

A RESOLUTION

APPROVING A CONSENT DECREE TO SETTLE ALL CLAIMS IN A CITIZENS' COMPLAINT FILED WITH THE ILLINOIS POLLUTION CONTROL BOARD BY THE CITY AND OTHER UNITS OF LOCAL GOVERNMENT AGAINST CLINTON LANDFILL, INC.

WHEREAS, beginning in December of 2011, a number of units of local government in Illinois, pursuant to the terms and conditions of an Intergovernmental Agreement (the "Intergovernmental Agreement"), have been sharing the costs of legal challenges to the operation of a chemical waste unit (the "CWU") located directly over the Mahomet Valley Aquifer (the "Aquifer") within a landfill facility in DeWitt County, Illinois, ("Clinton Landfill") operated by Clinton Landfill, Inc. ("CLI"); and

WHEREAS, the Intergovernmental Agreement provides for additional units of local government to join as parties to the Agreement to share the costs of the legal challenges to the CWU, and currently fourteen units of local government in Illinois are parties to said Agreement, including the Mahomet Valley Water Authority ("MVWA"), the Cities of Champaign, Urbana, Decatur, Bloomington, Monticello and Tuscola, the Town of Normal, Champaign, Piatt, Macon and McLean Counties, and the Villages of Savoy and Forsyth; and

WHEREAS, pursuant to said Intergovernmental Agreement, the City of Champaign is acting as the lead agency with authority to hire attorneys and other professional consultants to prosecute any legal challenges to the CWU; and

WHEREAS, the City of Champaign hired David L. Wentworth of the Peoria, Illinois law firm of Hasselberg, Grebe, Snodgrass, Urban & Wentworth, and Albert Ettinger of Chicago Illinois (the "Coalition Attorneys") in November of 2011 to prosecute legal challenges to the CWU; and

WHEREAS, on November 9, 2012, the Coalition Attorneys filed a Complaint (the “Citizens Complaint”) in a case numbered and hereinafter referred to as “Case No. PCB 13-22”, with the Illinois Pollution Control Board (“IPCB”) on behalf of the nine units of government then parties to the Intergovernmental Agreement, including the MVWA, the Cities of Champaign, Urbana, Decatur and Bloomington, the Town of Normal, Champaign and Piatt Counties, and the Village of Savoy, and Champaign Mayor Donald R. Gerard, and City of Urbana Mayor Laurel Lunt Prussing, (the “Plaintiffs”), against CLI to prevent the disposal of certain manufactured gas plant and PCB waste in the CWU; and

WHEREAS, the Citizens’ Complaint alleges that CLI was unlawfully operating the CWU within Clinton Landfill because CLI failed to obtain local siting approval for the CWU from the DeWitt County Board as required by the Illinois Environmental Protection Act (the “Act”); and

WHEREAS, on February 7, 2013, the People of the State of Illinois by Attorney General Lisa Madigan intervened in Case No. PCB 13-22 in support of the Plaintiffs Citizens’ Complaint against CLI; and

WHEREAS, on September 19, 2013, the IPCB granted CLI’s Motion to Dismiss the Citizens’ Complaint; and

WHEREAS, the Plaintiffs and the People of the State of Illinois as Intervener filed appeals from IPCB’s dismissal of the Citizen’s Complaint (“Citizen’s Complaint Appeal”) with the Fourth District Court of Appeals; and

WHEREAS, all of the parties in the Citizen’s Complaint Appeal have completed their legal briefs in that Appeal and the Appellate Court has postponed the scheduling of oral arguments on the motion of all of the parties to accommodate settlement negotiations in that case; and

WHEREAS, subsequent to the filing of the Citizen's Complaint, the Illinois Environmental Protection Agency (the "Agency") modified a permit it previously granted to CLI for operation of the Clinton Landfill to prohibit CLI from disposing of certain manufactured gas plant and PCB waste in the CWU because of CLI's failure to secure local siting approval from DeWitt County for said CWU; and

WHEREAS, CLI has now filed a series of appeals ("Permit Appeals") with the IPCB in the case numbered and hereinafter referred to as "Case No. PCB 15-60", alleging that the Agency's permit modification prohibiting operation of the CWU was in violation of the Act, and the Office of the Illinois Attorney General is now defending the Agency in the Permit Appeals; and

WHEREAS, the IPCB has continued Case No. PCB 15-60 upon the motion of the parties to that appeal to accommodate settlement discussions by the parties; and

WHEREAS, the Coalition Attorneys, attorneys in the Illinois Attorney General's Office and attorneys for CLI have now negotiated terms and conditions of a proposed settlement of all claims arising out of Case No. PCB 13-22 and Case No. PCB 15-60, and are proposing to enter said settlement in the form of a Consent Decree (the "Consent Decree") that would be filed in a new case alleging that CLI has created a public nuisance related to the disposal of MGP Source Material at the CWU, the new case to be filed in the Circuit Court in DeWitt County, Illinois for purposes of facilitating effective enforcement of its terms and conditions by all of the parties thereto; and

WHEREAS, the proposed terms and conditions of the Consent Decree substantially achieve the objectives of the Citizen's Complaint and entry of said Decree to settle all claims

arising out of the Citizen's Complaint will avoid the additional costs and risks associated with continuing to pursue said litigation.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHAMPAIGN, ILLINOIS, as follows:

Section 1. That the City shall be a party to and file a nuisance complaint in the Circuit Court of DeWitt County, Illinois for the purpose of entry of the Consent Decree and to facilitate effective enforcement of the terms and conditions of the Consent Decree.

Section 2. That the proposed Consent Decree to settle all claims arising out of the Citizen's Complaint is hereby approved.

Section 3. That the City Manager is hereby authorized to execute a Consent Decree in substantially the form as attached hereto.

COUNCIL BILL NO. 2015-153

PASSED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
DEWITT COUNTY, ILLINOIS
CHANCERY DIVISION**

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

v.)

CLINTON LANDFILL, INC., an Illinois)
corporation,)
)
Defendant.)

No.

Consolidated with

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, CITY OF)
MONTICELLO, ILLINOIS, a municipal corporation,)
CITY OF TUSCOLA, ILLINOIS, a municipal corporation,)
VILLAGE OF FORSYTH, ILLINOIS, a municipal)
corporation, COUNTY OF McLEAN, ILLINOIS,)
COUNTY OF MACON, ILLINOIS, and)
DEBORAH FRANK-FEINEN,)
)
Plaintiffs,)

v.)

CLINTON LANDFILL, INC., an Illinois)
corporation,)
)
Defendant.)

No.

CONSENT ORDER

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois and the Illinois Environmental Protection Agency (“Illinois EPA”) (together, the “State”), and Defendant, CLINTON LANDFILL, INC., an Illinois corporation (“CLI”); and Plaintiffs, 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, CITY OF DECATUR, a municipal corporation, CITY OF MONTICELLO, ILLINOIS, a municipal corporation, CITY OF TUSCOLA, ILLINOIS, a municipal corporation, VILLAGE OF FORSYTH, ILLINOIS, a municipal corporation, COUNTY OF McLEAN, ILLINOIS, COUNTY OF MACON, ILLINOIS, and DEBORAH FRANK-FEINEN, (individually and collectively, the “Local Governmental Plaintiffs”) and Defendant CLI; (collectively, “Parties to the Consent Order”) have agreed to the making of this Consent Order and submit it to this Court for approval.

I. INTRODUCTION

This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Court’s entry of the Consent Order and issuance of any injunctive relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.* (2014), and Illinois Pollution Control Board (“Board”) regulations alleged in the State’s

Complaint except as otherwise provided herein. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding nuisance alleged in the Local Governmental Plaintiffs' Complaint except as otherwise provided herein. It is the intent of the parties to this Consent Order that it be a final judgment on the merits of this matter.

A. Parties and Background

1. On the same date as entry of this Consent Order, a Complaint was filed on behalf of the People of the State of Illinois *ex rel.* Lisa Madigan, Attorney General of the State of Illinois, on her own motion pursuant to Section 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2014), against CLI.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2014).

3. On the same date as entry of this Consent Order, a Complaint was filed by the Local Governmental Plaintiffs against CLI alleging the existence of a nuisance.

4. At all times relevant to the Complaints, CLI was and is an Illinois corporation in good standing with the Illinois Secretary of State's Office.

5. CLI owns and operates a municipal solid waste and special waste landfill located at 9550 Heritage Road, Clinton, unincorporated DeWitt County, Illinois ("Clinton Landfill 3" or "Facility").

6. Clinton Landfill 3 consists of two parts: a 135-acre municipal solid waste unit ("MSWU") and a 22.5-acre portion of Clinton Landfill 3 referred to as of the date of entry of this Consent Order as the Chemical Waste Unit ("CWU"), located within the boundaries of the Facility (and for purposes of this Consent Order, Clinton Landfill 3 consists of the land legally

described in Exhibit A, a copy of which is attached hereto and incorporated by reference into this Consent Order).

7. On November 9, 2012, a complaint was filed with the Illinois Pollution Control Board (“Board”) titled Mahomet Valley Water Authority, City of Champaign, Donald R. Gerard, City of Urbana, Laurel Lunt Prussing, City of Bloomington, County Of Champaign, County Of Piatt, Town of Normal, Village Of Savoy, and City of Decatur, v. Clinton Landfill, Inc., PCB 13-22 (the “Mahomet Valley et al. case” and the “Mahomet Valley et al. case Parties”).

8. On February 7, 2013, the People of the State of Illinois by Attorney General Lisa Madigan intervened in the Mahomet Valley et al. case.

9. On September 19, 2013, the Board granted CLI’s Motion to Dismiss in the Mahomet Valley et al. case.

10. The Mahomet Valley et al. case Parties (Case No. 4-14-0002), and Intervenor the People of the State of Illinois (Case No. 4-14-0020), timely filed appeals with the Fourth District Court of Appeals. At this time, briefing on the appeals is complete and oral argument has been scheduled.

11. On August 28, 2014, CLI filed with the Board a Petition for Review of Permit based on an Illinois EPA-initiated modification (“Modification 47”) of Landfill Permit No. 2005-070-LF. Clinton Landfill, Inc. v. Illinois Environmental Protection Agency, Case No. PCB 15-60.

12. Subsequent modifications of Landfill Permit No. 2005-070-LF have necessitated additional petition filings with the Board because the language from Modification 47 was incorporated into each subsequent modification. Clinton Landfill, Inc. v. Illinois Environmental

Protection Agency, Case Nos. PCB 15-76, PCB 15-111, PCB 15-113, PCB 15-166, PCB 15-194, PCB 15-195, PCB 15-207, and PCB 16-34.

B. Definitions

For the purposes of this Consent Order, the following definitions shall apply:

1. “Manufactured Gas Plant Source Material (“MGP Source Material”)” shall mean any waste generated from the remediation of an MGP site or facility, the analysis of which, if it were tested using Method 1311 (Toxicity Characteristic Leaching Procedure in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” USEPA Publication Number EPA 530/SW-846), would demonstrate that the waste exceeds the regulatory levels for any contaminant given in the table contained in 40 C.F.R. 261.24(b) and 35 Ill. Adm. Code 721.124(b).

2. “Toxic Substances Control Act-polychlorinated biphenyls (“TSCA-PCBs”)” shall mean wastes containing PCBs that are required by the Toxic Substances Control Act to be disposed of in a Chemical Waste Landfill as defined in 40 C.F.R. 761.3.

3. The “Sole Source Aquifer” shall mean the Mahomet Sole Source Aquifer Area as designated by the USEPA effective on March 11, 2015 (as published in 80 Fed. Reg. 14370 (March 19, 2015)).

C. Allegations of Non-Compliance

The State contends that CLI has violated the following provisions of the Act and Board Waste Disposal regulations related to the Facility:

Count I: Waste Disposal in Violation of the Act, in violation of Section 21(d)(2) and (e) of the Act, 415 ILCS 5/21(d)(2) and (e) (2014), and Section 812.105 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 812.105.

Local Governmental Plaintiffs contend that CLI has created a public nuisance related to the disposal of MGP Source Material at the Facility.

D. Consolidation

On the same date as entry of this Consent Order, the case involving the Local Governmental Plaintiffs' Complaint was consolidated into the case involving the State's Complaint by the Court, on the Agreed Motion to Consolidate filed by the Parties to the Consent Order.

E. Non-Admission of Violations

CLI represents that it has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Consent Order and complying with its terms, CLI does not affirmatively admit the allegations of violation within the Complaints and referenced above, and this Consent Order shall not be interpreted as including such admission.

II. APPLICABILITY

A. This Consent Order shall apply to and be binding upon the Parties to the Consent Order and shall constitute a covenant running with the real property that is the site of Clinton Landfill 3 (*see* Exhibit A) and thereby apply to and be binding upon all successors in ownership or interest to said real property. The Parties to this Consent Order agree that it shall be filed for record in the office of the DeWitt County Clerk and Recorder. CLI waives as a defense to any enforcement action taken pursuant to this Consent Order the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order.

B. No change in ownership, corporate status or operator of the Facility shall in any way alter the responsibilities of CLI or the State under this Consent Order. CLI shall provide a copy of this Consent Order to any purchaser of the Facility or successor in interest to CLI as owner of the Facility. This provision does not relieve CLI from compliance with any regulatory requirement regarding notice and transfer of applicable Facility permits.

III. JUDGMENT ORDER

This Court has jurisdiction of the subject matter herein and of the Parties to the Consent Order and, having considered the stipulated facts and being advised in the premises, finds the following relief appropriate:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. CLI's Commitments

1. Within seven (7) days of entry of this Consent Order, CLI shall move to dismiss the permit appeals currently pending before the Board, Clinton Landfill, Inc. v. Illinois Environmental Protection Agency, Case Nos. PCB 15-60, PCB 15-76, PCB 15-111, PCB 15-113, PCB 15-166, PCB 15-194, PCB 15-195, PCB 15-207, and PCB 16-34.

2. On May 29, 2015, CLI filed a withdrawal of its request with the United States Environmental Protection Agency ("USEPA") for approval to dispose of TSCA-PCBs at the CWU at Clinton Landfill 3. CLI shall not submit an application to USEPA at any time in the future for approval to dispose of TSCA-PCBs at or within the boundaries of the real estate presently known as Clinton Landfill 3.

3. As of the date of entry of this Consent Order and until such time as CLI meets all the requirements set forth in the Permit 2005-070-LF, including closure and post-closure care, CLI shall not seek to obtain approval to accept TSCA-PCBs at the Facility.

4. As of the date of entry of this Consent Order and until such time as CLI meets all the requirements set forth in the Permit 2005-070-LF, including closure and post-closure care, CLI shall not accept for disposal at or within the boundaries of the real estate presently known as Clinton Landfill 3, any MGP Source Material.

5. a. Notwithstanding any subsequent modifications to Permit 2005-070-LF, CLI shall at a minimum, semi-annually monitor groundwater monitoring wells located downgradient of Cell CWU-1A, namely: G40M, G40D, G40R, G47M, G47D, G47R, G48M, G48D, G48R, G49S, G49M, G49D, G49R, G50S, G58M, G58D, G59D, and G59R at the Facility for the following parameters:

- a) Acenaphthene
- b) Acenaphthylene
- c) Anthracene;
- d) Benzene;
- e) Benzo(a)anthracene
- f) Benzo(a)pyrene
- g) Benzo(b)fluoranthene
- h) Benzo(ghi)perylene
- i) Benzo(k)fluoranthene
- j) Chrysene
- k) Pentachlorophenol
- l) Dibenzo(a,h)anthracene
- m) Ethylbenzene
- n) Fluoranthene
- o) Indeno(1,2,3-cd)pyrene
- p) Naphthalene
- q) Phenanthrene
- r) Pyrene
- s) Toluene
- t) Xylenes-Total

b. The requirements in Paragraph III.A.5 shall remain in effect until such time as CLI completes closure and post-closure care, as required in conformity with all applicable permits, statutes, and Board regulations.

c. Laboratory analysis of the groundwater monitoring conducted pursuant to this Paragraph III.A.5 shall be performed and reported by a laboratory that holds NELAP/TNI (National Environmental Laboratory Accreditation Program/The NELAC Institute) or equivalent certification. The Parties acknowledge that the Illinois EPA has the existing legal authority to split samples with CLI and to conduct testing at Clinton Landfill 3.

6. As of the date of entry of this Consent Order, CLI shall comply with all terms and conditions of Illinois EPA Landfill Permit No. 2005-070-LF, currently and as modified.

7. This Consent Order in no way affects the responsibilities of CLI to comply with any other federal, state or local laws or regulations, including but not limited to the Act.

8. The existing MGP Source Material within the CWU is currently covered with a minimum of 12 inches of clean soil as an “intermediate cover,” as is required by the Illinois EPA regulations. In addition to and directly above that intermediate cover layer, CLI shall place an additional 12 inches of clean, select clayey soil of the same type that has proven to meet the Illinois EPA low permeability requirements for landfill cell compacted clay liner construction (low permeability compacted cohesive earth liner with hydraulic conductivity no greater than 1×10^{-7} cm/sec). CLI or its contractor shall compact the additional 12 inches of said select clayey soil using the same equipment and methods utilized when constructing compacted clay liners for landfill cells. This relatively impermeable cap will minimize if not prevent altogether “new” water from coming into contact with the MGP Source Material. The existing leachate collection system beneath the MGP Source Material will ensure that any liquid that might be released from the MGP Source Material over time will be effectively collected and removed for proper management.

9. CLI shall not accept for disposal, apply for permits or authority to dispose, or file or seek to obtain local siting approval pursuant to Section 39.2 of the Act from the DeWitt County Board (or from the governing body of a municipality if in an incorporated area in the future) for the disposal of TSCA-PCBs or MGP Source Material on any real estate that is located over the Sole Source Aquifer in DeWitt County, Illinois, at any time.

10. CLI shall seek to have Landfill Permit No. 2005-070-LF modified by the Illinois EPA consistent with the terms of this Consent Order.

B. State's Stipulations

1. The State stipulates that it is resolving the allegations of its Complaint filed herein without requiring CLI to exhume the MGP Source Material currently disposed of in the CWU at the Facility, based on the violations alleged in the Complaint filed herein.

2. The State stipulates that CLI is not required to obtain any additional local siting approval from the DeWitt County Board for the CWU, provided that the CWU is not used for the disposal of MGP Source Material or TSCA-PCBs after the date of entry of this Order, and hereafter the CWU only accepts municipal solid waste, non-hazardous special waste, certified non-special wastes, and such other wastes that CLI is permitted to accept at the MSWU at the Facility.

3. Within seven (7) days of entry of this Consent Order, the State shall move to dismiss its appeal in Case No. 4-14-0020 filed with the Fourth District Court of Appeals.

C. Local Governmental Plaintiffs' Stipulations

1. The Local Governmental Plaintiffs stipulate that each of them is resolving the allegations of their Complaint filed herein without requiring CLI to exhume the MGP Source Material currently disposed of in the CWU at the Facility, and the Local Governmental Plaintiffs

stipulate that each of them will never require CLI to exhume the MGP Source Material currently disposed of in the CWU at the Facility.

2. Within seven (7) days of entry of this Consent Order, the Mahomet Valley et al. case Parties shall move to dismiss their appeal in Case No. 4-14-0002 filed with the Fourth District Court of Appeals.

3. a. On July 14, 2015, the MAHOMET VALLEY WATER AUTHORITY repealed its Ordinance No. 68.

b. The MAHOMET VALLEY WATER AUTHORITY shall adopt no ordinance prior to January 1, 2016, that concerns the subject matter at issue in repealed Ordinance No. 68; provided, however, that nothing herein shall prohibit the MAHOMET VALLEY WATER AUTHORITY from taking legislative action that concerns the subject matter of repealed Ordinance No. 68 prior to January 1, 2016, in the event: (i) CLI files a significant permit modification request seeking a substantial change in the operations, design or regulated status of the Facility that would allow the Facility to dispose of wastes which are not currently allowed under RCRA Subtitle D regulations; or (ii) CLI seeks approval to dispose of new waste stream(s) at the Facility for which it does not have permit authority as of the date of this Consent Order. If this Paragraph III.C.3.b is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions in this Consent Order shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

c. CLI shall have the right to enforce the requirements in this Paragraph III.C.3 against the MAHOMET VALLEY WATER AUTHORITY alone; the other Parties shall not be joined in any such enforcement action.

4. The COUNTY OF CHAMPAIGN, ILLINOIS and the COUNTY OF McLEAN, ILLINOIS each agree that if it is presented with an application for the siting and development of a transfer station and recycling center by CLI or any of its affiliates, such COUNTY will consider in good faith whether same is consistent with the solid waste management plan adopted by the COUNTY in accordance with the Local Solid Waste Disposal Act and/or the Solid Waste Planning and Recycling Act.

D. Enforcement and Modification of Consent Order

1. This Consent Order is a binding and enforceable order of this Court. This Court shall retain jurisdiction of this matter and shall consider any motion by any party for the purposes of interpreting and enforcing the terms and conditions of this Consent Order. The Parties to the Consent Order agree that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process.

2. The Parties to the Consent Order may, by mutual written consent, extend any compliance dates or modify the terms of this Consent Order without leave of this Court. A request for any modification shall be made in writing and submitted to the designated representatives. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Consent Order. Any such agreed modification shall be in writing and signed by authorized representatives of each party, for filing and incorporation by reference into this Consent Order.

E. Dispute Resolution

The Parties to the Consent Order may seek to informally resolve disputes arising under this Consent Order. The Parties to the Consent Order reserve the right to seek enforcement by

the Court where any other party has failed to satisfy any compliance deadline or has violated any provision within this Consent Order.

F. Notice and Submittals

The submittal of any notice or other documents required under this Consent Order shall be delivered to the following designated representatives:

As to the State Plaintiffs

Stephen J. Sylvester
Jennifer A. Van Wie
Assistant Attorneys General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

James Jennings
Assistant Counsel, Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Steve Nightingale
Manager, Bureau of Land, Permits Section
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to CLI

Brian Meginnes
Janaki Nair
Elias, Meginnes & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, Illinois 61602-1611

Royal J. Coulter, President
Clinton Landfill, Inc.
4700 N. Sterling Avenue
Peoria, Illinois 61615

As to Local Governmental Plaintiffs

City of Champaign
City Attorney
Office of City Attorney
102 N. Neil Street
Champaign, Illinois 61820

City of Champaign
City Manager
Office of City Manager
102 N. Neil Street
Champaign, Illinois 61820

Town of Normal
Corporation Counsel
Office of Corporation Counsel
11 Uptown Circle
Normal, Illinois 61761

Town of Normal
City Manager
Office of City Manager
11 Uptown Circle
Normal, Illinois 61761

City of Decatur
Corporation Counsel
Office of Corporation Counsel
Decatur Civic Center
1 Gary K. Anderson Plaza – 3rd Floor
Decatur, Illinois 62523

City of Decatur
City Manager
Office of City Manager
Decatur Civic Center
1 Gary K. Anderson Plaza – 3rd Floor
Decatur, Illinois 62523

G. Release from Liability

In consideration of CLI's commitments as set forth in Section III.A., the State and the Local Governmental Plaintiffs release, waive and discharge CLI from any liability, penalties,

and/or fines for the violations of the Act or in nuisance, respectively, that were the subject matter of the Complaints or are otherwise addressed herein. The release set forth above does not extend to any matters other than those expressly specified in the Complaints filed on the same date as entry of this Consent Order, or in this Consent Order. The State and the Local Governmental Plaintiffs reserve, and this Consent Order is without prejudice to, all rights of the State of Illinois and the Local Governmental Plaintiffs against CLI with respect to all matters not expressly addressed herein, including but not limited to the following:

- a. criminal liability;
- b. liability for future violations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. CLI's failure to satisfy the requirements of this Consent Order.

Nothing in this Consent Order is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Local Governmental Plaintiffs may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, other than CLI.

H. Execution and Entry of Consent Order

This Order shall become effective only when executed by all Parties to the Consent Order and the Court. This Order may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument. The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Consent Order and to legally bind them to it.

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

AGREED:

FOR THE STATE PLAINTIFF:

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

LISA BONNETT, Director
Illinois Environmental Protection Agency

BY: _____
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

**FOR THE LOCAL GOVERNMENTAL
PLAINTIFFS:**

MAHOMET VALLEY WATER
AUTHORITY

CITY OF CHAMPAIGN, ILLINOIS, a
municipal corporation

By: _____

By: _____

Its: _____

Its: _____

DATE: _____

DATE: _____

DONALD R. GERARD

LAUREL LUNT PRUSSING

DATE: _____

DATE: _____

CITY OF URBANA, ILLINOIS, a municipal corporation

By: _____

Its: _____

DATE: _____

CITY OF BLOOMINGTON, ILLINOIS, a municipal corporation

By: _____

Its: _____

DATE: _____

COUNTY OF CHAMPAIGN, ILLINOIS

By: _____

Its: _____

DATE: _____

COUNTY OF PIATT, ILLINIOS

By: _____

Its: _____

DATE: _____

TOWN OF NORMAL, ILLINOIS, a municipal corporation

By: _____

Its: _____

DATE: _____

VILLAGE OF SAVOY, ILLINOIS, a municipal corporation

By: _____

Its: _____

DATE: _____

CITY OF DECATUR, ILLINOIS, a municipal corporation

By: _____

Its: _____

DATE: _____

CITY OF MONTECELLO, ILLINOIS, a municipal corporation

By: _____

Its: _____

DATE: _____

CITY OF TUSCOLA, ILLINOIS, a municipal corporation

By: _____

Its: _____

DATE: _____

VILLAGE OF FORSYTH, ILLINOIS, a municipal corporation

By: _____

Its: _____

DATE: _____

COUNTY OF McLEAN, ILLINOIS

COUNTY OF MACON, ILLINOIS

By: _____

By: _____

Its: _____

Its: _____

DATE: _____

DATE: _____

DEBORAH FRANK-FEINEN

By: _____

Its: _____

DATE: _____

FOR CLI:

CLINTON LANDFILL, INC.

BY: _____

Its: _____

Title of Signatory

DATE: _____

IT IS SO ORDERED.

ENTERED:

JUDGE

DATE: _____

EXHIBIT A

LEGAL DESCRIPTION OF SITE (Clinton Landfill No. 3)

The approximately 269 acre site is located approximately 2 miles south of Clinton, Illinois east of U.S. Highway 51, in Texas Township, DeWitt County, Illinois. The site is legally described as follows:

Part of the Northeast Quarter and the Southeast Quarter of Section 10, Township Nineteen (19) North, Range Two (2) East; the Northwest Quarter and the Southwest Quarter of Section 11, Township Nineteen (19) North, Range Two (2) East; and the Northwest Quarter of the Northeast Quarter and the North Half of the Northwest Quarter of Section 14, Township Nineteen (19) North, Range Two (2) East, all situated in Dewitt County, Illinois and more particularly described as follows;

Commencing at the Southwest corner of the Northeast Quarter of said Section 10; thence N.88°36'34"E., 345.56 feet along the South line of the Northeast Quarter of said Section 10 to the Point of Beginning; thence N.0°00'05"W., 63.49 feet to the Northerly Right of Way line of a township road; thence S.89°59'55"W., 60.00 feet along the said Northerly Right of Way line; thence S.17°16'48" W., 47.13 feet along the said Northerly Right of Way line; thence N.87°43'00"W., 124.87 feet along said Northerly Right of way to the Easterly Right of Way line of F.A. Route 412 (US Route 51); thence N.0°19'42"E., 82.61 feet along said Easterly Right of Way line; thence N.5°22'57"W., 100.50 feet along said Easterly Right of Way line; thence N.0°19'42"E., 88.93 feet along said Easterly Right of Way line; thence N.88°36'34"E., 2530.01 feet to the East line of the Northeast Quarter of said Section 10; thence N.88°25'40"E., 204.15 feet to the East Right of Way line of the now abandoned Illinois Central Gulf Railroad; thence S.0°20'22"E., 300.05 feet along the said East Right of Way to the North line of the Southwest Quarter of said Section 11; thence N.88°25'40"E., 2444.08 feet along the North line of the Southwest Quarter of said Section 11 to the iron pin at the Northeast corner of the Southwest Quarter of said Section 11; thence S.0°11'27"W., 1319.68 feet along the East line of the Northeast Quarter of the Southwest Quarter of said Section 11 to the iron pin at the Southeast corner of the Northeast Quarter of the Southwest Quarter of said Section 11; thence S.0°20'57"W., 1336.42 feet along the East line of the Southeast Quarter of the Southwest Quarter of said Section 11 to the iron pin at the Southeast Corner of the Southwest Quarter of said Section 11; thence S.0°29'23"W., 196.82 feet along the West line of the Northwest Quarter of the Northeast Quarter of said Section 14; thence S.37°48'15"E., 884.21 feet; thence South, 427.15 feet to the South line of the Northwest

Quarter of the Northeast Quarter of said Section 14; thence S.88°41'09"W., 549.84 feet along the South line of the Northwest Quarter of the Northeast Quarter of said Section 14 to the iron pin at the Southwest Corner of the Northwest Quarter of the Northeast Quarter of said Section 14; thence S.88°34'49"W., 1167.00 feet along the South line of the North Half of the Northwest Quarter of said Section 14; thence N.65°24'32"W., 1454.56 feet; thence West, 143.42 feet; thence N.0°20'22"W., 298.81 feet; thence N.0°20'22"W., 2805.20 feet; thence N.45°45'22"W., 222.93 feet; thence S.88°23'08"W., 950.46 feet; thence S.12°26'12"W., 316.59 feet; thence N.76°33'13"W., 1149.56 feet; thence N.0°00'05"W., 96.51 feet to the Point of Beginning and containing 268.804 acres more or less.

Part of 12-10-400-003



REPORT TO CITY COUNCIL

FROM: Dorothy Ann David, City Manager

DATE: August 28, 2015

SUBJECT: EXPLANATION OF COUNCIL BILL NO. 2015 -153

A. Introduction: This Council Bill approves a consent decree that would settle the lawsuit filed by the City and a number of other units of local government against Clinton Landfill, Inc. for the alleged unlawful operation of a chemical waste unit at the Clinton Landfill in DeWitt County, Illinois.

B. Action Requested: The Administration recommends approval of the Council Bill.

C. Prior Council Action:

- On December 6, 2011, the City Council approved Council Bill No. 2011-240, approving an intergovernmental agreement with the City of Urbana, the Town of Normal, the Village of Savoy, and Champaign County to share the costs of hiring professional consultants to challenge any applications to the U.S. Environmental Protection Agency (U.S. EPA) or the Illinois Environmental Protection Agency (Illinois EPA) by Clinton Landfill, Inc. (CLI) for permission to operate a chemical waste unit (CWU) at its landfill facility in DeWitt County, located directly over the Mahomet Aquifer.
- On December 4, 2012, the City Council approved Council Bill 2012-205 approving a contract between the City of Champaign as lead agency for the Intergovernmental Coalition and attorneys David Wentworth and Albert Ettinger to file and prosecute legal challenges to the operation of the CWU.
- On July 2, 2013, the City Council approved Council Bill No. 2013-114, approving a change order to increase the not-to-exceed amount for the City's contract with Coalition attorneys David Wentworth and Albert Ettinger to \$83,000.
- On March 17, 2015, the City Council approved Council Bill No. 2015- 040, approving an amendment to the intergovernmental agreement to authorize the hiring of legal and technical consultants to represent the Coalition at any local siting hearing conducted by the DeWitt County Board to consider any application filed by CLI for approval of the CWU.

D. Summary:

- A summary of earlier stages in the Intergovernmental Coalition's efforts to oppose operation of a CWU at the Clinton Landfill can be found in the Report to the City Council dated March 13, 2015, which can be accessed on-line at: [CB2015-040](#).
- In March of 2015, attorneys for CLI initiated negotiations with the Illinois Attorney General's Office and the Coalition's attorneys to discuss the terms of a possible settlement of all outstanding cases concerning the CWU.
- The Appellate Court has suspended scheduling of oral arguments on the Coalition's and the Illinois Attorney General's appeal from the IPCB dismissal of the Coalition's Citizen's Complaint at the request of all parties to facilitate settlement negotiation efforts.
- The IPCB has suspended consideration of CLI's appeal challenging the IEPA's permit modification that prevents it from accepting certain PCB wastes and certain MGP wastes in the CWU at the request of all parties to those permit appeals to facilitate settlement negotiation efforts.
- Attorneys for the parties have agreed on a proposed settlement decree that will settle all claims arising out of those lawsuits and that substantially achieves the objectives of the Coalition's Citizen's Complaint.
- The proposed settlement decree will be filed in a new case to be filed in the DeWitt County Circuit Court, Illinois, alleging that CLI has created a public nuisance related to the disposal of certain MGP at the CWU.

E. Background:

1. Intergovernmental Coalition Efforts to Oppose the CWU at the Clinton Landfill. The basis for the concern of the Intergovernmental Coalition members about the operation of a chemical waste unit by CLI in its landfill facility in DeWitt County, and a timeline for various facets of the Coalition's legal efforts are discussed in some detail in a Report to Council dated March 13, 2015 that accompanied Council Bill No. 2015-040. That report may be accessed on line at: [CB2015-040](#).

2. Status of Current Lawsuits Regarding the CWU. David Wentworth and Albert Ettinger, the attorneys for the Intergovernmental Coalition, and attorneys with the Illinois Attorney General's Office have filed appeals from the IPCB's dismissal of the Coalition's Citizen's Complaint in the Appellate Court for the Fourth Judicial District. Those appeals have been fully briefed by the parties, and all that remains is the scheduling of oral arguments. That scheduling has been postponed by the Court at the request of all of the parties to afford an opportunity for the parties to attempt to negotiate a settlement of the claims involved in that case.

CLI filed a permit appeal with the IPCB to challenge the validity of the IEPA's more recent modification #47 of CLI's permit for its landfill facility, which ordered CLI to cease further operation of the CWU because of the failure to get local siting approval from DeWitt County for that facility. Consideration of that appeal has been suspended by the IPCB at the request of the parties to facilitate settlement negotiations. If no settlement is reached by the parties, both of those legal cases will resume until final decisions are rendered by the Appellate Court and the IPCB respectively.

3. Earlier Settlement Between DeWitt County and CLI of Host Agreement Fee Lawsuit.

Earlier this year, attorneys representing DeWitt County and CLI reached an agreement to settle a lawsuit filed by the County against CLI that sought the recovery of monthly landfill facility host agreement fees that CLI had stopped paying for over a year. CLI's explanation for stopping those payments was that the County had itself breached the landfill host agreement when the County Board approved a resolution supporting the Coalition's legal claim in its Citizen's Complaint that the CWU was subject to local siting approval. CLI took this position even though the host fee had been agreed to contractually between the parties in 2002, long before CLI ever even considered constructing and operating a CWU at this facility.

In addition to reaching an agreement on the amount of host fees to be paid, the agreement also committed CLI to withdrawing its application before the U.S. EPA for permission to accept PCB contaminated waste at the facility, to never seeking such approval again regarding Landfill #3, and to cease accepting any additional Manufactured Gas Plant (MGP) waste with chemical concentrations exceeding certain state regulatory levels for toxicity at the facility, commonly referred to and hereinafter referred to as "MGP source material". In exchange, the County agreed to never seek any administrative agency or court ruling requiring the removal of the MGP source material already accepted at the facility. The enforceability of that agreement is contingent upon CLI successfully settling its lawsuits with the Attorney General's office and the Intergovernmental Coalition.

4. Key Features of the Proposed Consent Decree.

a. CLI's Agreement to Never Dispose of PCBs or More Toxic MGP Wastes over the Aquifer in DeWitt County. The Coalitions' attorneys, attorneys in the Illinois Attorney General's Office, and attorneys for CLI have now agreed on a final draft of a proposed consent decree to settle the outstanding lawsuits regarding the operation of the CWU. Similar to the agreement reached between CLI and DeWitt County, the proposal has CLI agreeing to never accept federally regulated PCB waste or any future deliveries of the MGP source material for disposal at its Landfill #3 facility. The proposal goes further, however, and commits CLI to never seeking permission to and never actually accepting such wastes at any other future landfill facility that is in DeWitt County and located over the Mahomet Aquifer.

Coalition attorneys unsuccessfully sought a commitment from CLI to agree to never accept such wastes at any facility anywhere over the Mahomet Aquifer. It should be noted, however, that no other waste disposal company is currently restricted in that manner. In addition, CLI's commitment to not dispose of such wastes anywhere in DeWitt County over the Mahomet Aquifer goes well beyond the relief sought in the Coalition's Citizen's Complaint, namely to require local siting approval by the DeWitt County Board for the operation of the existing CWU.

b. CLI Allowed to Leave Wastes Already Accepted in CWU in Place. The proposed decree also mirrors the settlement already reached between DeWitt County and CLI in allowing CLI to leave the MGP source material already disposed of in the CWU in place without the need for local siting approval. An estimated 27,000 tons of MGP waste have been disposed of in the CWU to date. This represents only a small percentage of the capacity of this facility. According

to CLI's application to the U.S. EPA for permission to accept PCB contaminated waste, the CWU occupies approximately 22.5 acres of Landfill #3 and has an estimated capacity of 2,529,506 cubic yards for waste materials. According to CLI, for the MGP waste received for disposal at the CWU, one cubic yard of MGP waste typically equates to one ton of MGP waste. As a result, 27,000 tons of MGP waste equals approximately 27,000 cubic yards (out of the 2,529,506 cubic yard-capacity). The consent decree will insure that only a small percentage of that capacity will be occupied with the MGP wastes already accepted at the facility.

In addition, the IEPA is concerned that the exhumation of wastes already accepted in the facility could damage the integrity of the engineered barriers in the unit that prevent contaminants from migrating off the facility. Also, the fact that the IEPA actually did grant approval to CLI by way of a permit modification to accept the waste already disposed of in the unit would pose an obstacle to persuade a Court to order CLI to remove those materials even if the Coalition were successful with its Citizen's Complaint, and CLI was then unsuccessful in obtaining local siting approval from the DeWitt County Board to resume operation of the CWU.

Another factor supporting accepting this concession is that CLI designed and constructed the CWU to hazardous waste landfill standards, providing additional engineered barriers beyond those required for a municipal solid waste landfill to more effectively contain contaminants on site and protect groundwater. This fact would also diminish the chances that a Court would order CLI to remove that waste.

c. Risks of Proceeding with Litigation. If efforts to settle the pending litigation fail and the litigation resumes, there is a risk that CLI would be successful, both in persuading the Appellate Court to sustain the IPCB's dismissal of the Citizens' Complaint, and in having the IPCB reverse the IEPA's most recent permit modification. CLI would then be able to renew its application to the U.S. EPA for permission to dispose of federally regulated PCB wastes at the facility. CLI would probably need to seek local siting approval from the DeWitt County Board before resuming the disposal of MGP source material even if CLI prevails in the two lawsuits because of a new law, recently signed by the Governor, that now requires such material to be disposed of in a hazardous waste land fill rather than a municipal solid waste landfill. (Public Act 099-0365, signed into law on Aug. 14, 2015). If granted, CLI would then be allowed to resume accepting the more hazardous MGP wastes.

At the time the Coalition began its legal efforts to oppose operation of this facility, the U.S. EPA was poised to grant approval for the disposal of PCB contaminated waste at this facility based on the representations of CLI's consultant, and in fact had issued a draft permit for review. Pursuant to authority granted in an amendment to the Coalition's intergovernmental agreement, the City of Champaign as lead agency was then and is now prepared to retain the services of the legal and technical consultants the Mahomet Valley Water Authority utilized to challenge CLI's U.S. EPA application to make a case for denying local siting approval if CLI made an application to the DeWitt County Board. However, the DeWitt County Board will ultimately be called upon to decide which experts to believe in reaching its decision.

In addition, because the DeWitt County Board will be acting in an administrative or quasi-judicial capacity in reviewing any CLI application for local siting approval, the Board's

determination as to how to resolve factual disputes between the qualified experts tendered by the two sides will be entitled to a substantial degree of deference from the IPCB, the agency where a direct appeal from a local siting decision must be filed under the Act. In order to overrule a DeWitt County Board approval granted in the face of conflicting expert testimony, the IPCB would need to find that the County Board's decision was "*against the manifest weight of the evidence*". Stated differently, the IPCB would need to find that it was clearly evident from the record created before the County Board that the Board should have denied the request. This will be a difficult burden to meet if the evidentiary record includes testimony from qualified experts retained by CLI to support the application.

d. Impermeable Clay Cover to be Placed Over the Existing MGP Waste in the CWU and Ongoing Monitoring Requirements. The proposed settlement would also require that CLI apply an additional one-foot thick layer of relatively impermeable clay soils on top of the "daily cover" of soils already in place over the existing waste in the CWU. This will significantly reduce the risk of rain water coming into contact with the wastes already present in the unit and reduce the possibility of contaminants migrating out of the facility. The settlement also imposes a semi-annual groundwater monitoring regime on CLI to detect the presence of an extensive list of chemical contaminants commonly found in the manufactured gas plant waste already disposed of in the facility in leachate created by the facility during its operational life and the post-closure period, extending at least thirty years after the last waste is disposed of at the facility.

e. The IEPA and Attorney General's Office retain the right to seek exhumation of the MGP Source Materials as Appropriate to Remedy Future Violations. The proposed consent decree reserves to the State, essentially the IEPA and the Illinois Attorney General, the right to take enforcement action against CLI for any future violations related to the CWU, including, if appropriate, the right to seek an order forcing the exhumation of the MGP source materials already in place if that is deemed an appropriate response to actual pollution caused by said waste. This is addressed in two sections of the decree; in paragraph B-1 of the decree where the State is agreeing to forgo requiring exhumation of that material *based on the violations alleged in the Complaint*, i.e., the failure to obtain local siting approval, and in Section G where the State reserves all rights against CLI for any criminal liability, liability for future violations, liability for natural resources and damages arising out of said alleged violations.

CLI was unwilling to agree to reserve with each of the coalition members any right to independently force exhumation of those materials, and this was deemed a reasonable concession given the low probability that a court would order such an action without a request from the State as the primary enforcer of the Act.

f. Consent Decree to be a Covenant Running with the Land. The proposed consent decree expressly provides that the terms and conditions will constitute a covenant running with the affected land. The Consent Decree will be filed with the DeWitt County Recorder against the land. This means that if CLI were to sell its landfill facilities to another party, the new owner would also be subject to the terms and conditions of the consent decree.

g. Conditions of Good Faith Review of Future Facilities in Champaign and McLean County. In addition, the proposed decree imposes an obligation on Champaign County and

McLean County to exercise good faith in evaluating any future proposal to site a recycling or transfer station in those counties for consistency with those counties respective solid waste plans. CLI sought this language to provide assurances that such proposals would be reviewed on their individual merit based on the specific features of those proposals and controlling regulations, something each County would be required to do in any event. Representatives for each of those counties have indicated they would support a consent decree with those requirements.

h. Limitations on the Mahomet Valley Water Authority's Ability to Enact Landfill Regulations. The proposed consent decree includes a provision preventing the Mahomet Valley Water Authority (MVWA or Authority) from enacting any new ordinance imposing any requirements on landfills similar to regulations in an ordinance it recently repealed. Ordinance #68, enacted back in 2011 but never actively enforced by the Authority, imposed a number of reporting, testing and registration requirements on landfills located in Piatt and DeWitt County, the region within its jurisdiction. The only active landfill within those two counties is CLI's facility in DeWitt County. CLI is currently challenging MVWA's authority to engage in such regulatory activities in Court, asserting that it and other governmental bodies are largely pre-empted by the Act's grant of regulatory authority to the IEPA. The Authority repealed Ordinance #68 at its monthly meeting in July to a large degree in recognition of the fact that many of its requirements duplicated similar requirements enforced by the IEPA. On July 31, 2015, CLI filed a motion to voluntarily dismiss its complaint against MVWA. The MVWA Board has been considering a much more modest set of regulations to replace Ordinance #68.

CLI originally sought a commitment from the MVWA to agree to never enact any other ordinance dealing with the same subject matter as Ordinance #68. This was rejected based on the understanding by Coalition attorneys and MVWA's attorney that this would, in any event, be an unenforceable permanent constraint on a local governmental body's powers to enact reasonable police power regulations. The parties, including the MVWA Board by and through its attorney, settled on the much more limited prohibition in the proposed consent decree that bars enacting any new regulations until January 1, 2016. The decree also provides that even this modest constraint would not be operable in the event CLI proposed any permit modification that authorized acceptance of any new waste stream.

It appears that with the consent decree, all disputes between the MVWA and CLI will be resolved (although after January 1, 2016, there could be new disputes between those parties).

i. Emerging Opposition to Anticipated Consent Decree from Citizens. Some citizens who have been following the controversy over the CWU have already expressed opposition to anticipated terms of the consent decree, based on publicity generated by the earlier agreement reached between CLI and DeWitt County. The opposition appears to be based on two major concerns. The first is concern over allowing CLI to leave the wastes already accepted in the CWU in place without any local siting approval from the DeWitt County Board. That concern is addressed in detail above.

The second concern arises from CLI's plans, revealed in various public statements, to accept coal ash, the residue from the combustion of coal, primarily by electric utilities for disposal in the CWU. Coal ash is regulated in Illinois as a non-hazardous special waste. As such, it is legal to

accept such waste material in a conventional municipal solid waste landfill. CLI's Landfill #3 was granted local siting approval by the DeWitt County Board in 2002 and subsequently issued a permit by the IEPA to operate as such a facility without any of the procedural irregularities associated with operation of the portion of the landfill now devoted to the CWU. Accordingly, CLI can lawfully accept coal ash even in portions of Landfill #3 that are outside of the CWU. Even if the Coalition is successful with its Citizen's Complaint, CLI will be able to accept this substance for disposal at its landfill.

The harmful effects of coal ash on the environment have received heightened public attention in the past several years in response to some high profile contamination events, most notably the breach of a dike at the Tennessee Valley Authority's Kingston Fossil Plant that resulted in the release of an estimated 5.4 million cubic yards of coal ash into the Emory and Clinch Rivers in Tennessee. Coal ash is known to contain a number of substances that are hazardous to human health, including arsenic, selenium, and mercury.

A number of environmental organizations, including the Sierra Club, have actively lobbied the U.S. EPA to reclassify coal ash as a hazardous waste, which would require it to be disposed of in a properly designed and permitted hazardous waste landfill. The U.S. EPA declined to do so, leaving it to the various states to determine if they wished to impose more stringent restrictions on disposal of coal ash. The fact remains, however, that current law in Illinois allows CLI to accept this material at its facility in DeWitt County. Coal ash has been accepted at numerous municipal solid waste landfills throughout the state for a number of years now. It would be illogical to reject this proposed consent decree based upon CLI's plan to lawfully dispose of this material at their facility. In addition, as previously mentioned, the CWU is actually designed and constructed to hazardous landfill standards.

j. Filing a New Public Nuisance Complaint in DeWitt County to Facilitate Enforcement of the Consent Decree. Based on its extensive experience in the enforcement of judgments pertaining to violations of the State's Environmental Protection Act, the Attorney General's office recommended against entering the proposed consent decree in the pending case before the IPCB. That Board does not have the same enforcement mechanisms available to it as a circuit court would. Instead, if the Coalition members authorize entering the consent decree, a new public nuisance complaint will be filed in DeWitt County Circuit Court alleging that the disposal of MGP waste in the CWU poses a threat to the public because of its location over the Aquifer. This new lawsuit will essentially function as a platform for entering the decree, which will be entered contemporaneously with the filing of the lawsuit in the Circuit Court in DeWitt County.

k. Approval Process. Each of the fourteen members of the Coalition will be considering the proposed consent decree at public meetings scheduled throughout the month of September. In the event one or more of the Coalition members fails to approve the proposed agreement, representatives of all of members will need to confer with the Coalition's attorneys to determine how to proceed. To the extent members opposing settlement articulate a basis for such opposition, it is possible the Coalition members could decide to direct the attorneys to determine whether CLI was willing to re-open settlement negotiations to determine if the concerns of settlement opponents could be addressed with revisions to the consent decree. Another possibility, depending on how many members vote to approve the settlement, is that those

members favoring settlement may choose to explore with CLI's attorneys whether they were willing to settle with those members, leaving the members opposing settlement to determine whether to continue litigation on their own.

1. Future Coalition Efforts. Once the current litigation efforts are concluded, the Administration will be determining the level of interest among the Coalition members to actively support additional legislation to provide more effective protection of the Mahomet Aquifer from the hazards posed by activities such as landfills. Among possible legislative initiatives would be supporting a bill banning any expansion of existing landfills or creation of new landfills anywhere over a sole source aquifer. Other possible legislative initiatives might focus on creating a statutory framework for more effective regional control over activities conducted over the Mahomet Aquifer or on imposing more rigorous State regulatory oversight over landfill monitoring activities.

5. Conclusion. For the reasons discussed above, the Administration believes it is in the best interest of the City and its Intergovernmental Coalition partners to agree to this proposed settlement decree to settle the pending lawsuits concerning the CWU in DeWitt County. A more detailed, technical discussion of the proposed settlement is contained in a report prepared by David Wentworth which was presented to representatives of all of the Coalition members at a meeting at the Hilton Garden Inn. A copy of that report is attached.

F. Alternatives:

1. Approve this Council Bill approving the proposed consent decree to settle all of the legal issues in the Coalition's Citizen's Complaint and the related permit appeal filed by CLI with the IPCB.
2. Defeat this Council Bill and provide further direction to staff.

G. Discussion of Alternatives:

Alternative 1 would approve the proposed consent decree settling the pending lawsuits between the Intergovernmental Coalition, the Illinois Attorney General's office, and CLI regarding operation of the CWU in DeWitt County.

a. Advantages

- Will realize the primary objective of the Coalition's lawsuit to prevent the disposal of federally regulated PCBs and further disposal of more toxic MGP wastes in the CWU over the Mahomet Aquifer.
- Secures an additional concession from CLI of agreeing to never seek approval to dispose of federally regulated PCB wastes or more toxic MGP wastes anywhere in DeWitt County over the Mahomet Aquifer.
- Will avoid the costly involvement of the Coalition in a local siting hearing in DeWitt County to approve acceptance of those waste streams in the CWU.

- Will avoid the risk of losing the appeal from the dismissal of the Coalition’s Citizen’s Complaint, which would allow CLI to resume accepting more toxic MGP wastes in the CWU and renewing its application for disposal of federally regulated PCB wastes without the need for local siting approval.

b. Disadvantages

- Will eliminate the possibility, however remote and unlikely, of getting a court to order CLI to remove wastes already accepted in the CWU from that facility.

Alternative 2 would defeat the Council Bill.

a. Advantages

- Maintains the possibility, however unlikely, that a Court will ultimately order CLI to remove the wastes already disposed of in the CWU.

b. Disadvantages

- Risks the consequences of losing the Coalition’s appeal from dismissal of its Citizen’s Complaint.
- Risks the consequences of a possible approval by the DeWitt County Board of local siting approval for acceptance of federally regulated PCB wastes and more toxic MGP wastes even if the Coalition wins its appeal from the dismissal of its Citizen’s Complaint.
- Increases the chances that at any local siting hearing conducted by the DeWitt County Board, CLI’s evidence minimizing the threat posed by the Chemical Waste Unit will go largely unchallenged.
- Misses an opportunity to have CLI commit to no disposal of federally regulated PCB wastes and more toxic MGP wastes anywhere over the aquifer in DeWitt County.

H. Community Input: The key features of the proposal have been the subject of a great deal of discussion among members of the public who have been following events concerning the landfill since the details of the settlement between CLI and DeWitt County were made public earlier this year. David Wentworth and City staff discussed the details of the proposed settlement with representatives of the Coalition at a luncheon meeting conducted on Tuesday, August 11, 2015. It is anticipated that all of the local governments participating in the Coalition will have their respective councils or boards consider the proposal at public meetings, so the proposal will have received a great deal of public scrutiny by the time all of the members have acted on it.

I. Budget Impact: Approval of the consent decree will avoid the future expenditure of an estimated one to two hundred thousand dollars by the Coalition for participating in a local siting hearing before the DeWitt County Board. The City’s share of that expenditure was estimated on the high end to be as much as \$37,218.

J. Staffing Impact: Staff members in the Public Works, the Legal and the Finance Departments have to date spent hundreds of hours over the past three years promoting expansion

of the Intergovernmental Coalition, drafting and reviewing agreements and administering Coalition consultant billing and member payments. Approving the consent decree will undoubtedly avoid the expenditure of hundreds of addition hours of staff time that would need to be devoted to preparing for and monitoring the Coalition's participation in a local siting hearing before the DeWitt County Board, billing and collecting from the Coalition members their share of the costs incurred, and managing any appeals from the outcome of such a hearing that would undoubtedly be filed either by CLI or the Coalition, depending on the outcome of the process.

Prepared by:

Reviewed by:

Joseph E. Hooker
Assistant City Attorney

Dennis Schmidt
Public Works Director

Attachments: Mahomet Aquifer Luncheon Materials by David Wentworth

Mahomet Aquifer Luncheon

August 11, 2015

Consent Decree

Presented by:

David L. Wentworth II

and Albert Ettinger

I. BACKGROUND

A. Clinton Landfill No. 3

On September 12, 2002, Clinton Landfill, Inc. (“CLI”) obtained local siting authority from the DeWitt County Board pursuant to Section 39.2 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/39.2, to develop a 135 acre municipal solid waste disposal unit known as Clinton Landfill No. 3, after representing to the DeWitt County Board in its local siting application and at hearing that high concentrations of PCBs, hazardous levels of MGP, and hazardous waste would be excluded from disposal in the proposed Clinton Landfill No. 3.

In 2007, CLI obtained a permit from the Illinois Environmental Protection Agency (“Agency”) to develop at Clinton Landfill No. 3, a RCRA Subtitle D municipal solid waste disposal facility, which permit specifically prohibited the disposal of two (2) types of waste: high concentration levels of PCBs regulated under the federal Toxic Substances Control Act (“TSCA”), 15 U.S.C. 2601-2697, and manufactured gas plant waste exceeding the regulatory levels provided in 35 Ill. Adm. Code 721.124(b).

In 2008, CLI applied for a significant permit modification from the Agency to construct an entirely differently designed, and previously undisclosed, Chemical Waste Unit (CWU) located within 22.5 acres of Clinton Landfill No. 3. The CWU was specifically designed to hazardous waste facility standards to accept PCBs at high levels regulated by TSCA and manufactured gas plant waste exceeding the regulatory levels provided in 35 Ill. Adm. Code 721.124(b), the very wastes CLI had previously committed not to accept.

On January 8, 2010, the Agency issued CLI a modified permit for the CWU located within Clinton Landfill No. 3, which permit was further modified by the Agency for the CWU on July 5, 2012. In violation of Section 39.2 of the Act, CLI took no steps to obtain approval of the suitability

of the location or otherwise obtain local siting approval for the new CWU from the DeWitt County Board. 415 ILCS 5/39.2.

B. Local Government Coalition Response to CWU – Complaint and Appeal

On November 9, 2012, Petitioners 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 “Petitioners” or “Intergovernmental Coalition”) filed a four-count Citizens’ Complaint (“Complaint”) with the Illinois Pollution Control Board (“Board”) as Case No. PCB 2013-022 pursuant to Section 31(d)(1) of the Act, 415 ILCS 5/31(d)(1), alleging that the CWU constitutes a “new pollution control facility” under the Act and that Respondent CLI violated Section 39.2 of the Act for developing, constructing and operating the CWU to dispose or threaten to dispose TSCA regulated PCB and manufactured gas plant wastes without local siting authority. 415 ILCS 5/3.330(b); 415 ILCS 5/39.2.

On February 7, 2013, the People of the State of Illinois, by and through the Illinois Attorney General, filed a Petition to Intervene in PCB Case No. 2013-022 on the side of the Intergovernmental Coalition.

In the Complaint, Petitioners, as joined by the People, sought the following relief from the Board:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations contained herein;

2. Finding that Respondent CLI has violated Sections 21(e), 39(a), 39(c), and 39.2 of the Act, 415 ILCS 5/21(e), 39(a), 39(c), and 39.2;

3. Ordering Respondent to immediately cease and desist from the identified violations of the Act, including but not limited to the closure of the Chemical Waste Unit at Clinton Landfill No. 3 in accordance with the Agency's closure plans and taking of such other immediate action to correct the violations of Sections 21(e), 39(a), 39(c), and 39.2 of the Act, 415 ILCS 5/21(e), 39(a), 39(c), and 39.2;

4. Pursuant to Section 103.208 of the Board's procedural rules, forwarding Complainants' request for an informal Agency investigation to the Agency;

5. Assessing a civil penalty against Respondent of not more than the statutory maximum pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a); and

6. Providing for such other and further relief as the Board may deem just and proper and in the public interest.

By Opinion and Order of the Board dated September 19, 2013, (“Opinion” or “Order”), the Board granted CLI’s motion to dismiss the Complaint, finding that the Complaint was “frivolous” under the Board’s rules where “CLI is not capable of violating Section 39.2 of the Act.” Opinion, p. 26. The Board dismissed the Complaint on the pleadings as a matter of law pursuant to 415 ILCS 5/31(d)(1) and 35 Ill. Adm. Code 101.202. In so finding, the Board held that the “determination of whether additional local siting approval is required is a permitting decision for the Agency, and the Board making this determination would have the same effect as the Board undertaking the role of permitting authority, a duty expressly assigned to the Agency.” Opinion, p. 27 (Appendix, p. A-27), citing *Landfill, Inc. v. Illinois Pollution Control Board*, 74 Ill. 2d 541, 560 (1978). A motion to reconsider the Board’s decision was denied on December 5, 2013, and appeals followed.

In dismissing the Complaint, the Board did forward the Complainants' request for an informal Agency investigation to the Agency. In the pleadings before the Board, the Petitioners repeatedly pointed out that the Board regulations allow for modification of a permit without finding that the permit was invalid. Section 813.201 of the regulations, applicable to Clinton Landfill No. 3, states:

b) Agency Initiated Modification

1) The Agency may modify a permit under the following conditions:

A) Discovery of a typographical or calculation error;

B) Discovery that a determination or condition was based upon false or misleading information;

C) An order of the Board issued in an action brought pursuant to Title VIII, IX or X of the Act; or

D) Promulgation of new statutes or regulations affecting the permit.

35 Ill. Adm. Code 813.201(b)(1).

On December 27, 2013, Petitioners filed with the Fourth District Appellate Court of Illinois a Petition for Review of the Opinion and Order of the Illinois Pollution Control Board. On January 13, 2014, the People of the State of Illinois filed a Petition for Direct Administrative Review of the same order. Petitioners' Brief was filed in July 2014. The appeals are fully briefed and awaiting oral argument before the Fourth District Court of Appeals (pending a settlement, discussed below).

C. Agency Corrective Action in 2014

On July 22, 2014, after the Board dismissed the Complaint and the case was pending on appeal, the Agency questioned the DeWitt County Board on the nature and extent of the September 12, 2002 local siting approval. The DeWitt County Board responded that its prior approval did not include authority to dispose TSCA regulated PCB and manufactured gas plant wastes.

On July 31, 2014, citing 35 Ill. Adm. Code 813.201(b)(1)(B), the Agency issued Permit Modification No. 47 for Clinton Landfill No. 3 and withdrew the Agency's previous approval to dispose TSCA regulated PCB and manufactured gas plant wastes in the CWU because of CLI's failure to get local siting approval for that facility from the DeWitt County Board. Since July 31, 2014, disposal of high concentration levels of PCBs regulated under the federal Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2601-2697, and manufactured gas plant waste exceeding the regulatory levels provided in 35 Ill. Adm. Code 721.124(b), were prohibited in the CWU of Clinton Landfill No. 3.

No disposal of high concentration levels of PCBs regulated under TSCA has occurred in Clinton Landfill No. 3 or the CWU. The USEPA never approved the CWU as a "chemical waste landfill" as defined in 40 CFR 761.3. Even though the Agency had approved the CWU, the PCB waste stream still required federal approval, and lacking federal approval, no PCBs regulated under TSCA were ever disposed of in the CWU or Clinton Landfill No. 3.

Limited disposal of manufactured gas plant waste, some portion of which probably included such waste exceeding the regulatory levels provided in 35 Ill. Adm. Code 721.124(b) (i.e. hazardous levels), was disposed of in a portion of the CWU. CLI has represented that approximately 30,000 tons of manufactured gas plant waste has been disposed of in a small portion of the CWU before Permit Modification No. 47.

D. CLI Appeals Permit Modification No. 47 (and other modifications)

In response to the Agency permit modification, on August 28, 2014, CLI filed with the Board a Petition for Review of Permit based on an Illinois EPA-initiated modification (“Modification 47”) of Landfill Permit No. 2005-070-LF. Clinton Landfill, Inc. v. Illinois Environmental Protection Agency, Case No. PCB 15-60. Subsequent modifications of Landfill Permit No. 2005-070-LF have necessitated additional petition filings with the Board because the language from Modification 47 was incorporated into each subsequent modification. Clinton Landfill, Inc. v. Illinois Environmental Protection Agency, Case Nos. PCB 15-76, PCB 15-111, PCB 15-113, PCB 15-166, PCB 15-194, PCB 15-195, PCB 15-207, and PCB 2016-034. The Illinois Attorney General is defending the Agency in these consolidated permit modification appeals. The permit modification appeals are pending before the Board, and action is stayed through September 30, 2015 pending a settlement, discussed below.

II. CLINTON LANDFILL SETTLEMENT PROPOSAL

A. Initial Outreach for a Global Settlement

On March 10, 2015, CLI approached the Intergovernmental Coalition, through its attorneys, and the Attorney General's Office, with a proposal to settle all disputes regarding the CWU and manufactured gas plant and PCB waste streams at Clinton Landfill No. 3. The proposal entailed CLI agreeing to permanently give up the right to dispose, apply for permits or authority to dispose, or file to obtain local siting approval for the disposal of PCB wastes or manufactured gas plant wastes exceeding the regulatory levels provided in 35 Ill. Adm. Code 721.124(b), in exchange for CLI being allowed to keep in place the manufactured gas plant waste which had already been disposed of at the CWU.

B. Current (as of July 27, 2015) Draft Consent Order

The parties have worked since March to document the terms and conditions of a global settlement in the form of a Consent Order. The Consent Order would be entered in a yet to be filed civil lawsuit in DeWitt County Circuit Court (as opposed to having a settlement documented in the cases pending before the Board). The complaint to be filed by the Intergovernmental Coalition plaintiffs will allege that CLI has created a public nuisance related to the disposal of MGP Source Material at the Facility. The complaint to be filed by the State will allege that CLI has violated the following provisions of the Act and Board Waste Disposal regulations related to the Clinton Landfill No. 3: Waste Disposal in Violation of the Act, in violation of Section 21(d)(2) and (e) of the Act, 415 ILCS 5/21(d)(2) and (e) (2014), and Section 812.105 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 812.105. The complaints are contemplated to be filed the same day that the Consent Order is entered by the DeWitt County Circuit Court. It is contemplated that members of the Intergovernmental Coalition would then pass resolutions or take

action to approve the Consent Order. The terms and provisions set forth below are for discussion only and subject to the final approval of all of the parties, and are in the nature of settlement negotiations only and not admissible in evidence.

Definitional provisions of the proposed Consent Order include:

1. “Manufactured Gas Plant Source Material (“MGP Source Material”)” shall mean any waste generated from the remediation of an MGP site or facility, the analysis of which, if it were tested using Method 1311 (Toxicity Characteristic Leaching Procedure in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” USEPA Publication Number EPA 530/SW-846), would demonstrate that the waste exceeds the regulatory levels for any contaminant given in the table contained in 40 C.F.R. 261.24(b) and 35 Ill. Adm. Code 721.124(b).

2. “Toxic Substances Control Act-polychlorinated biphenyls (“TSCA-PCBs”)” shall mean wastes containing PCBs that are required by the Toxic Substances Control Act to be disposed of in a Chemical Waste Landfill as defined in 40 C.F.R. 761.3.

3. The “Sole Source Aquifer” shall mean the Mahomet Sole Source Aquifer Area as designated by the USEPA effective on March 11, 2015 (as published in 80 Fed. Reg. 14370 (March 19, 2015)).

4. The “Facility” shall mean the municipal solid waste and special waste landfill located at 9550 Heritage Road in Clinton, Illinois known as Clinton Landfill No. 3, including the Chemical Waste Unit (“CWU”) located within the boundaries of the Facility.

Substantive provisions of the proposed Consent Order include:

1. The Consent Order shall apply to and be binding upon the parties to the Consent Order and shall constitute a covenant running with the real property that is the site of Clinton Landfill 3 and thereby apply to and be binding upon all successors in ownership or interest to said real property. The parties to the Consent Order agree that it shall be filed for record in the office of the DeWitt County Clerk and Recorder. CLI waives as a defense to any enforcement action taken pursuant to this Consent Order the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order.

2. No change in ownership, corporate status or operator of the Facility shall in any way alter the responsibilities of CLI or the State under this Consent Order. CLI shall provide a copy of this Consent Order to any purchaser of the Facility or successor in interest to CLI as owner of the Facility. This provision does not relieve CLI from compliance with any regulatory requirement regarding notice and transfer of applicable Facility permits.

3. Within seven (7) days of entry of the Consent Order, CLI shall move to dismiss the permit appeals currently pending before the Board, Clinton Landfill, Inc. v. Illinois Environmental Protection Agency, Case Nos. PCB 15-60, PCB 15-76, PCB 15-111, PCB 15-113, PCB 15-166, PCB 15-194, PCB 15-195, PCB 15-207, and PCB 2016-034.

4. On May 29, 2015, CLI filed a withdrawal of its request with the United States Environmental Protection Agency (“USEPA”) for approval to dispose of TSCA-PCBs at the CWU at Clinton Landfill 3. CLI shall not submit an application to USEPA at any time in the future for approval to dispose of TSCA-PCBs at or within the boundaries of the real estate presently known as Clinton Landfill 3. As of the date of entry of the Consent Order and until such time as CLI

meets all the requirements set forth in the Permit 2005-070-LF, including closure and post-closure care, CLI shall not seek to obtain approval to accept TSCA-PCBs at the Facility.

5. Notwithstanding any subsequent modifications to Permit 2005-070-LF, CLI shall at a minimum, semi-annually monitor groundwater monitoring wells located downgradient of Cell CWU-1A, namely: G40M, G40D, G40R, G47M, G47D, G47R, G48M, G48D, G48R, G49S, G49M, G49D, G49R, G50S, G58M, G58D, G59D, and G59R at the Facility for the following parameters:

- a) Acenaphthene
- b) Acenaphthylene
- c) Anthracene;
- d) Benzene;
- e) Benzo(a)anthracene
- f) Benzo(a)pyrene
- g) Benzo(b)fluoranthene
- h) Benzo(ghi)perylene
- i) Benzo(k)fluoranthene
- j) Chrysene
- k) Pentachlorophenol
- l) Dibenzo(a,h)anthracene
- m) Ethylbenzene
- n) Fluoranthene
- o) Indeno(1,2,3-cd)pyrene
- p) Naphthalene
- q) Phenanthrene
- r) Pyrene
- s) Toluene
- t) Xylenes-Total

The requirements in this paragraph shall remain in effect until such time as CLI completes closure and post-closure care, as required in conformity with all applicable permits, statutes, and Board regulations. Laboratory analysis of the groundwater monitoring conducted pursuant to this paragraph shall be performed and reported by a laboratory that holds NELAP/TNI (National Environmental Laboratory Accreditation Program/The NELAC Institute) or equivalent

certification. The parties acknowledge that the Illinois EPA has the existing legal authority to split samples with CLI and to conduct testing at Clinton Landfill 3.

6. As of the date of entry of the Consent Order, CLI shall comply with all terms and conditions of Illinois EPA Landfill Permit No. 2005-070-LF, currently and as modified. This Consent Order in no way affects the responsibilities of CLI to comply with any other federal, state or local laws or regulations, including but not limited to the Act.

7. The existing MGP Source Material within the CWU is currently covered with a minimum of 12 inches of clean soil as an “intermediate cover,” as is required by the Illinois EPA regulations. In addition to and directly above that intermediate cover layer, CLI shall place an additional 12 inches of clean, select clayey soil of the same type that has proven to meet the Illinois EPA low permeability requirements for landfill cell compacted clay liner construction (low permeability compacted cohesive earth liner with hydraulic conductivity no greater than 1×10^{-7} cm/sec). CLI or its contractor shall compact the additional 12 inches of said select clayey soil using the same equipment and methods utilized when constructing compacted clay liners for landfill cells. This relatively impermeable cap will minimize if not prevent altogether “new” water from coming into contact with the MGP Source Material. The existing leachate collection system beneath the MGP Source Material will ensure that any liquid that might be released from the MGP Source Material over time will be effectively collected and removed for proper management.

8. CLI shall not accept for disposal, apply for permits or authority to dispose, or file or seek to obtain local siting approval pursuant to Section 39.2 of the Act from the DeWitt County Board (or from the governing body of a municipality if in an incorporated area in the future) for the disposal of TSCA-PCBs or MGP Source Material on any real estate that is located over the Sole Source Aquifer in DeWitt County, Illinois, at any time.

9. CLI shall seek to have Landfill Permit No. 2005-070-LF modified by the Illinois EPA consistent with the terms of the Consent Order.

10. The State shall stipulate in the Consent Order that it is resolving the allegations of its Complaint filed herein without requiring CLI to exhume the MGP Source Material currently disposed of in the CWU at the Facility, based on the violations alleged in the Complaint to be filed in DeWitt County, and that CLI is not required to obtain any additional local siting approval from the DeWitt County Board for the CWU, provided that the CWU is not used for the disposal of MGP Source Material or TSCA-PCBs after the date of entry of this Order, and hereafter the CWU only accepts municipal solid waste, non-hazardous special waste, certified non-special wastes, and such other wastes that CLI is permitted to accept at the MSWU at the Facility. Within seven (7) days of entry of this Consent Order, the State shall move to dismiss its appeal in Case No. 4-14-0020 filed with the Fourth District Court of Appeals.

11. The Local Governmental Plaintiffs shall stipulate that each of them is resolving the allegations of their Complaint to be filed in DeWitt County without requiring CLI to exhume the MGP Source Material currently disposed of in the CWU at the Facility, and that each of them will never require CLI to exhume the MGP Source Material currently disposed of in the CWU at the Facility. Within seven (7) days of entry of the Consent Order, the Intergovernmental Coalition parties shall move to dismiss their appeal in Case No. 4-14-0002 filed with the Fourth District Court of Appeals.

12. On July 14, 2015, the MAHOMET VALLEY WATER AUTHORITY repealed its Ordinance No. 68. The MAHOMET VALLEY WATER AUTHORITY shall adopt no ordinance prior to January 1, 2016, that concerns the subject matter at issue in repealed Ordinance No. 68; provided, however, that nothing herein shall prohibit the MAHOMET VALLEY WATER

AUTHORITY from taking legislative action that concerns the subject matter of repealed Ordinance No. 68 prior to January 1, 2016, in the event: (i) CLI files a significant permit modification request seeking a substantial change in the operations, design or regulated status of the Facility that would allow the Facility to dispose of wastes which are not currently allowed under RCRA Subtitle D regulations; or (ii) CLI seeks approval to dispose of new waste stream(s) at the Facility for which it does not have permit authority as of the date of this Consent Order. If this paragraph is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions in this Consent Order shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. CLI shall have the right to enforce the requirements in this paragraph against the MAHOMET VALLEY WATER AUTHORITY alone; the other Parties shall not be joined in any such enforcement action.

13. The COUNTY OF CHAMPAIGN, ILLINOIS and the COUNTY OF McLEAN, ILLINOIS each agree that if it is presented with an application for the siting and development of a transfer station and recycling center by CLI or any of its affiliates, such COUNTY will consider in good faith whether same is consistent with the solid waste management plan adopted by the COUNTY in accordance with the Local Solid Waste Disposal Act and/or the Solid Waste Planning and Recycling Act.

14. This Consent Order is a binding and enforceable order of the Court. This Court shall retain jurisdiction of this matter and shall consider any motion by any party for the purposes of interpreting and enforcing the terms and conditions of this Consent Order. The parties to the Consent Order agree that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process. The parties to the Consent Order may, by mutual written consent, extend any compliance dates or modify the terms of this

Consent Order without leave of this Court. A request for any modification shall be made in writing and submitted to the designated representatives. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Consent Order. Any such agreed modification shall be in writing and signed by authorized representatives of each party, for filing and incorporation by reference into this Consent Order.

15. In consideration of CLI's commitments, the State and the Local Governmental Plaintiffs release, waive and discharge CLI from any liability, penalties, and/or fines for the violations of the Act or in nuisance, respectively, that were the subject matter of the Complaints or are otherwise addressed herein. The release set forth above does not extend to any matters other than those expressly specified in the Complaints filed on _____, 2015, or in this Consent Order. The State and the Local Governmental Plaintiffs reserve, and this Consent Order is without prejudice to, all rights of the State of Illinois and the Local Governmental Plaintiffs against CLI with respect to all matters not expressly addressed herein, including but not limited to the following:

- a. criminal liability;
- b. liability for future violations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. CLI's failure to satisfy the requirements of this Consent Order.

Nothing in this Consent Order is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Local Governmental Plaintiffs may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, other than CLI.

16. This Order shall become effective only when executed by all parties to the Consent Order and the Court. This Order may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument. The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Consent Order and to legally bind them to it.

III. RECOMMENDATION TO APPROVE CONSENT ORDER

I recommend that the Intergovernmental Coalition enter into the Consent Order on the terms and provisions described herein.