the Complaint.[1]

The Board Lacks Jurisdiction over Third-Party Appeals of Agency Permits

It is black-letter law in Illinois that the denial or issuance of a landfill permit by the Agency can ***only*** be appealed by the permit applicant: "If the Agency refuses to grant or grants with conditions a permit under Section 39 of this Act, the ***applicant*** may, within 35 days after the date on which the Agency served its decision on the applicant, petition for a hearing before the [Pollution Control] Board to contest the decision of the Agency." 415 ILCS §5/40(a)(1)

[1] In paragraph 122 of Count IV, the Complainants allege that "Manufactured gas plant waste exceeding regulatory levels specified in 35 Ill. Adm. Code 721.124(b) is classified as a type of 'hazardous waste as defined by Illinois Administrative Code Title 35, Section 721.'" The Complainants fail to cite to 35 Ill. Adm. Code 721.124**(a)**, which explicitly provides that the levels specified in subsection (b) thereof do not apply to manufactured gas plant waste: "A solid waste (**except manufactured gas plant waste**) exhibits the characteristic of toxicity if, using Method 1311 (Toxicity Characteristic Leaching Procedure (TCLP)) in 'Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,' USEPA publication number EPA 530/SW-846, as incorporated by reference in 35 Ill. Adm. Code 720.111(a), the extract from a representative sample of the waste contains any of the contaminants listed in the table in subsection (b) of this Section at a concentration equal to or greater than the respective value given in that table." 35 Ill. Adm. Code 721.124(a) (emphasis added). (This regulation is identical in substance to Federal regulation 40 CFR §261.24, which added the exclusion for manufactured gas plant waste in response to the D.C. Circuit Appellate Court's decision in Ass'n of Battery Recyclers, Inc. v. U.S. E.P.A., 208 F.3d 1047, 1064 (D.C. Cir. 2000), that "the EPA has not justified its application of the TCLP to MGP waste."). Based on their failure to consider the limitation in subsection (a) of 35 Ill. Adm. Code 721.124, the Complainants allege that manufactured gas plant waste "constitutes a 'hazardous waste' pursuant to Section 3.220 of the Act, 415 ILCS 5/3.220" in paragraph 123 of Count IV, and that "[a]ny disposal of hazardous manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b), violates Sections 21(f) of the Act because Clinton Landfill No. 3 does not have a hazardous waste disposal facility 'RCRA permit for the site issued by the Agency under subsection (d) of Section 39 of this Act....' 415 ILCS 5/21(f)" in paragraph 129 of Count IV. *See also* pg. 2 of the letter attached hereto as Exhibit A, in which the Agency notes that "the permit does authorize the acceptance of non-hazardous special waste including non-hazardous MGP waste." The Complainants' failure to cite to subsection (a) of 35 Ill. Adm. Code 721.124 is grossly misleading and evidences a lack of transparency and good faith on the part of the Complainants.

(emphasis added). There are no procedures whatsoever in the Act for the appeal of a permit decision by any person other than the permit applicant.

Therefore, in the case of Landfill, Inc. v. Pollution Control Bd., 74 Ill. 2d 541, 387 N.E.2d 258 (1978), the Illinois Supreme Court held that the issuance of a landfill permit by the Agency to an applicant cannot be appealed to the Pollution Control Board by third parties (*i.e.*, persons other than the applicant). The Court's decision was based, in part, on its finding that "to permit challenges to the allowance of a permit before the Board undermines the statutory framework." Id. at 559, 265. *See also* City of Elgin v. County of Cook, 169 Ill. 2d 53, 61, 660 N.E.2d 875, 880 (1995) ("An Agency decision granting a permit cannot be appealed to the Pollution Control Board, which is only authorized to hear appeals where the Agency denies a permit or grants only a conditional permit. [Citation omitted.]"); People of Williamson County ex rel. State's Attorney Charles Garnati, *et al.* vs. Kibler Development Corporation, *et al.*, PCB 08-93, 2008 WL 2721786 (Ill. Pol. Contr. Board, July 10, 2008), *affirmed on reconsideration*, 2008 WL 4189532 (Ill. Pol. Contr. Board, Sept. 4, 2008) (holding that the State's Attorney did not have standing to appeal issuance of a permit to the respondent landfill owner and operator). The Board has continually reiterated this principle.

Based on the Act and Landfill, Inc. and its progeny, the decision by the Agency ***not to require local siting approval*** in issuing a permit is ***not*** subject to appeal by third-parties or to the jurisdiction of the Board. The Board very recently reiterated this point in its decision in Anielle Lipe and Nykole Gillette, Complainants v. Illinois Environmental Protection Agency, Respondent, PCB 12-95, 2012 WL 1650149 (Ill. Pol. Contr. Bd. May 3, 2012). In that case, the complainants filed an enforcement action against the Agency, alleging that the Agency had issued a construction permit without verifying that the siting requirements applicable to pollution

control facilities under Section 39.2 of the Act had been complied with. Id. at *1. The complainants argued "that 'the Illinois Pollution Control Board does have authority to enforce the 'Act' by ensuring that the siting approval requirements of a pollution control facility and its operations are in compliance.'" Id. at *5. The Board dismissed the case, stating as follows:

> Complainants claim that the Agency's decision to grant the Tough Cut permit violates the Act and request that the Board enforce the Act by revoking the permit. Comp. at 7. * * *.
>
> The Agency argues that it properly issued the permit to Tough Cut, properly determined that the facility is not a "pollution control facility," and properly determined that local siting approval as a pollution control facility was not required to obtain the permit. The Agency argues that case law establishes that the Agency and not the Board is the appropriate entity to determine whether a facility qualifies as a pollution control facility. See *City of Waukegan* [*v. Illinois E.P.A.*], 339 Ill. App. 3d [963] at 975 [(2nd Dist. 2003)].
>
> The dispositive issue here, however, is whether the Act allows third parties to prosecute the Agency's alleged permitting violations before the Board. It has long been established that the Board lacks jurisdiction to entertain allegations that a permit determination by the Agency violated the Act. In 1978, the Supreme Court held in Landfill, Inc. that "[t]he focus must be upon polluters who are in violation of the substantive provisions of the Act," and not on the Agency in the performance of its duties. *Landfill, Inc.*, 74 Ill. 2d at 556, 387 N.E.2d at 263. Accordingly, the Board finds that it does not have authority to hear this complaint alleging violations of the Act by the Agency in carrying out its permitting duties.

Id. at *8.

The Board reached the same conclusion in Mill Creek Water Reclamation District v. Illinois Environmental Protection Agency and Grand Prairie Sanitary District, PCB 10-74, 2010 WL 3167245 (Ill. Pol. Contr. Bd. August 5, 2010). In addition to other claims of errors, the Petitioner in the Mill Creek claimed that the Agency wrongfully failed to require proof of local siting approval prior to issuing its permit:

> Second, Mill Creek claims that Kane County did not hold a public hearing on "the siting of Grand Prairic's proposed pollution control facility." Pet. at 8, citing 415 ILCS 5/39.2(d) (2008). Accordingly, continues Mill Creek, Grand Prairie could not provide proof of local siting approval to the Agency, a prerequisite to issuance of a development or construction permit for a new pollution control facility. *Id.*, citing 415 ILCS 5/39(c) (2008). Mill Creek argues that the Agency had no authority to grant the permits prior to receiving proof of local siting approval, and that by issuing the permits absent that approval, the Agency violated Section 39(c) of the Act (415 ILCS 5/39(c) (2008)). *Id.*

Id. at *2. The Board dismissed the appeal based on Landfill, Inc. and related law, finding that because "Mill Creek does not have standing to initiate this appeal of the wastewater treatment facility construction and operation permits issued to Grand Prairic by the Agency under Section 39(a) of the Act," "the Board lacks jurisdiction to hear Mill Creek's third-party petition for review." Id. at *7.

Similarly, in the Second District Appellate Court case of City of Waukegan v. Illinois E.P.A., 339 Ill. App. 3d 963, 791 N.E.2d 635 (2nd Dist. 2003), the City sought to challenge the issuance of a permit by the Agency. In that case (as in this case), the Agency did not require local siting approval prior to issuance of the permit, based on its decision that the facility in question was not a "new pollution control facility" requiring siting pursuant to the Act. The City argued that local siting approval was required, and attempted to circumvent the holding in City of Elgin by arguing that the failure of the applicant to obtain local siting approval divested the Agency of jurisdiction to grant the permit. Id. at 975, 645. The Court held that "[a]lthough the City couches its argument in terms of 'jurisdiction,' it is clear that the City is really challenging the merits of the Agency's decision to issue permits to the District and, in particular, the Agency's determination that the project does not constitute a 'pollution control facility.'" Id. The Court dismissed the City's challenge, stating as follows:

> The express language of section 39(c) instructs the Agency that it may not issue a permit for a new pollution control facility absent proof of local siting approval. Thus, section 39(c) requires the Agency to decide, before issuing a permit, whether local siting approval is required and, if it is, to make sure that the applicant has submitted proof thereof. Section 39(c) thereby bestows upon the Agency the power to determine causes of the general class of cases to which this case belongs. Further, we believe the Agency's expertise is a necessary part of determining whether a facility constitutes a "new pollution control facility." There is no allegation in this case that the Agency failed to make the necessary determinations under section 39(c). Rather, the City simply disagrees with the Agency's decision that local siting approval is not required. The City has not demonstrated that the Agency exceeded the scope of its authority.

Id. at 975-76, 645.

Based on the foregoing, it is crystal clear that the Agency's decision not to require local siting approval prior to issuing a permit is not subject to review by the Board or the Courts.

The Board Lacks Jurisdiction over This Case

Presumably because of this clear guidance in the case law, the Complainants in this case did not characterize this matter as a permit appeal (in which the Agency would have been named as a respondent), but rather filed this case as an enforcement action against CLI alone. Nevertheless, as above, the ***only*** statutory or permit requirement that the Complainants seek to "enforce" against CLI in this case is the requirement in Section 39(c) of the Act that an applicant for a permit obtain local siting approval as a condition of issuance of a permit by the Agency. As the Supreme Court stated in Landfill, Inc.,

> a consideration of the terms of the Act reveals a statutory scheme under which the Agency has the function of issuing permits. The Board has authority to hold enforcement hearings only upon separate citizen or Agency complaints, ***not challenging the Agency's performance of its duties but alleging that the activity contemplated causes or threatens pollution.***

Landfill, Inc., 74 Ill. 2d at 560, 387 N.E.2d at 265 (emphasis added). Nowhere in the Complaint do Complainants claim that "the activity contemplated causes or threatens pollution" in violation of the Act. Rather, the entirety of the Complaint is based on the Complainants' claim that the Agency should have required additional local siting approval before issuing Permit Modifications 9 and 29 and the Renewal.

The Complainants are not the first would-be litigants to seek to collaterally attack an Agency permit based on alleged defects in local siting approval. In the Illinois Supreme Court case of City of Elgin v. County of Cook, 169 Ill. 2d 53, 660 N.E.2d 875 (1995), the plaintiff municipalities attempted to challenge an Agency permit through the back door, by challenging the validity of the zoning ordinance authorizing the siting and development of the facility, on which the permit was based. Id. at 61-62, 880. The Illinois Supreme Court held that certain municipalities (which were not the applicants for the permit at issue) were "statutorily precluded from legally challenging the Agency's decision to grant a development permit for a pollution control facility." Id. at 61, 880. The Illinois Supreme Court found that the case constituted "an impermissible collateral attack on the Agency development permit approving the balefill." Id. at 65, 882.

Similarly, in Anielle Lipe and Nykole Gillette, Complainants v. Illinois Environmental Protection Agency, Respondent, PCB 12-95, 2012 WL 1650149 (Ill. Pol. Contr. Bd. May 3, 2012), discussed above, the complainants characterized their case as an "enforcement" action, and sought to "enforce" the siting provisions in the Act against the Agency, requesting that the Board "revoke" the Agency's permit. Id. The complainants "allege[d] that the information Tough Cut [the permit applicant] presented at public meetings and hearings did not fully disclose

the nature and scope of the proposed operation." Id. at *2. The Board dismissed the case for lack of jurisdiction, stating as follows in support of its decision:

> Complainants argue that this case should proceed because the Board has authority to enforce the Act "by ensuring that the siting approval requirements of a pollution control facility and its operations are in compliance." Resp. at 5. In *Landfill, Inc.*, the Illinois Supreme Court found that the Act does not allow third parties to prosecute the Agency's alleged permitting violations before the Board. Specifically, the Court stated that a citizen's statutory remedy is "not an action before the Board challenging the Agency's performance of its statutory duties in issuing a permit." *Landfill, Inc.*, 74 Ill. 2d at 559-60, 387 N.E.2d at 265.

2012 WL 1650149, *9.

In this case, as in the Lipe and Gilllete case, the Complainants are seeking to "enforce" the siting provisions of the Act, thereby directly attacking the validity of the Permit issued by the Agency, because "the facility described in the Application approved by the DeWitt County Board in 2002 is a substantially different facility than what is set forth in the Permit Renewal and Permit Modification Nos. 9 and 29." Complaint, ¶64. Like the complainants in the Lipe and Gillette case, the Complainants in this case do not have the legal authority to appeal the Agency's permitting decisions.

Because the Complainants cannot appeal the Agency's issuance of the Permit, the Board lacks jurisdiction to hear this case. *See, e.g.* Citizens Against the Randolph Landfill, (CARL) v. Pollution Control Bd., 178 Ill. App. 3d 686, 692-93, 533 N.E.2d 401, 406 (4th Dist. 1988) ("when one improperly seeks to initiate an action before an administrative board, such as by requesting review of a decision which the board has no authority to review, the board at least has jurisdiction to enter a final order dismissing the action..."); Citizens Utilities Co. of Illinois v.

Illinois Pollution Control Bd., 265 Ill. App. 3d 773, 777, 639 N.E.2d 1306, 1310 (3rd Dist. 1994), *appeal denied*, 158 Ill. 2d 550, 645 N.E.2d 1356 (1994).

CONCLUSION

Based on the foregoing, it is clear that the Complainants have no right to challenge the Permit. Characterizing the Complaint as an enforcement action does not save the case. As in City of Waukegan, the entirety of this case is a back door attempt to challenge the Agency's permitting decisions, years after the fact, for compliance with a decade-old siting approval. It is the purview of the Agency to review siting prior to issuing a permit. (Notably, in this case, the Agency not only reviewed the local siting approval prior to issuing the Permit, but it actually revisited and reaffirmed its decision regarding local siting approval in response to a citizen complaint as recently as last year. *See* the Agency's letter dated June, 2011, attached hereto as Exhibit A). If Complainants are allowed to persist in this case, no Agency permit will ever be safe from collateral attack. The Complainants had no right to appeal the issuance of the Permit (including the modifications and renewal) directly, and have no right to challenge the issuance of the Permit through this proceeding. Therefore, this case must be dismissed for want of jurisdiction. The case is "frivolous" as defined in 35 Ill. Admin. Code §101.202, in that it is both "a request for relief that the Board does not have the authority to grant" and "fails to state a cause of action upon which the Board can grant relief."

WHEREFORE, CLI respectfully requests that this Board dismiss the Complainants' Complaint in its entirety, and award CLI such other and further relief as is deemed appropriate under the circumstances.

Respectfully submitted,

CLINTON LANDFILL, INC.,
Respondent

By: _____
One of its attorneys

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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PAT QUINN, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

217/782-3397

June , 2011

Mr. Bill Spencer, Vice-President
Mr. David E. Holt, Secretary
WATCH Clinton Landfill
P.O. Box 104
Clinton, IL 61727-0104

Re: 0390055036 – DeWitt County
Clinton Landfill 3

Dear Mr. Spencer and Mr. Holt:

This letter is in response to Mr. Holt's letter on behalf of WATCH Clinton Landfill ("WATCH") to Doug Clay, Manager of the Illinois Environmental Protection Agency's Bureau of Land, Division of Land Pollution Control. The letter was sent via e-mail dated May 16, 2011. The letter concerns Clinton Landfill 3 ("Landfill"), its application pending before the United States Environmental Protection Agency ("USEPA") for authorization to accept polychlorinated biphenyl ("PCB") waste, and its current acceptance of manufactured gas plant ("MGP") waste, which WATCH characterizes as hazardous. More specifically, WATCH claims that the permit modification issued to the Landfill in January 2010 by the Bureau of Land Permit Section is in "violation of conditions established by the DeWitt County Board in 2002 . . . ."[1] The letter notes that excerpts from transcripts of the hearings held by the DeWitt County Board ("Board") on July 11 and 15, 2002, include statements by representatives of Clinton Landfill, Inc. "voluntarily [excluding] hazardous waste and PCB waste" from acceptance at the Landfill. WATCH asserts that this testimony became a condition of the Board's siting approval resolution and that issuance of permit modifications by the Illinois EPA in furtherance of acceptance of PCB waste or MGP waste for disposal constitutes violation of the condition.

The Illinois EPA disagrees with these characterizations and conclusions. As WATCH is aware, the Illinois EPA is prohibited from issuing a development or construction permit to certain "pollution control facilities" (i.e., waste management facilities) unless the applicant submits proof that the local siting authority has approved the proposed location of the facility in accordance with Section 39.2 of the Environmental Protection Act. 415 ILCS 5/39(c), 39.2. Clinton Landfill, Inc. submitted the proof in the required Form LPC-PA8, a notarized document

[1] The DeWitt County Board is the local siting authority for Clinton Landfill 3 for purposes of the local siting provision of the Environmental Protection Act. 415 ILCS 5/39.2. The DeWitt County Board adopted a resolution approving siting for Clinton Landfill 3 on September 12, 2002.

EXHIBIT A TO MOTION TO DISMISS

signed by the Board Chairman certifying that the facility was approved for waste storage, waste treatment, waste disposal and landfilling. As further required by the LPC-PA8, the Board resolution approving the siting and stating conditions of the approval was attached to the certification. The LPC-PA8 clearly states that the conditions are provided for information only and the Illinois EPA has no obligation to monitor or enforce local conditions. Even if there were such an obligation, the document contains no conditions excluding the acceptance of PCB wastes or MGP wastes at Clinton Landfill 3.

Clinton Landfill, Inc. submitted an application for the development and construction of a combined municipal solid waste landfill unit and chemical waste unit authorized to receive non-hazardous solid waste and non-hazardous special waste. The application was reviewed and issued in accordance with the regulations for such facilities at 35 Ill. Adm. Code 810-813 and, in particular, in accordance with Part 811 standards and requirements for municipal solid waste landfills and chemical waste landfills, the state's most stringent standards applicable to non-hazardous landfills. The permit modification issued by the Illinois EPA does not authorize the acceptance of "hazardous waste" within the meaning of state and federal environmental laws. However, the permit does authorize the acceptance of non-hazardous special waste including non-hazardous MGP waste. PCB waste may not be accepted unless authorized by the USEPA. If acceptance is authorized by the USEPA, only PCB waste considered non-hazardous special waste may be accepted at the facility. In addition, there was nothing in the application making the unit a "new pollution control facility" and triggering a second local siting approval procedure. The application did not propose an expansion to the area that was approved by the Board in the 2002 siting approval resolution, and it did not propose the acceptance of special or hazardous waste for the first time. 415 ILCS 5/3.330(b). Therefore, the Illinois EPA's issuance of the permit modification in January 2010 complied with all statutory and regulatory requirements applicable to the review of the application.

Sincerely,

Lisa Bonnett
Interim Director

cc: Scott Phillips
Doug Clay
Steve Nightingale
Imran Syed
John Kim
Kyle Rominger

CERTIFICATE OF SERVICE

The undersigned certifies that on December 5, 2012, the foregoing document will be served upon each party to this case in the following manner:

_X_ Enclosing a true copy of same in an envelope addressed to the attorney of record of each party or the party as listed below, with FIRST CLASS postage fully prepaid, and depositing each of said envelopes in the United States Mail at 5:00 p.m. on said date.

___ Enclosing a true copy of same in an envelope addressed to the attorney of record of each party or the party as listed below, for delivery by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, and depositing each of said envelopes in the United States Mail at 5:00 p.m. on said date.

___ Personal delivery to the attorney of record of each party at the address(es) listed below.

___ Facsimile transmission with confirmation by United States Mail

___ Via Federal Express - Express Package Service - Priority Overnight

David L. Wentworth II
David B. Wiest
Hasselberg, Williams, Grebe,
Snodgrass & Birdsall
124 SW Adams Street, Suite 360
Peoria, IL 61602-1320

Albert Ettinger
53 W. Jackson Street, Suite 1664
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Illinois Attorney General's Office
500 South Second Street
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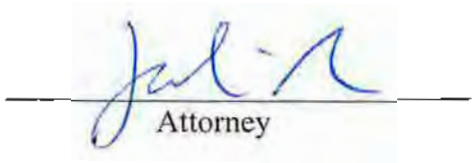

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