



Office of the Mayor  
Laurel Lunt Prussing

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August 19, 2015

To: Urbana City Council

From: Laurel Prussing

Re: **Clinton Landfill Proposed Consent Decree**

Dear Diane, Mike, Dennis, Bill, Aaron, Eric and Charlie,

Local governments formed a coalition in December 2011 to protect the Mahomet Aquifer from dangerous PCB wastes being disposed at the Clinton landfill's chemical waste unit.

This negotiated consent decree accomplishes that goal. Clinton Landfill, Inc., is agreeing not to accept any PCB wastes at the Landfill #3 or at any other site in DeWitt County. The company is also agreeing to not accept any future deliveries of the more toxic types of Manufactured Gas Plant waste.

The consent decree would run with the land, meaning that if Clinton Landfill, Inc., were to sell the landfill to another company, the same restrictions would apply to the new owner.

To win these key points is nothing less than a major victory. Four years ago, our effort looked like a long-shot at best. Special thanks to the city of Champaign, and its assistant city attorney, Joseph Hooker, who helped organize this remarkably successful intergovernmental effort.

As in most negotiations, the coalition did make some small concessions. Some 77,000 tons of Manufactured Gas Plant wastes that were already landfilled will be allowed to remain there, though the agreement would require an additional foot of impermeable clay to be placed over that waste to prevent water penetration. Illinois EPA recommends that this approach is safer than removal of the MGP wastes, a process that could damage the integrity of the engineered barriers.

Another concern raised by opponents is that Clinton Landfill, Inc. might accept coal ash, currently regulated as a non-hazardous special waste in Illinois and acceptable at conventional municipal landfills. However, a landfill built to hazardous landfill standards would provide a far higher level of protection.

It is important to not allow the perfect to be the enemy of the excellent. Failure to approve the consent decree in hopes of a perfect deal would open up new potential problems and loopholes.

Joe Hooker and our coalition attorneys, David Wentworth and Albert Ettinger, did brilliant work on our behalf. We owe special thanks to former Champaign City Manager Steve Carter who led in the building of the coalition of cities and counties that sustained this work. He led a remarkable public campaign of mayors and others to speak to the public across the region and educate citizens on this issue.



**RESOLUTION NO. 2015-08-047R**

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

(Protection of Mahomet Valley Aquafer)

WHEREAS, THE City of Urbana (the "City") is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution of 1970 and may exercise any power and perform any function pertaining to its government and affairs, and the passage of this Resolution constitutes an exercise of the City's home rule powers and functions; and

WHEREAS, beginning in December 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, as lead agency, 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 2011 to represent the interests of the parties to the Intergovernmental Agreement and 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; 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 Citizens 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 Citizens' 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 operating the CWU because of CLI's failure to secure local siting approval from DeWitt County for said CWU; and

WHEREAS, CLI has now filed an appeal ("Permit Appeal") 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 that that Permit Appeal; 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 agreed to the 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 into said settlement in the form of a consent decree (the "Consent Decree") that would be filed in a 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 Citizens' Complaint and entry of the Consent 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 URBANA, ILLINOIS, as follows:

**Section 1.** That the proposed Consent Decree to settle all claims arising out of the Citizens' Complaint is hereby approved in substantially the form appended hereto as an exhibit.

**Section 2.** That the Mayor of the City of Urbana is hereby authorized to execute a consent decree in substantially the form appended hereto as an exhibit.

PASSED:

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTENTIONS: \_\_\_\_\_

APPROVED: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

**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

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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  $1 \times 10^{-7}$  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

# DRAFT

## **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.

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## 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.

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**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 Citizen's 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).

Even if the Coalition and Attorney General's office is successful in the litigation, it is important to remember that CLI would still have the option to apply to the DeWitt County Board to obtain local siting approval for the CWU. If granted, CLI would then be allowed to resume accepting the more hazardous MGP wastes and renew its PCB waste application with the U.S. EPA. CLI will likely be able to call on its own qualified experts to offer the opinion that the CWU can be operated without posing an unreasonable risk to the Aquifer.

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

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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

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regulatory activities in Court, asserting that it and other governmental bodies are largely preempted 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.

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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.



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

August 11, 2015

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**Re: Concerns with the Clinton Landfill in Clinton, DeWitt County, Illinois**

Dear Ms. Brown and Messrs. Hoffman, Spencer, and Wissmiller:

Thank you for contacting the Illinois Attorney General's Office ("AGO") regarding our mutual desire to protect the Mahomet Aquifer. This letter responds to your letter dated May 26, 2015 addressed to Attorney General Lisa Madigan. We shared your letter with the Illinois Environmental Protection Agency ("Illinois EPA") as your concerns relate to highly technical matters regarding the design and operation of the chemical waste unit ("CWU") at Clinton Landfill, and the susceptibility of the Mahomet Aquifer to contamination, if the CWU were to release contaminants to the environment. This response includes the Illinois EPA's input on those technical issues.

As a threshold matter, we should all recognize the significant events of the past six months. During that timeframe, Clinton Landfill, Inc. ("CLI") withdrew its application to the United States Environmental Protection Agency ("USEPA") for approval to dispose of polychlorinated biphenyls ("PCBs") at the CWU, even though the USEPA issued a Draft Approval to allow such disposal. Likewise, CLI announced that it would discontinue its pursuit of approval to dispose of manufactured gas plant ("MGP") remediation wastes above regulatory limits. *See* 35 Ill. Adm. Code 721.124(b). These major developments address many of the



environmental concerns raised during the many years of controversy regarding the CWU.

In your letter, you expressed concerns about the MGP waste that was placed in the CWU remaining in place. Separately, you also referenced recent disposal of coal-ash waste in the CWU. Additionally, you conveyed your concerns about the effectiveness of the liners and leachate collection system for the CWU. A primary basis for your apprehension is what you describe as the close proximity of the bottom of the CWU to the Mahomet Aquifer. Finally, you request that:

[I]n-place MGP and coal-ash wastes are removed and that further coal-ash waste and other toxic waste disposal at Clinton Landfill is prohibited as part of the pending consent decree. Considered in light of the additional information provided in this letter, that request is reasonable in order to prevent the anticipated, if not guaranteed, future contamination of the Mahomet Aquifer, central Illinois' only source of drinking water.

WATCH Letter, May 26, 2015, p. 2.

As we review your letter, we note that your concerns are not shared by the USEPA. The USEPA, the same agency that granted the Mahomet Aquifer its sole-source designation, evaluated the geology and hydrogeology above the Mahomet Aquifer during its review of CLI's application to accept PCB waste that must be disposed of in a "chemical waste landfill," as defined in 40 C.F.R. 761.3, in accordance with the Toxic Substances Control Act ("TSCA-PCBs"). The USEPA found that "**fluids will not migrate from the CWU to the Mahomet Aquifer even under worst case hypothetical scenarios.**" See USEPA Draft TSCA Approval, p. 15, Section 10.A.iii, available at [http://www.epa.gov/Region5/waste/clintonlandfill/PDFClintonLFChemicalWaste\\_USEPAApplication/cl\\_037.pdf](http://www.epa.gov/Region5/waste/clintonlandfill/PDFClintonLFChemicalWaste_USEPAApplication/cl_037.pdf). (Emphasis added.)

Like your organization, the AGO has been very involved in the issues concerning the CWU. As early as February 2012, we contacted the Illinois EPA expressing concerns about the CWU and the types of wastes to be disposed at that site. In 2013, when numerous local governments filed a complaint before the Illinois Pollution Control Board ("Board") alleging that CLI had violated the Illinois Environmental Protection Act ("Act") by filing a permit application with Illinois EPA for a new site and new waste streams for which it had not received local siting approval from DeWitt County. The AGO intervened in support of those local governments. See 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)." As you are aware, the Board rejected the arguments made by the local governments and the AGO and dismissed that action. The local governments and the AGO each appealed that matter to the Fourth District Appellate Court. The AGO's (Case No. 4-14-0020) and the local governments' (Case No. 4-14-0002) appellate cases are still pending.

In addition, the AGO is representing the Illinois EPA in permit appeals filed by CLI, which are currently before the Board, entitled Clinton Landfill, Inc. v. Illinois EPA, 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 ("Permit Appeals"). As you know, on July 31, 2014, the Illinois EPA modified CLI's landfill permit ("Landfill Permit") to prohibit disposal of TSCA-PCBs in the CWU unless DeWitt County Board grants local siting approval to allow such waste to be disposed of at the CWU. The design and construction standards set by the USEPA for a chemical waste landfill are very demanding and include redundant safety measures to ensure the protection of the environment, especially groundwater. The CWU was designed and constructed to meet these USEPA standards for a chemical waste landfill.

The Illinois EPA also modified the Landfill Permit to prohibit further disposal of MGP waste that exceeds the regulatory levels for any contaminant listed in the table contained in 35 Ill. Adm. Code 721.124(b). What this means is, CLI is prohibited from disposing in the CWU any TSCA-PCBs, and any MGP waste that exceeds the regulatory levels, as mentioned in the previous sentence. CLI is prohibited from accepting any hazardous waste for disposal at the CWU.

In both the Mahomet Valley et al. case and the Permit Appeals, the AGO is primarily concerned about whether the requirements of the local siting process for the CWU had been followed. Neither case alleges any violations of pollution standards at the CWU. Indeed, neither the USEPA, Illinois EPA nor the AGO have taken issue with the location or design of the CWU. The design and operation of landfills within the State of Illinois is governed by both State and Federal statutes and regulations. Those design and operational standards have been promulgated to ensure the protection of both human health and the environment. Significantly, the CWU was designed to meet the stringent USEPA requirements for chemical waste landfills found in 40 C.F.R. §761.75. In addition, the CWU includes liner components and a redundant leachate drainage and collection system that each go beyond the regulatory standards required for the disposal of the types of waste currently disposed in the CWU. No TSCA-PCBs were ever permitted to be disposed of at the CWU and there is no factual basis to suggest or conclude that the CWU cannot and will not safely contain the MGP waste that has already been disposed therein.

### **Coal Combustion Waste**

As to your inquiry regarding the disposal of coal-ash waste, coal combustion waste ("CCW") is a defined term under Section 3.140 of the Act (415 ILCS 5/3.140). Under Illinois law, CCW may be disposed of in an Illinois EPA-permitted non-hazardous municipal solid waste landfill, such as the Clinton Landfill, provided that the CCW is not a hazardous waste as defined by Section 3.220 of the Act, (415 ILCS 5/3.220). More specifically, all special waste, including CCW, disposed of at Clinton Landfill is evaluated to determine whether it is hazardous. Any waste that is determined to be hazardous cannot be disposed at the Clinton Landfill and must be taken to a hazardous waste disposal facility.

You request that the possible resolution of the pending litigation referenced above include a requirement that CLI be prohibited from accepting CCW. Because disposal of CCW at landfills is allowed by the Act, we are not aware of a legal or factual basis to support your request.

### **MGP Waste Legislation**

As you likely know, HB1326, which is currently with Governor Rauner for final approval, is a bill prohibiting the disposal of MGP waste at facilities like the CWU, if testing using the Toxicity Characteristic Leaching Procedure ("TCLP") demonstrates that the waste exceeds the regulatory levels for any contaminant found in the table listed in 40 C.F.R. 261.24(b). If this bill becomes law, it will prohibit the **future** disposal of MGP waste exceeding regulatory levels. A review of the text of HB1326 shows no intent by the General Assembly that the statute applies to any MGP waste disposed of prior to its effective date.

### **Degradation of Landfill Liners**

You have also raised concerns that constituents from the MGP waste may negatively impact the high density polyethylene ("HDPE") liners underlying the CWU, which you assert will result in contamination of the Mahomet Aquifer. Both the Illinois EPA and the USEPA have evaluated the CWU overlying the Mahomet Aquifer and any potential interactions between the two.

In its permit application for the development of the CWU, CLI was required to and did demonstrate to the Illinois EPA that its HDPE liners and geosynthetic clay liner were each compatible with the leachate expected to be generated from potential waste streams at the CWU. In evaluating CLI's permit application, the Illinois EPA took into account the impacts leachate from MGP waste may have on the proposed HDPE and geosynthetic clay liners and determined that the liners complied with applicable Illinois law and would be protective of human health and the environment.

Additionally, the USEPA thoroughly evaluated the geology and hydrogeology beneath the CWU, concluding:

- 1) The hydrogeologic characteristic, engineering design and the groundwater Impact Assessment indicates that the Clinton Landfill No. 3 is appropriate for the development of a Chemical Waste Unit if approved design and construction plans, monitoring and operating plans are adhered to.
- 2) The proposed landfill will be protective of underground sources of drinking water.

USEPA Memorandum of the Water Division's evaluation of the geology and hydrogeology beneath the Clinton Landfill in DeWitt County, Illinois (January 26, 2011) p. 2, available at: [http://www.epa.gov/Region5/waste/clintonlandfill/PDFClintonLFChemicalWaste\\_USEPAApplication/cl\\_222.pdf](http://www.epa.gov/Region5/waste/clintonlandfill/PDFClintonLFChemicalWaste_USEPAApplication/cl_222.pdf). A copy of this Memorandum is attached to this letter.

In that same review, the USEPA specifically responded to the concern that liner materials may eventually deteriorate allowing leachate into the substrate. The USEPA's response was:

Given the highly redundant and conservative nature of the liner system, leakage of leachate into the substrate is not expected. The system consists of three HDPE liners and two leachate collection systems over a three-foot thick layer of

compacted clay which overlays at least 150 ft of native clay above the Mahomet Aquifer.

USEPA Memorandum of the Water Division's evaluation of the geology and hydrogeology beneath the Clinton Landfill in DeWitt County, Illinois (January 26, 2011) p. 5, (*see link above*).

### Proximity to the Mahomet Aquifer

In your letter you state:

When the potentiometric surface of the Mahomet Aquifer's water, the height the water will rise when exposed to the open atmosphere, is considered, the bottom of the landfill is about 48 feet below the top of the Mahomet Aquifer's water.

\* \* \*

With the in-place MGP waste having chemically deteriorated the chemical-waste cell's bottom liner, the contamination of the underlying Mahomet Aquifer, lying just 48 feet below, from the leachate essentially rinsing the toxic components from the chemical waste as it passes through and carrying that contamination downward into the aquifer is not an unreasonable scenario and should be anticipated.

WATCH Letter, May 26, 2015, p. 2.

The USEPA extensively reviewed the CWU's proximity to the Mahomet Aquifer during its review of CLI'S TSCA permit application. *See* USEPA Administrative Records for CLI's TSCA Permit Application for its CWU, available at: <http://www.epa.gov/region5/waste/clintonlandfill/cl-application.html> After an in-depth review of available information concerning the Mahomet Aquifer and impacts from the CWU, the USEPA stated as follows:

**The Mahomet Aquifer, as determined by drilling and water well construction, is at least 170 feet below the base of the CWU. The depth-to-aquifer is based on an evaluation of known well screen elevations in the 3 mile radius area that show water is consistently produced from elevations lower than 490 ft MSL [mean sea level]. The aquifer is isolated and well protected by watertight clay that is continuous and capable of maintaining an artesian head of approximately 110 ft.<sup>1</sup> Favorable conditions for continued use of the Mahomet Aquifer for drinking water are known to exist because the**

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<sup>1</sup> The USEPA states that the "Mahomet Aquifer is over-pressured, that is, artesian conditions exist: water would flow upward if flow paths existed. The maintenance of this pressure over time demonstrates the integrity of the native clay layer." *See* Attachment, p. 3.

watertight clays of the overlying upper Banner/lower Glasford aquiclude<sup>2</sup> is known to resist pressurized groundwater flow at loads of 50 pounds per square inch and because geochemical studies by the Illinois State Geological Survey, Institute of Natural Resource Sustainability, show isolation of the whole western Mahomet Aquifer. Indications are compelling.

USEPA Draft TSCA Approval, p. 15, Section 10.A.iii. available at:  
[http://www.epa.gov/Region5/waste/clintonlandfill/PDFClintonLFChemicalWaste\\_USEPAApplication/cl\\_037.pdf](http://www.epa.gov/Region5/waste/clintonlandfill/PDFClintonLFChemicalWaste_USEPAApplication/cl_037.pdf). (Emphasis added.)

Additionally, the USEPA concluded:

The Mahomet Aquifer [is] approximately 170 feet below the lowest geomembrane of the CWU . . . . Groundwater flow in deep sands below the landfill is fully isolated from it. **Water in the Mahomet is chemically and physically independent of the proposed CWU.** It is completely isolated from surface water and shallow groundwater.

USEPA Draft TSCA Approval, p. 17, Section 10.D.i. (*see* link above). (Emphasis added.)

Finally, both the USEPA and the Illinois EPA agree that:

**Fluids will not migrate from the CWU to the Mahomet Aquifer even under worst case hypothetical scenarios. Without migration, there can be no way for drinking water risks to develop.**

USEPA Draft TSCA Approval, p. 15, Section 10.A.iii. (*see* link above) (Emphasis added.).


Given that the Illinois EPA and USEPA have thoroughly evaluated the hydrogeologic separation of the CWU from the Mahomet Aquifer and that the CWU was constructed and designed to meet or exceed the regulatory requirements for the disposal of MGP waste (waste which CLI ceased accepting in July 2014), we are confident that all appropriate safeguards are in place to protect the Mahomet Aquifer from impacts from the CWU. If at any time evidence suggests a threat to groundwater, the Illinois Attorney General may, at that time, exercise her constitutional authority to ensure the continued protection of human health and the environment.

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<sup>2</sup> The USEPA defines an “aquiclude” as a geologic unit through which virtually no water flows, such as “silty clay hardpan” found below 650ft MSL and Vandalia Till, lower Glasford Formation, Illinoian Age. An aquiclude may show signs of flow into it or from it but shows no signs of flow through it.” USEPA Draft TSCA Approval, p.3.

Again, thank you for contacting the Illinois Attorney General's Office.

Sincerely,



Matthew J. Dunn, Chief  
Environmental Enforcement/Asbestos  
Litigation Division  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, IL 62706

cc: Lisa Bonnett, Director, Illinois EPA  
John J. Kim, Chief Legal Counsel, Illinois EPA  
David L. Wentworth II, Esq., Hasselberg Grebe Snodgrass Urban & Wentworth  
Frederick C. Stavins, City Attorney, City of Champaign  
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Daniel P. Markwell, DeWitt County State's Attorney



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JAN 26 2011

REPLY TO THE ATTENTION OF: W-15J

**MEMORANDUM**

**SUBJECT:** Clinton Landfill

**FROM:**

Tinka G. Hyde  
Director, Water Division

A handwritten signature in black ink, appearing to read "Tinka G. Hyde", written over the typed name.

**TO:**

Bruce F. Sypniewski  
Acting Director  
Land and Chemicals Division

Attached is Water Division's evaluation of the geology and hydrogeology beneath the Clinton Landfill in DeWitt County, Illinois.

Attachment

## Clinton Landfill Evaluation

The Water Division was asked to 1) summarize and evaluate the geology and hydrogeology beneath the permitted (for municipal solid waste facility) Clinton Landfill No.3 as to the suitability of the site for the development of a Chemical Waste Unit, and 2) determine if the proposed landfill will be protective of underground sources of drinking water. The Clinton Landfill No.3 is located at 9550 Heritage Road, Clinton in DeWitt County, Illinois. The proposed landfill cell and larger facility are located over the Mahomet Valley Aquifer, which underlies most of DeWitt County. The Mahomet Aquifer is used extensively throughout central Illinois (by approximately 750,000 people) for drinking water and irrigation.

On February 5, 2008, the Illinois Environmental Protection Agency received an application from Clinton Landfill Inc. (CLI) for a permit to redesign 22.5 acres of the southwest corner of the landfill for the disposal of a variety of non-hazardous industrial process and pollution control wastes including polychlorinated biphenyl (PCB) wastes. The Chemical Waste Unit has a design capacity of 2.55 million cubic yards of airspace, which includes daily cover; CLI estimates an airspace utilization of one ton of waste per cubic yard of airspace, and anticipates approximately 34 years of operation based on 75,000 tons of waste that will be accepted per year.

### Findings

Simon Manoyan of the Watersheds and Wetlands Branch, Steve Roy of the Underground Injection Control Branch and Bill Spaulding of the Groundwater and Drinking Water Branch concluded the following:

- 1) The hydrogeologic characteristic, engineering design and the groundwater Impact Assessment indicates that the Clinton Landfill No. 3 is appropriate for the development of a Chemical Waste Unit if approved design and construction plans, monitoring and operating plans are adhered to.
- 2) The proposed landfill will be protective of underground sources of drinking water.

The reasons for their findings are as follows:

- An engineered multiple layer-composite liner system was constructed across the base and sideslopes of the proposed Chemical Waste Unit in order to contain the waste materials and prevent contaminants from leaving the landfill and impacting the water. The engineered multiple layer-composite liner system will be comprised of a primary composite liner consisting of compacted cohesive earth overlain by a geomembrane, a geocomposite drainage layer and a second geomembrane. At the base of the Chemical Waste Unit, there is an additional geosynthetic clay liner and a third geomembrane will be installed above the primary composite liner system. The compacted cohesive earth liner will consist of a minimum of 3-foot thick layer of compacted soil with a maximum permeability of  $1 \times 10^{-7}$  cm/sec. The geomembranes will consist of double-sided textured 60-mil HDPE.
- A succession of low-permeability cohesive soil units are present beneath the site which will separate the footprint of the proposed Chemical Waste Unit from the regional aquifer, and have an average thickness of approximately 200 feet at the site and approximately 170 feet of which will remain between the bottom of the proposed liner invert and the regional Mahomet sand aquifer.
- A leachate drainage system/collection system will be constructed on the bottom of the landfill to remove leachate from the landfill. The primary leachate drainage/collection system includes a highly permeable drainage layer to transmit leachate to a series of high-strength plastic pipes placed at intervals on the bottom liner. A redundant leachate drainage/collection system has also been included within the proposed liner system directly beneath the primary liner system in order to provide additional leachate removal capabilities if necessary. Both primary and redundant leachate drainage/collection systems will rapidly transmit leachate to collections sumps from which the leachate will be extracted.
- Upon the Chemical Waste Unit being filled to its intended height, it will be overlain by Municipal Solid Waste to achieve the final proposed grades and a final cover system will be constructed to cap the waste. From the bottom up, the final cover system that will cap the landfill will consist of five layers:



1. a 12-inch thick compacted low permeability final cover barrier soil (maximum permeability of  $1 \times 10^{-7}$  cm/sec);
2. a 40-mil high density polyethylene (HDPE) geomembrane to serve as an impermeable barrier against infiltration of moisture into the landfill;
3. a drainage layer consisting of a drainage net overlain by a non-woven geotextile to reduce the hydraulic head acting on the final cover;
4. a minimum three-foot thick protective soil layer overlaying the low permeability layer with the uppermost six inches consisting of soil suitable for vegetation; and
5. a vegetation layer.

To facilitate drainage and minimize erosion, the slope of the final cover will be between a minimum of 5 percent and a maximum of 25 percent. The final slopes of the landfill will be vegetated and will incorporate drainage terraces to effectively control erosion. After the placement of final cover, precipitation that falls on the landfill will be diverted into the stormwater management system to minimize percolation through the final cover system.

- Based on the waste streams anticipated, landfill gas generation is not expected, however the permitted Clinton Landfill No. 3 Municipal Solid Waste Unit has been designed with a permitted landfill gas management system. Additionally, ambient air monitoring will be performed at the Chemical Waste Unit.
- The Groundwater Impact Assessment was approved by Illinois Environmental Protection Agency for the permitted Clinton Landfill No. 3 municipal solid waste landfill. The Groundwater Impact Assessment included fate and transport modeling (conservative one- and two-dimensional models approved by the Illinois Environmental Protection Agency) to assess whether the landfill would have any impact on the groundwater quality. The models used to determine leachate migration included
  - Digital Terrain Model (DTM);
  - a two-dimensional contaminant transport model (MIGRATE, groundwater modeling software designed for the sole purpose of modeling landfills); and
  - a one-dimensional model for Hydrologic Evaluation of Landfill Performance (HELP), jointly developed by U.S. EPA and the Army Corps of Engineers for conducting water balance analyses of landfills and other solid waste containment facilities.

EPA TSCA staff used a one-dimensional contaminant transport model (pollutant migration through a clay layer (POLLUTE)) to help assess the results of the applicant's models.

- PCBs are not mobile from properly constructed landfills – they tend to stay where they are put. There are redundant leachate collection systems with multiple layers of HDPE, bentonite and compacted clay at the base of the landfill, and over at least 150 ft of native clay.
- If PCBs were to get through the bentonite and HDPE layers, the three feet of compacted clay will retard movement for at least 1000 years.
- If PCBs were to get through the compacted clay layer, there is still at least 150 feet of native clay between the landfill and the Mahomet Aquifer.
- The Mahomet Aquifer is over-pressured, that is, artesian conditions exist: water would flow upward if flow paths existed. The maintenance of this pressure over time demonstrates the integrity of the native clay layer.

- Water is extracted from shallower zones in some areas but these shallower aquifers are also protected by the liner and compacted clay later. In addition, none of these wells is “downstream” of the landfill and the location of the site essentially precludes use of any such location in the future.

### **Modeling issues raised in the KPRG Report**

Summarized briefly, KPRG states that they reviewed the permit application submitted by Clinton Landfill, Inc. (CLI) and found it to be inadequate based on their understanding of the modeling effort conducted by CLI. The inadequacies that KPRG report listed are “lack of calibration, absence of fundamental hydrogeologic data and lack of evaluation lateral migration.” KPRG recommended an unnamed 3-dimensional groundwater model.

The selection of an appropriate model depends on the application needs, objectives of the project, and what question(s) needs to be addressed by the model. The definition of modeling objectives is an essential first step in the development of a modeling approach. In some cases, objectives will be best met by using a combination of models, and in other cases, a very simplified model might be sufficient to support decision making needs. The selection of the model can be based on criteria such as value of the resource considered, data needs, application cost, the required accuracy, type of pollutants/stressors considered, management considerations and user experience. The groundwater modeling software (MIGRATE) selected by the Applicant was developed and designed for the purpose of modeling landfills and incorporates engineered systems (liners, clay layers etc.) and the hydrogeologic conditions. MIGRATE model has been used in landfill designs and accepted as an industry standard.

The KPRG recommendation is generic and may not improve the model results significantly.

IEPA performed a review of the hydrogeological investigation (which was developed and performed in accordance with the requirements of 35 Ill. Admin. Code, Sections 811.315, 812.314, and 812.315 and Federal TSCA regulations) and agreed with the findings and issued a permit for the site. The Applicant’s hydrological investigation included boring logs, cross sections, private water well logs, geotechnical information, slug testing, and potentiometric maps. Additionally, CLI collected over twenty years of groundwater monitoring data for the facility and excavated and constructed landfill cells in the clays at the site and found them to be as identified in the hydrological investigation. The Groundwater Impact Assessment completed by the Applicant was developed based on State regulations and IEPA Guidance Document LPC-PA2. Based on IEPA’s conclusions, sufficient and appropriate data was available to conduct modeling to address the project needs.

In addition to the low mobility of PCBs , the Illinois Geological Survey concluded that the groundwater within Mahomet Aquifer is separated from the bottom of the landfill by the engineered liner system and at least 150 feet of glacial clays and receives very little surface recharge in the site vicinity, therefore the facility is deemed to be safe.

The HELP model was used to aid in the design of the leachate collection system, which is what this modeling program was designed to do.

### **Issues raised by Lee and Lee-Jones**

In September, 2009, Rep. Timothy Johnson wrote Region 5 Regional Administrator Mary Gade with concerns about the proposed landfill. He included a report written by G. Fred Lee and Anne Jones-Lee for the DeWitt County Board to provide information related to his concerns. Lee and Lee-Jones raised the following issues:

- 1) PCBs are hazardous essentially forever.

Response: the information indicates that they are essentially immobile and will stay within the landfill once it is capped. PCBs are very stable and hardly degrade naturally, although some can be degraded by certain anaerobic bacteria. They degrade to water, carbon dioxide and chlorine.

- 2) Cover materials will eventually deteriorate, allowing water to penetrate.

Response: Cap maintenance is required by permit conditions.

- 3) Liner materials will eventually deteriorate allowing leachate into the substrate. Note: the only citation referenced by Lee and Lee-Jones is a report which they themselves wrote.

Response: Given the highly redundant and conservative nature of the liner *system*, leakage of leachate into the substrate is not expected. The system consists of three HDPE liners and two leachate collection systems over a three-foot thick layer of compacted clay which overlays at least 150 ft of native clay above the Mahomet Aquifer.

- 4) Liner is inaccessible: leaks will not be detected in a timely way and repair is difficult.

Response: Leakage will be detected by the volume of liquid pumped from the leachate collection systems. However, repair would probably be difficult.

- 5) There are pathways through the substrate into the Mahomet Aquifer:

Response: This does not seem to be true. Water in the Mahomet in this area does not show the influence of water from the surface and is in fact under artesian pressure (flow would be upward if a flow path were available). The existence of this artesian pressure demonstrates the integrity of the native clay.

Reports and other documents prepared by EPA RCRA (TSCA) staff show that no community water wells within a 15-mile radius (confirmed in SDWIS) will be threatened by this landfill. They are either 1) upstream or sidestream of the landfill (based on groundwater flow direction) and therefore they cannot be impacted by the landfill (even if there were to be a leak) or 2) they draw water from the deeper aquifer (the Mahomet), in which case the nature of the deposits between the landfill and the Mahomet Aquifer is protective. All existing wells draw water either from a shallow aquifer or a deep aquifer but no wells draw water from the zone between these two, indicating that no water is available in this "dry zone". This can be seen in the following figure which plots depth of water wells (as elevation above mean sea level (MSL)) against the number of such wells. There are no wells in the zone between approximately 460 to 550 ft above MSL. (The "dry zone" appears to be less than 150 feet thick because the figure includes wells within several miles of the landfill and the formations at these distances are not at the same depth as they are beneath the landfill. At the site of the landfill, the clay layer is at least 150 feet thick.)

