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: See Attached Service List

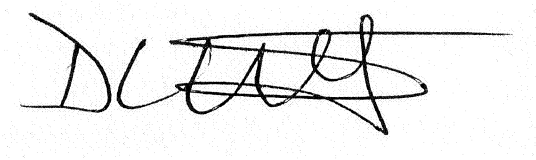
PLEASE TAKE NOTICE that on this date I filed electronically with the Clerk of the Pollution Control Board of the State of Illinois: Response to Motion to Dismiss, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

MAHOMET VALLEY WATER AUTHORITY, CITY OF CHAMPAIGN, ILLINOIS, a municipal corporation, DONALD R. GERARD, CITY OF URBANA, ILLINOIS, a municipal corporation, LAURAL 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,



Dated: December 24, 2012

By: _____
One of Their Attorneys

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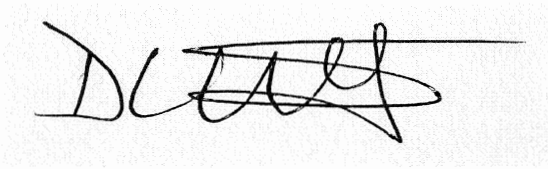
CERTIFICATE OF SERVICE

I hereby certify that I did on December 24, 2012, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Peoria, Illinois, a true and correct copy of the following instruments, entitled: NOTICE OF ELECTRONIC FILING, and RESPONSE TO MOTION TO DISMISS, in the above-captioned matter, upon the persons listed on the Service List, and the same by electronic filing as authorized by the Clerk of the Illinois Pollution Control Board.



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PCB 2013-022

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THIS FILING IS SUBMITTED ON RECYCLED PAPER.

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.	)	

RESPONSE TO MOTION TO DISMISS

NOW COME 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, by and through their attorneys, Hasselberg, Williams, Grebe, Snodgrass & Birdsall, and Albert Ettinger, and

for their Response to the Motion to Dismiss filed by Respondent, Clinton Landfill, Inc. ("CLI"), state as follows:

Introduction

Landfill, Inc. v. Pollution Control Board, 74 Ill. 2d 541 (1978), and its progeny, and the plain language of the Illinois Environmental Protection Act ("Act"), control the disposition of the CLI's Motion to Dismiss ("Motion") and dictate that the Motion must be denied. The Citizens' Complaint ("Complaint") alleges sufficient facts to state an enforcement cause of action against CLI for violations of the Act. The Board has jurisdiction to hear the case.

CLI's Motion presents two (2) basic arguments in support of its central claim that the Board lacks jurisdiction to hear the instant case. First, CLI asserts that a landfill developer has no independent obligation under the Act to obtain local siting approval before developing and operating a landfill or disposing of waste at that facility. Second, CLI asserts that Complainants fail to allege any violation of the Act not related to local siting, and fail to allege the CLI's actions violate any other provision of the Act or otherwise cause or threaten to cause pollution.

Both arguments are without merit. CLI mischaracterizes the Complaint. CLI ignores the plain language of the Act and holding of *Landfill, Inc.* CLI's Motion should be denied. The Board should accept the case for hearing.

Section 39.2 of the Act Requires Local Siting Approval

In support of its first argument, CLI attempts to cast the focus on the Agency's responsibilities under Section 39(c) of the Act. CLI claims "local siting approval is ***only*** a pre-condition to ***permitting*** of a landfill." Motion, p. 2 (emphasis in original). CLI asserts that the "obligation to obtain local siting approval is solely found in Section 39(c) of the Act". Motion, p. 4. CLI states: "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." Id. CLI further argues: "[T]he ***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." Motion, p. 9 (emphasis in original). CLI asserts that 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." Motion, p. 4 (emphasis added). CLI therefore concludes that "***the Complaint is an attack on the Permit***." Motion, p. 4 (emphasis in original). After contorting Complainants' Complaint into something it is not, CLI then cites *Landfill, Inc.* for the proposition that "the issuance of a landfill permit by the Agency to an applicant cannot be appealed to the Pollution Control board by third parties." Motion, p. 6.

What CLI fails to address is that *Landfill, Inc.* also establishes that a citizen can bring an enforcement action pursuant to Section 31 of the Act against a permittee who is alleged to be "in violation of the substantive provisions of the Act." *Landfill, Inc.*, 74 Ill. 2d at 556. The court in *Landfill, Inc.* described these alleged violators of the Act as

"polluters." *Id.* While citizen enforcement proceedings are allowed, a third-party action "challenging the Agency's performance of its statutory duties in issuing a permit" is not. *Landfill, Inc.*, 74 Ill. 2d at 560-61. To this point, Section 31(d)(1) of the Act states: "Any person may file with the Board a complaint, meeting the requirements of subsection (c) of this Section, against any person allegedly violating the 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)(1); see Complaint, para. 7. Section 31(e) of the Act states: "In hearings before the Board under this Title the burden shall be on the Agency or other complainant to *show either that the respondent has caused or threatened to cause air or water pollution* **or** *that the respondent has violated or threatens to violate any provision of this Act or any rule or regulation of the Board or permit or term or condition thereof.*" 415 ILCS 5/31(e)(emphasis added). Thus, pursuant to Section 31 of the Act, a "polluter" can be subject to enforcement proceedings if that person has "caused or threatened to cause" pollution, has "violated or threatens to violate any provisions of this Act," has "violated or threatens to violate . . . any rule or regulation of the Board", has "violated or threatens to violate . . . any . . . permit or term or condition thereof", or any combination thereof. 415 ILCS 5/31(e); see also 415 ILCS 5/31(d)(1). *Landfill, Inc.* therefore makes a clear distinction between a citizen enforcement action alleging violations of the Act, and a third-party action against the Agency. The former is proper; the latter is not. *Landfill, Inc.*, 74 Ill. 2d at 560-61.

The Complaint is an action against CLI alleging that CLI's contemplated activities cause or threaten pollution, and violate the Act. The Complaint alleges that CLI's PCB and MGP waste disposal operations at the newly created Chemical Waste Unit have

commenced, and that CLI is violating or threatening to violate the Act and Board's rules. Complaint, para. 10. The allegations in the Complaint are not an attack on or challenge to the Agency's performance of its duties.

Pursuant to Sections 39(c) and 39.2 of the Act, a county board has concurrent jurisdiction with the Agency to determine whether a waste facility should be located at a proposed site. *City of Elgin v. County of Cook*, 169 Ill. 2d 53, 64 (1995)(SB 172 "made clear all units of local government . . . have concurrent jurisdiction with the Agency in approving siting, because section 39(c) now requires local government approval of all proposed pollution control facilities [in accordance with Section 39.2 of this Act]."); 415 ILCS 5/39(c). In drafting what is now known as Section 39.2 of the Act, the "legislature charged the county board, rather than the [Board], with resolving the technical issues such as public health ramifications of a landfill's design." *Kane County Defenders, Inc. v. Pollution Control Board*, 139 Ill. App. 3d 588, 592-93 (2d Dist. 1985)(citations omitted). The court in *Kane County* continued: "This broad delegation of adjudicative power to the county board clearly reflects a legislative understanding that the county board hearing, which presents the only opportunity for public comment on the proposed site, is the most critical stage of the landfill site approval process." *Kane County*, 139 Ill. App. 3d at 593. Section 39.2 of the Act "confers on a county board the power to rule on requests for local siting approval, thus vesting the board with subject-matter jurisdiction over such approvals." *Ogle County Board v. Pollution Control Board*, 272 Ill. App. 3d 184, 192 (2d Dist. 1995). Section 39.2(g) further establishes the county board's independent jurisdiction over and significant role in local siting approval, which states: "The siting approval procedures, criteria and appeal procedures provided for in this Act for new

pollution control facilities shall be the exclusive siting procedures and rules and appeal procedures for facilities subject to such procedures." 415 ILCS 5/39.2(g).

Section 39.2(a) of the Act requires "local siting approval for each pollution control facility which is subject to such review." 415 ILCS 5/39.2(a). Complainants allege that Section 39.2(a) of the Act requires "local siting approval for each pollution control facility which is subject to such review." Complaint, para. 82. CLI's Motion fails to mention Section 39.2 of the Act or Complainants' allegations that Section 39.2 of the Act has been violated by CLI. In trumpeting its narrow view of Section 39(c) of the Act, CLI conveniently forgets that local siting approval - *proof* of which must be given to the Agency for permit processing - must also be obtained from the County Board "in accordance with Section 39.2 of this Act." 415 ILCS 5/39(c); see also Motion, p. 4. Section 39.2 adjudicative proceedings before a county board are separate and independent of the Agency and are the exercise of the county board's concurrent jurisdiction with the Agency.

Section 21(e) of the Act states: "No person shall: (e) *Dispose*, treat, store or abandon *any waste*, or transport any waste into this State for disposal, treatment, storage or abandonment, *except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder*." 415 ILCS 5/21(e)(emphasis added); see Complaint, para. 69. Local siting approval pursuant to Section 39.2 of the Act is one of the "requirements of this Act and of regulations and standards thereunder." 415 ILCS 5/21(e). Local siting approval is not solely a means to the end of obtaining a permit, or "only" a permit pre-condition, as CLI claims. Local siting approval by a unit of local government is one of the "requirements of this Act." 415 ILCS 5/21(e), 39.2(a).

Therefore, landfill development and specific waste disposal activities, if conducted at a facility which fails to meet all requirements of the Act, violate the Act and are the proper subject of a citizen enforcement action. 415 ILCS 5/31(d)(1)(complaint may be filed against any person "allegedly violating the Act").

It is no defense that the Agency issued a Permit Renewal and Permit Modifications for Clinton Landfill No. 3 because Section 813.107 of the Board's rules states: "The issuance and possession of a permit shall not constitute a defense to a violation of the Act or any Board regulations set forth in 35 Ill. Adm. Code: Chapter I except for the development and operation of a landfill without a permit." 35 Ill. Admin. Code 813.107; see Complaint, para. 9. Here, the Complainants allege that Respondent is polluting without fulfilling the independent duty of obtaining local siting approval.

In addition, the permits attached to the Complaint establish that Respondent is proceeding in violation of its permits. The "Standard Conditions For Construction/Development Permits Issued By The Illinois Environmental Protection Agency Bureau of Land" dated August 22, 2001 and incorporated into the Permit (Exh. A, p. 51 to Complaint), Permit Modification No. 9 (Exh. D, p. 61 to Complaint) and the Permit Renewal (Exh. E to Complaint, p. 73), each state:

> 2. The construction or development of facilities covered by this permit shall be done in compliance with applicable provisions of . . . the Illinois Environmental Protection Act, and Rules and Regulations adopted by the Illinois Pollution Control Board.
>
> * * * * *
>
> 5. The issuance of this permit:
>
> c. does not release the permittee from compliance with other applicable statutes and regulations of the United States, of the State of Illinois, or with applicable local laws, ordinances and regulations.

CLI boldly asserts that the Complaint "is a back door attempt to challenge the Agency's permitting decisions." Motion, p. 12. It is not. To the contrary, the Complaint is a direct action against CLI, not the Agency. The Agency is not a respondent to the instant enforcement action. Furthermore, no permit decision of the Agency is being challenged by the Complaint. Rather, the Complaint alleges that a landfill developer has an independent obligation under the Act to obtain local siting authority before developing and operating a landfill or disposing of certain waste at that facility. The law is clear that an Agency issued permit cannot constitute a defense to a claim of polluting without a permit unless that permit is valid.[1]

There is nothing "back door" about the Complaint. The Complaint acknowledges that pursuant to Section 39(a) of the Act, the Agency is vested with the duty to issue permits for landfill facilities. See Complaint, para. 71-73. But for new pollution control facilities, the inquiry does not stop there, and neither does the Complaint. The Complaint then alleges that Senate Bill 172 added local siting requirements to the Act (in what is now known as Section 39.2) which "assigned to local governments the responsibility of reviewing the location, land-use, and quality of life issues of the proposed facility." Complaint, para. 77-78.

It was not enough for CLI to mischaracterize the Complaint as a permit appeal. CLI attempts to expand the *Landfill, Inc.* rule against third party permit appeals to also absolve the applicant of its separate statutory obligations under the Act where there has

[1] *Landfill Inc.* held that third parties cannot bring challenges to Agency permits unless the General Assembly has provided for such a third party appeal but also made clear that, in cases where no third party appeal is allowed, persons who may be injured by pollution may bring an action in the Board against the polluter directly and that the discharger may only rely on the permit to form any part of a defense if the IEPA permit was issued in full compliance with law. The Supreme Court recognized that in cases in which the public did not have the right to appeal an IEPA-issued permit, it would raise constitutional questions were the Board to give any sort of preclusive weight to the IEPA permit.

been a permit issuance "decision by the Agency not to require local siting approval." Motion, p. 6. No such rule exists. CLI cannot convert an enforcement action against a "polluter" into a permit appeal, and immunize the "polluter" from failing to comply with the Act. [2]

In support of its proposed expansion of the holding of *Landfill, Inc.*, CLI cites two (2) Board cases, *Lipe v. IEPA*, PCB 12-95, 2012 WL 1650149 (May 3, 2012), and *Mill Creek Water Reclamation District v. IEPA*, PCB 10-74, 2010 WL 3167245 (Aug. 5, 2010), and one appellate case, *City of Waukegan v. IEPA*, 339 Ill. App. 3d 963 (2d Dist. 2003). The cases cited by CLI are readily distinguishable from the instant case, and do not immunize an applicant for its separate statutory obligations to comply with the Act.

Each of the cases cited by CLI involves improper direct claims by a complainant against the Agency (as a named respondent to the complaint) for Agency permit issuance and the Agency's "performance of its duties." See e.g., Lipe, slip op. at 8 (alleging the "Agency's decision to grant the Tough Cut permit violates the Act"); *Mill Creek*, slip op. at 2 (alleging "Agency violated Section 39(c) of the Act."); and *Waukegan*, 339 Ill. App. 3d at 965 (sought declaration that permits issued by Agency were void). None of the complainants in the cases cited by CLI alleged enforcement actions against the permit holder.

In the instant case, unlike the cases cited by CLI, Complainants are not suing the Agency as a respondent, and seek no relief from the Agency. Furthermore, Complainants allege violations of the Act against CLI. No such allegations were raised in the cases cited by CLI.

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[2] Indeed, it would plainly be unconstitutional to allow the IEPA permit to be used as a defense to Complainants' claims when they had no opportunity to appeal the issuance of the permit.

Complaint Alleges Violations of Act and Waste Disposal in Violation of Act - "Pollution"

In support of its second argument, CLI boldly asserts that 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." Motion, p. 3. CLI continues: "Nowhere in the Complaint do Complainants claim that 'the activity contemplated causes or threatens pollution' in violation of the Act." Motion, p. 10. To the contrary, the Complaint sufficiently alleges that actions of CLI associated with the Chemical Waste Landfill and PCB and MGP waste streams violate the Act and thereby threaten to cause or cause pollution. See e.g. Complaint, para. 10; see also Complaint, para. 1-6 (summarizing action, describing Mahomet Aquifer, PCB and MGP waste streams, CLI's violations of the Act, and CLI's intentions to dispose of said waste).

Section 39.2(a) of the Act requires "local siting approval for each pollution control facility which is subject to such review." 415 ILCS 5/39.2(a)("county board *shall* approve or disapprove . . . "); See also Complaint, para. 82. Under the Board's rules, a permit applicant has the primary responsibility to determine whether a proposed facility is a new pollution control facility under Section 3.330 of the Act. Section 812.105 of the Board's regulations states, in pertinent part: "The applicant shall state whether the facility is a new regional pollution control facility, as defined in Section [3.330] of the Act, which is subject to the site location suitability approval requirements of Sections 39(c) and 39.2 of the Act." 35 Ill. Admin. Code 812.105; See also Complaint, para. 80. Complainants allege: "Respondent CLI is responsible for determining and complying with Sections 3.330(b)(3), 39(c), and 39.2 of the Act." (citing 40 CFR § 761.50(a)(6);

415 ILCS 5/3.330(b)(3), 39(c), 39.2); see Complaint, para. 90. In this regulatory context, as plead in the Complaint as set forth above, Complainants allege "CLI represented and determined that local siting authority for the Chemical Waste Unit was not needed." Complaint, para. 96. Complainants further allege: " CLI erroneously determined that the contemplated facility was not a 'new pollution control facility' under 415 ILCS 5/3.330(b) despite the fact that it was 'requesting approval' to 'dispose of' new types of 'special' and 'hazardous waste' "for the first time." Complaint, para. 96. Complainants sufficiently allege violations of the Act and seek relief from the Board consistent with a citizen enforcement action under Section 31(d)(1) of the Act.

The Complaint alleges the following actions were taken by CLI without first obtaining local siting authority:

> Count I: Development, Construction and Operation of Chemical Waste Unit
>
> 112. From at least January 8, 2010, and continuing through the date of filing of the instant complaint, CLI has failed to obtain local siting authority from the DeWitt County Board for the development, construction and operation of the Chemical Waste Unit in Clinton Landfill No. 3, in violation of or in threatened violation of Sections 39(a), 39(c), and 39.2 of the Act. 415 ILCS 5/39(a), 39(c), and 39.2.
>
> 113. By violating or threatening to violate Sections 39(a), 39(c), and 39.2 of the Act, CLI thereby, also violated or threatens to violate Section 21(e) of the Act. 415 ILCS 5/21(e).
>
> Count II: Disposal of TSCA Regulated PCB Waste
>
> 119. From at least January 8, 2010, and continuing through the date of filing of the instant complaint, CLI has failed to obtain local siting authority from the DeWitt County Board for the disposal in the Chemical Waste Landfill or in any part of Clinton Landfill No. 3 of waste containing polychlorinated bi-phenyls (PCBs) at concentration greater than allowed pursuant to the Toxic Substances Control Act (TSCA), in violation of or in threatened violation of Sections 39(a), 39(c), and 39.2 of the Act. 415 ILCS 5/39(a), 39(c), and 39.2.

120. By violating or threatening to violate Sections 39(a), 39(c), and 39.2 of the Act, CLI thereby, also violated or threatens to violate Section 21(e) of the Act. 415 ILCS 5/21(e).

Count III: Disposal of MGP Waste

119. From at least January 8, 2010, and continuing through the date of filing of the instant complaint, CLI has failed to obtain local siting authority from the DeWitt County Board the disposal in the Chemical Waste Landfill or in any part of Clinton Landfill No. 3 of manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b), in violation of or in threatened violation of Sections 39(a), 39(c), and 39.2 of the Act. 415 ILCS 5/39(a), 39(c), and 39.2.

120. By violating or threatening to violate Sections 39(a), 39(c), and 39.2 of the Act, CLI thereby, also violated or threatens to violate Section 21(e) of the Act. 415 ILCS 5/21(e).

The Complaint alleges the following actions were taken by CLI without first obtaining a RCRA Permit:

Count IV: Disposal of Hazardous Waste

134. From at least January 8, 2010, and continuing through the date of filing of the instant complaint, CLI has failed obtain a RCRA permit pursuant to Section 39(d) of the Act and pursuant to Sections 703.121(a) and (b) of the Board's Waste Disposal Regulations for the disposal in the Chemical Waste Landfill or in any part of Clinton Landfill No. 3 of hazardous waste in the form of manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b), in violation of or in threatened violation of Sections 39(a), 39(c), 39(d) and 39.2 of the Act. 415 ILCS 5/39(a), 39(c), 39(d) and 39.2.; 35 Ill. Admin. Code 703.121(a) and (b).

135. By violating or threatening to violate Sections 39(a), 39(c), 39(d) and 39.2 of the Act, and 35 Ill. Admin. Code 703.121(a) and (b), CLI thereby, also violated or threatens to violate Section 21(f) of the Act. 415 ILCS 5/21(f).

Regarding the MGP waste which exceeds the levels of 35 Ill. Admin. Code 721.124(b), Complainants attached Permit Modification No. 9 as Exhibit D, and allege, in addition to the foregoing:

51. CLI also initiated Permit Modification No. 9 to obtain approval from the Agency for disposal of, for the first time in Clinton

> Landfill No. 3, "manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b)."
>
> 55. Permit Modification No. 9 constituted a "significant modification" to Permit No. 2005-070-LF pursuant to 35 Ill. Admin. Code 813.103 because it. . . 4) changed the Special Waste disposal condition of III.A.2.f. regarding manufactured gas plant waste.

Permit Modification No. 9 states, in pertinent part: "Manufactured gas plant waste exceeding the regulatory levels specified in 35 Ill. Adm. Code 721.124(b) can be disposed of in the CWU." See Exhibit D, p. 18. Regardless of the exemption contained in Section 721.124(a) for manufactured gas plant wastes, the Agency Permit Modification No. 9 (and the Permit Renewal) on its face allow CLI to dispose of hazardous waste in the Chemical Waste Unit without a RCRA Permit. To the extent CLI is disposing of such waste, it is in violation of Sections 39(a), 39(c), 39(d) and 39.2 of the Act. 415 ILCS 5/39(a), 39(c), 39(d) and 39.2.; 35 Ill. Admin. Code 703.121(a) and (b).

June 2011 Agency Letter

CLI's Motion makes no defense to the merits of the action or the violations of the Act alleged in the Complaint. CLI's Motion does not assert that the creation of the Chemical Waste unit or contemplated disposal of PCB and MGP wastes do not make it a "new pollution control facility" and thereby trigger application of Sections 39(c) and 39.2 of the Act. CLI does, however, attach a June 2011 letter from the Agency purportedly on the local siting approval issues raised in the Complaint.[3] That the Agency may too have

[3] The letter should be stricken from the record because it constitutes other affirmative matter and is not supported by affidavit. To the extent it is considered by the Board, the letter actually supports Complainants' substantive claims that CLI's apparent interpretation and application of Section 3.330(b)(3) to Clinton Landfill No. 3 is made in isolation, in complete disregard of the legislative findings expressed in the Act, the purposes of the Act, and the plain and ordinary meaning of the clear and unambiguous statutory language of Sections 39(c), 39.2 and 3.330(b)(3) of the Act. See Complaint, para. 92-100.

gotten it wrong, after the fact, does not absolve CLI of its separate statutory obligation under the Act to obtain local siting approval for the Chemical Waste Landfill and the PCB and MGP waste streams. The law is clear under *Landfill, Inc.* that non-reviewable views of the Agency have no legal effect. Regardless, the Agency is not a respondent in the instant case and the Complainants do not make any claims against the Agency.

Conclusion

The Complaint is a proper enforcement action brought against CLI for violations of the Act committed by CLI, as authorized by Section 31(d)(1) of the Act. CLI has an independent obligation under the Act to obtain local siting approval before developing the Chemical Waste Unit and undertaking the disposal of PCB and MGP waste. Having a permit is no defense. The county board has concurrent jurisdiction with the Agency over location of a new facility. CLI's construction of the Act and the holding of *Landfill, Inc.* would render the siting process meaningless where there plain and ordinary meaning of the Act required local siting approval from the DeWitt County Board.

WHEREFORE, the Complainants respectfully request that the Board deny CLI's Motion to Dismiss, accept the case and authorize a hearing in this matter at which time Respondent will be required to answer the allegations contained in the Citizens' Complaint, and for such other and further relief as the Board may deem just and proper and in the public interest.

Respectfully submitted,

MAHOMET VALLEY WATER AUTHORITY, CITY OF CHAMPAIGN, ILLINOIS, a municipal corporation, DONALD R. GERARD, CITY OF URBANA, ILLINOIS, a municipal corporation,

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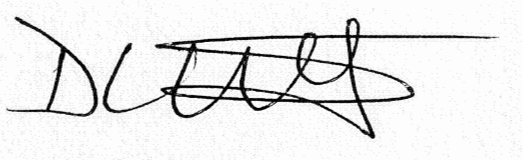
Complainants,



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