

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 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 12. 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 23. 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