

The Intergovernmental Coalitions Complaint Against Clinton Landfill, Inc. before the Illinois Pollution Control Board

By Joseph Hooker

Assistant City Attorney with the City of
Champaign

Who are the members of the coalition?

- ▣ City of Champaign
- ▣ City of Urbana
- ▣ City of Bloomington
- ▣ City of Decatur
- ▣ Town of Normal
- ▣ Village of Savoy
- ▣ Champaign County
- ▣ Piatt County
- ▣ Mahomet Valley Water Authority

What have the coalition members agreed to do?

- ▣ Share the costs of legal challenges to
 - Clinton Landfill, Inc.'s current operation of a Chemical Waste landfill and
 - To any approval by the U.S. EPA of a pending application to dispose of PCB-contaminated waste at that facility

Who is providing the legal representation of the coalition members?



- ▣ Albert Ettinger, sole practitioner in Chicago, IL.
 - Formerly Senior Staff Attorney at Environmental Law and Policy Center of the Midwest
 - Practice focused on protecting water quality and implementing the Clean Water Act
 - Extensive experience representing citizens and environmental organizations in causes of action pursuant to various environmental protection laws



- ▣ David L. Wentworth II, partner with the Peoria law firm of Hasselberg, Grebe, Snodgrass, Urban & Wentworth
 - Extensive experience representing the interests of individual citizens, citizen's groups and environmental organizations throughout Central and Northern Illinois in hazardous and municipal landfill siting matters

What kind of complaint did the Intergovernmental Coalition file?

- ▣ It is a “citizen’s complaint” filed with the Illinois Pollution Control Board (IPCB)
- ▣ Section 31(d)(1) of the Illinois Environmental Protection Act (the Act) authorizes any person to file a complaint with IPCB alleging a violation of the Act.

The core allegation of the complaint:

- ▣ Clinton Landfill, Inc., (CLI) is violating the Act by operating a chemical waste facility at its Landfill #3 unit, directly over the Mahomet Aquifer, without having obtained local siting review approval of the DeWitt County Board
- ▣ Local siting review is required by Section 39.2 of the Act for any “new pollution control facility”. (415 ILCS 5/39.2)
- ▣ The complaint seeks an order directing CLI to cease the operation of the facility

Attorney General Lisa Madigan Joins our Lawsuit

- ▣ The Illinois Attorney General agrees with the intergovernmental coalition's legal claims.
- ▣ The Attorney General's office was granted leave to intervene in the lawsuit and filed pleadings and a legal brief in support of the Coalition's complaint.

Who is Clinton Landfill, Inc.

- ▣ Clinton Landfill Inc. is a subsidiary of Area Disposal Services, Inc. and Peoria Disposal Services



- ▣ These are two very large waste disposal corporations headquartered in Peoria, Illinois
- ▣ “PDC provides hazardous waste disposal services to clients in 11 states throughout the Midwest.” (source: area and pdc website)

What is the significance of the failure to conduct a local siting review hearing?

- ▣ Pursuant to Section 39.2, the County Board cannot approve such a facility UNLESS the applicant establishes by evidence presented at that hearing that numerous criteria have been met, including:
 - The facility is necessary to accommodate the waste needs of the area it is intended to serve
 - The facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected

What establishes that this chemical waste facility is a “new pollution control facility”

- ▣ The only local siting review hearing ever conducted by the DeWitt County Board for Landfill #3 occurred on July 11 and July 15, 2002.
- ▣ At that time, CLI was proposing to operate Landfill #3 as a conventional Municipal Solid Waste landfill (MSWLF) as defined by the State’s Environmental Protection Act.

- ▣ On July 11, 2002, Ronald L. Edwards, then Vice President of Landfill Development and Operations for Area Disposal Services, Inc. and CLI, testified at that local siting review hearing *under oath* that Landfill #3 would NOT accept PCB contaminated waste in concentrations regulated by and subject to approval in accordance with the Federal Toxic Substances Control Act, and would NOT accept certain, more concentrated “Special Waste.”

- ▣ On March 2, 2007 the Illinois EPA issued CLI Permit No. 2005-070-LF for Landfill No. 3, the “new pollution control facility” approved by the DeWitt County Board in 2002.
- ▣ Permit No. 2005-070-LF expressly prohibited disposal of two kinds of waste
 - Waste containing higher concentrations of PCBs that require U.S. EPA approval under the Toxic Substances Control Act (TSCA); and
 - Manufactured gas plant waste in concentrations exceeding permissible levels identified in Section 35 Ill. Adm. Code 721.124(b)

Meanwhile- back in Peoria County.....

- ▣ On November 9, 2005, Peoria Disposal Company (PDC) files application with Peoria County Board for permission to expand PDC No. 1 Landfill, which was reaching capacity.
- ▣ On December 9, 2005, PDC files application to the U.S. EPA for approval pursuant to TSCA to dispose of PCB's in concentrations greater than 50 ppm in PDC No. 1 Landfill

- ▣ Peoria County Board conducted a local siting review hearing **lasting six days**, from February 21 through February 27, 2006 to review application to expand PDC No. 1 Landfill.
- ▣ In accordance with requirements of Section 39.2, the County accepted public comment on the application for 30 days after the close of the public hearing- until March 29, 2006
- ▣ Over a thousand pages of public comment for and against the proposal were received.

- ▣ In April of 2006 the County Board's Site Hearing Committee conducted meetings to discuss the evidence presented during six days of public hearings and public comment received after the hearing, and developed and filed for the County Board's consideration recommended findings of fact to recommend denial of application.
- ▣ In May of 2006, the full County Board followed the Committee's recommendations and voted to deny the application based on the recommended findings of fact.

- ▣ The adopted findings of fact were that PDC had failed to satisfy three Section 39.2 criteria including:
 - The facility is necessary to accommodate the waste needs of the area it is intended to serve; and
 - The facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected

- ▣ PDC appealed to the IPCB challenging the Peoria County Board's decision to deny the application.
- ▣ The IPCB affirmed the decision of the County Board.
- ▣ PDC appealed the IPCB decision to the Appellate Court
- ▣ The Appellate Court affirmed the decision of the IPCB

Back now to DeWitt County....

- ▣ Sometime around February 1, 2008, CLI filed an application with the IEPA seeking approval to “modify” Permit No. 2005-070-LF to allow it to utilize 22.5 acres of Landfill No. 3 for a “Chemical Waste Unit”.
- ▣ The stated objective of the permit modification was to permit CLI to dispose of waste containing PCB’s in concentrations requiring U.S. EPA approval under TSCA AND to dispose of manufactured gas plant waste exceeding permissible concentrations under State law for the existing MSWLF.

- ▣ In order to facilitate disposal of highly concentrated TSCA-regulated PCB waste, the proposed “Chemical Waste Unit” was designed to exceed the design and operating requirements for hazardous waste facilities under Illinois State Law. (see 35 Ill. Admin. Code 724.401(c))
- ▣ The IEPA approved the permit modification application and issued “Permit Modification No. 9” on or about January 8, 2010.

- ▣ Pursuant to permit modification No. 9, the facility is already accepting “special waste” that it could not accept with a municipal solid waste permit – e.g. higher concentrations of *Manufactured Gas Plant* or *MGP* waste, AND
- ▣ The “Chemical Waste” designation will allow CLI to accept PCB contaminated waste regulated by the Federal Toxic Substances Control Act if the U.S. EPA approves CLI’s PCB Waste application.

- ▣ If granted U.S. EPA approval, Landfill #3 will become only the 2nd PCB waste landfill in all of U.S. EPA region 5-
- ▣ U.S. Region 5 includes all of six states!! Illinois, Indiana, Michigan, Ohio, Wisconsin and Minnesota
- ▣ A municipal waste landfill serving a modest portion of Central Illinois will be converted into a toxic waste landfill accepting PCB waste from all over the Midwest.

- ▣ This new, significantly more toxic waste stream
 - Calls for significantly enhanced design features for the landfill, compared to a municipal solid waste landfill proposal reviewed in 2002
 - Poses significantly greater potential threats to public health , including contamination to the Mahomet Aquifer
 - Will be brought in from a much greater geographic area than the service area reviewed at the 2002 hearing.
- ▣ The Coalition and the Illinois Attorney General believe it is clear that State Law calls for the DeWitt County Board to perform a new evaluation of the need for and the design, operation and location of this chemical waste facility.

Coming to an Aquifer Near You- the PCB Train!

- ❑ CLI is seeking various approvals for a rail spur to bring hazardous waste to Landfill #3 by the trainload!



So what action if any did the DeWitt County Board take regarding the chemical waste facility?

- ▣ On August 21, 2007- the Dewitt County Board Finance Committee considered and recommended approval of a “First Amendment” to the host agreement that had been approved in 2001.

- ▣ The proposed first amendment added three new paragraphs to the 2001 Host agreement that:
 - Expressed County Board support for and approval of the construction and operation of a Chemical Waste Landfill by CLI in Landfill #3.
 - Provided that CLI would pay the County an additional 50,000 per year to support implementation of the County's Solid Waste Management Plan commencing on January 1, 2008 .
 - Expressed support for and approval of the permitting of a "Rail Unloading Facility by CLI" and the payment by CLI of an additional fee for waste unloaded at that facility.

So what prior notice did the public get about consideration of this issue?

- ▣ The only public notice for this meeting was an agenda posted four days earlier- August 17 2007
- ▣ The only mention of any consideration of topics involving the Landfill was reference to an *“Amendment to the Host Agreement to support rail service”*

- ▣ **Two days later-** the full DeWitt County Board voted on and approved the amendment to the Host Agreement.
- ▣ In the only public notice of that meeting of the full board, a posted agenda, the only reference to consideration of any topic affecting the operation of the landfill is “*Discussion and possible action on ... Adopt first Amendment to Host Agreement.*”

- ▣ When word got out about the significance of this approval of the amendment to the Host Agreement, public outcry persuaded the DeWitt County Board to authorize a vote on non-binding resolution concerning the facility in 2008.
- ▣ 75% of those DeWitt County residents voting on the resolution expressed opposition to the Chemical Waste facility.

What is the status of the IPCB Complaint

- ▣ On September 19, 2013, the IPCB dismissed the Coalition's Complaint, issuing a written ruling explaining its decision.
- ▣ All of the pleadings of the parties and IPCB rulings can be found at the IPCB website at <http://www.ipcb.state.il.us/>
- ▣ Click on the "E-library" link - then click on "Search Board and Court Decisions" and enter case number PCB 2013-022

- ▣ The basis for the dismissal? IPCB ruled that:
 - Because the Illinois EPA issued a permit modification approving the chemical waste facility in Landfill #3, CLI had no legal obligation to apply for local siting review approval **even if the chemical waste facility is in fact a new pollution control facility that called for such a local siting review.**

- ▣ The Coalition and the Illinois Attorney General filed a motion asking the IPCB to reconsider its decision.
- ▣ The Current DeWitt County Board, by a vote of 7 to 5, approved a resolution supporting the Coalition's claim that the chemical waste facility should be subjected to a new local siting review hearing.
- ▣ On December 5, 2013, the IPCB denied that motion.

- ▣ The Coalition and the Illinois Attorney General have now filed an appeal from that decision to the Appellate Court for the Fourth Judicial District in Springfield.
- ▣ It will probably be several months before the Appellate Court decides the appeal

- ▣ Given the host County's critical role in evaluating the public health and safety implications of new pollution control facilities in Section 39.2 of the Act, this IPCB ruling defies common sense and completely undermines the integrity of the local siting review process
- ▣ Some members of the Coalition are also exploring with local state legislators the possibility of sponsoring legislation to address weaknesses in the current regulation of landfills to
 - Protect the public from the consequences of erroneously issued IEPA permits
 - Expand notice requirements for proposals to build new landfill facilities over aquifers that serve multiple counties

OTHER RECENT DEVELOPMENTS

- ▣ Clinton Landfill, Inc. has now declared that it is no longer legally required to pay its host fee to DeWitt County, (approximately \$1,000,000 per year) which was established as a condition of operating Landfill #3 as a conventional municipal solid waste landfill in the original “Host County Agreement” entered into in April of 2001. (source - Pantagraph)
- ▣ CLI claims it is relieved of this 2001 legal obligation because the current County Board violated a 2008 amendment to that agreement that stated the Board would remain neutral regarding the new chemical waste facility.

- ▣ At the time CLI agreed to this host fee in 2001, no one, including CLI, was talking about locating a chemical waste facility in Clinton.
- ▣ After agreeing to this 2001 hosting fee, CLI attempted to get approval from Peoria County to have its chemical waste facility located in that County.
- ▣ Only after Peoria County denied that request at a local siting review hearing did AREA/PDC's focus shift to the Clinton Landfill facility

Websites and e-mail addresses

- ▣ I can be reached at e-mail:
joseph.hooker@ci.champaign.il.us and
- ▣ Phone: 1-217-403-8765
- ▣ Visit www.cleanwater4midIL.org for more information