



MEMORANDUM

To: Mayor Laurel Prussing and members of the City Council

From: Mike Monson, Chief of Staff

Date: Nov. 22, 2011

Re: Intergovernmental Agreement Regarding Clinton Landfill Permit

Introduction

Council members are asked to approve an intergovernmental agreement to share the cost of mounting a legal/administrative challenge to the likely issuance of a permit by the U.S. EPA that would allow Clinton Landfill No. 3 to accept hazardous PCB-contaminated soils. The chemical landfill is located over and could pose a threat to the purity of the Mahomet Aquifer, the source of Urbana and Champaign's drinking water.

Background

Clinton Landfill No. 3, a subsidiary of Area Disposal Service, Inc., has applied to the U.S. Environmental Protection Agency for a permit to be able to accept Polychlorinated Biphenyl (PCB)-contaminated waste in a separate chemical waste storage facility that is a part of the company's landfill south of Clinton on U.S. 51. The public comment period on the permit application closed in mid-August and interested parties expect a decision from the regional administrator of the U.S. EPA within days or weeks. The Illinois EPA has already given its approval to expanding the landfill to accept PCBs.

The Clinton Landfill is located directly over the Mahomet Aquifer, which in the primary drinking water source for several hundred thousand central Illinois residents in 15 different counties. All told, some 750,000 residents get their drinking water from the Aquifer.

PCBs are a known carcinogen and they pose a substantial threat to human health if they are ingested or otherwise introduced into the human body. Congress banned domestic production of

PCBs in 1979. The wastes proposed to be deposited in the Clinton Landfill would largely consist of contaminated soils dredged from the Great Lakes region.

PCBs were used as coolants and insulating fluids for transformers and capacitors, and they do not decompose readily. A number of PCB-contaminated sites have required Superfund cleanup, including parts of the Hudson River in New York State. PCBs can pose a health risk to humans through consumption of contaminated fish.

Intergovernmental Agreement

Officials in a number of local communities and counties -- including Urbana, Champaign, Savoy, Champaign County and Normal -- believe that installing a landfill with PCB-wastes over the Mahomet Aquifer poses an unacceptable risk.

To that end, the local and area governments are proposing an intergovernmental agreement to share the initial costs of a potential legal/administrative challenge. Original members will include Urbana, Normal, Champaign, Savoy and Champaign County, with costs of up to \$12,000 for the first phase to be shared based on a per capita or population basis. Under the formula, Urbana would pay 16.2 percent of the total legal bill during this first phase. If other communities join, the costs to Urbana will be reduced. Champaign would pay 31.9 percent of the total cost, while Champaign County (excluding the population of Champaign, Urbana and Savoy) would pay 28.1 percent. The city of Bloomington is still considering whether to enter into the intergovernmental agreement.

The City of Champaign will act as the lead agency in coordinating the work associated with opposing the Clinton Landfill permit. Their plan is to hire Chicago attorney Albert Ettinger and Peoria attorney David Wentworth to look at the public record and make recommendations about how to proceed with a legal or administrative challenge to the permit.

As lead agency, the City of Champaign will be entitled to reimburse its own staff time by charging 10 percent of the total cost of the bill submitted by the attorneys and any other professional services provided under contract. Champaign staff will prepare requests for proposals and enter into contracts for professional services to support members' intervention into the proceeding or case.

An executive committee will be formed with a representative from each participating community. The executive committee will make decisions by majority vote concerning strategy and contracting for professional services.

Normal approved the intergovernmental agreement on Nov. 22. Champaign will consider the agreement Dec. 6; Savoy on Dec. 7, and Champaign County on Dec. 20.

Options

1. Approve the intergovernmental agreement as a cost-effective way of mounting an aggressive challenge to the expected approval of the U.S. EPA permit for Clinton Landfill No. 3. Similar intergovernmental agreements have been used in the past by Urbana and Champaign to oppose rate-hike requests by area utilities.
2. Do not approve the intergovernmental agreement. Such a move would save on expected legal costs, but would lessen the likelihood that the chemical landfill can be stopped.

Fiscal Impact

During the initial phase, Urbana's legal bill would be about \$2,000 total if it is necessary to spend the entire \$12,000 allotted. Long term, the city's costs would be higher if a protracted legal struggle is required. Under the terms of the intergovernmental agreement, Urbana may withdraw from the association by giving 45 days notice. But the city would be required to pay its share of costs incurred up until the date of withdrawal.

Recommendation

The Mayor recommends that the City Council approve the proposed intergovernmental agreement as the best and most cost-effective method available to vigorously oppose the proposed PCB landfill near Clinton.

RESOLUTION NO. 2011-11-042R

A RESOLUTION AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT REGARDING THE CLINTON LANDFILL PERMIT APPLICATION TO ACCEPT POLYCHLORINATED BIPHENYLS

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1.

An Intergovernmental Agreement Regarding the Clinton Landfill Permit Application to Accept Polychlorinated Biphenyls between the City of Urbana, Illinois, the City of Champaign, Illinois, the Town of Normal, Illinois, the Village of Savoy, Illinois, and the County of Champaign, Illinois, in substantially the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2.

The Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

Motion was made by Alderman _____, seconded by Alderman _____ that the Resolution be adopted.

PASSED BY THE CITY COUNCIL this ____ day of _____, _____.

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this ____ day of _____, _____.

Laurel Lunt Prussing, Mayor

**INTERGOVERNMENTAL AGREEMENT
REGARDING THE CLINTON LANDFILL PERMIT APPLICATION TO ACCEPT
POLYCHLORINATED BIPHENYLS**

WHEREAS, Clinton Landfill #3 is currently permitted as a landfill authorized to accept municipal solid waste; and

WHEREAS, Clinton Landfill Incorporated, a subsidiary of Area Disposal Service, Inc., operates Clinton Landfill #3, and has applied to the United States Environmental Protection Agency, (US EPA) pursuant to Section 6(e)(1) of the Toxic Substances Control Act of 1976 (15 USC 2605(e)(1)) to permit the acceptance of Polychlorinated Biphenyls (PCB's) at such site; and

WHEREAS, the regulations pertaining to chemical waste landfills, 40 CFR§ 761.75 require landfills used for its disposal (PCB's) to be approved by the Regional Administrator for the United State Environmental Protection Agency (US EPA); and

WHEREAS, Clinton Landfill Incorporated has already been granted approval of its request for permission to accept PCB's at Clinton Landfill #3 by the Illinois Environmental Protection Agency (IEPA); and

WHEREAS, the Clinton Landfill is located directly over the Mahomet Aquifer which serves as a source of drinking water for numerous municipalities and hundreds of thousands of residents in a wide area of Central Illinois; and

WHEREAS, PCB's are a known carcinogen, and pose a substantial threat to human health if they are ingested or otherwise introduced into the human body; and

WHEREAS, the parties to this agreement believe that the citing of a landfill with PCB's poses an unacceptable risk of PCB contamination of the Mahomet Aquifer; and

WHEREAS, professionals, including but not limited to legal counsel and technical experts with specialized competence in evaluating the legal and technical issues posed by the proposed PCB landfill, are needed to assist the parties; and,

WHEREAS, Section 10 of Article VII of the 1970 Illinois Constitution and “The Intergovernmental Cooperation Act” (5 ILCS 220/, et seq.) provides for intergovernmental cooperation.

NOW, THEREFORE, in consideration of the mutual understandings and agreements set forth herein, the parties agree as follows:

Section 1. In General. All the participants in this Agreement recognize the importance of the Mahomet Aquifer to the well-being of their communities. The parties recognize that potential contamination of the Mahomet Aquifer would have catastrophic consequences for each community. The purpose of this Agreement to provide for the participants’ ability to effectively intervene in any administrative or other legal proceeding, hereinafter referred to collectively as a “proceeding”, the outcome of which threatens the aquifer or increases the probability of contamination of the aquifer, and specifically the proceeding referred to in the preamble of this Agreement.

Section 2. Original Members. The CITY OF CHAMPAIGN, ILLINOIS (Champaign), the CITY OF URBANA, ILLINOIS (Urbana), the TOWN OF NORMAL, ILLINOIS, (Normal), the VILLAGE OF SAVOY, ILLINOIS (Savoy) and CHAMPAIGN COUNTY, ILLINOIS (Champaign County) each will be designated an "Original Member".

Section 3. Additional Parties. Other governmental agencies may become members to this Agreement by agreeing to the terms herein. Fully Participating members will contribute financially to these undertakings in a proportionate amount according to the terms provided in

this Agreement and will have the same rights and responsibilities as Original Members. If an additional governmental agency becomes a Fully Participating Member during the course of a particular proceeding, the total costs for that particular proceeding after Preliminary Review will be shared with the new Member pursuant to the cost sharing formula provided below. Any reference to Members in this Agreement means all Original Members and Fully Participating Members who have not terminated their participation as provided in Section 9.

Section 4. Lead Agency. Champaign will be the initial lead agency on behalf of the Members. The Lead Agency may be rotated among the Members as jointly agreed upon by the Executive Committee. The Lead Agency will have the following responsibilities:

a. Contracts. The Lead Agency will prepare Requests for Proposals regarding and enter into contracts for professional services to support the Members' intervention into US EPA or IEPA proceedings, or the Members' appeals to the Courts from US EPA or IEPA decisions, the outcomes of which pose a substantial threat of contamination to the Mahomet Aquifer; and supervise the professional service providers in the course of such intervention or participation including without limitation, financial, legal and engineering consultants. Such contracts will be entered into as expeditiously as possible in order to meet any applicable statutes of limitation, filing deadlines or other case scheduling requirements. Any contractual limitations in use of the work product of service providers in these cases will be applicable to Members in the same manner as applied to the Lead Agency.

b. Reports. The Lead Agency will cause reports to be sent periodically to the members and make available copies of work produced by services purchased under this Agreement.

c. Meetings. The Lead Agency will arrange for meetings of the Executive Committee, if necessary.

Section 5. Executive Committee. The Executive Committee will consist of one contact person designated by each Member. Changes in the contact person may be made at any time by a Member upon notice by email or letter to the contact person of the Lead Agency. The Executive Committee may take any action by vote of a majority of those in attendance at a meeting or voting by email or telephone confirmed by email, provided that at least three (3) Original Members vote. Approval by a majority of those voting is necessary to take the following actions:

- a. Approve a contract with a service provider; and
- b. Approve the position to be taken by Interveners in any expert testimony to be submitted to the IEPA, US EPA or the courts.

Section 6. Cost Sharing. Each Member will be proportionately liable for the costs for contractual services retained pursuant to Section 3 and the Lead Agency’s administrative costs as defined below, based upon the relative sizes of each Member’s population as determined by the 2010 Decennial U.S. Census. The population of Champaign County for purposes of determining its share of said costs will be determined by subtracting the populations of the Cities of Champaign and Urbana and the Village of Savoy from the County’s total population. Each of the party’s populations and respective share of the total costs is shown in the following table.

| Municipality | Population | Cost Share based upon Percentage of Total population |
|--|------------|--|
| Normal | 52,497 | 20.70 |
| Champaign | 81,055 | 31.97 |
| Urbana | 41,250 | 16.27 |
| Savoy | 7,280 | 2.87 |
| Champaign County excluding Champaign, Urbana and Savoy | 71,496 | 28.19 |
| Total | 253,578 | 100 |

Those Members will be billed at the conclusion of the major case segments as bills from professionals are received and at the conclusion of the case, with costs required to be paid to consultants prior to that time being borne by the Lead Agency.

The Lead Agency will seek reimbursement for its own staff time or in house resources provided to support this project at the rate of 10% of the total cost billed by professional service contractors.

Section 7. Payment. Payment for attorney and expert services rendered under this Agreement will be due to the Lead Agency within forty-five (45) days following receipt by each of the participants of an itemized statement of the services performed. Such statement will describe the services rendered.

Section 8. Completion and Termination.

a. Any signatory to this Agreement may terminate this Agreement by giving no less than forty-five (45) days' written notice of the intent to terminate this Agreement. Notice will be considered given when deposited in the United States mail, postage prepaid, and addressed to the City or Town Manager and the City or Town Attorney of the current Lead Agency. Until otherwise provided, such notice will be given as follows:

City Manager
City of Champaign
102 North Neil Street
Champaign, IL 61820

City Attorney
City of Champaign
102 North Neil Street
Champaign, IL 61820

In the event of termination of this Agreement by any Member prior to completion and final payment by that participant, the participant will pay the Lead Agency its proportionate share of costs for all services performed or actually rendered up to the effective date of termination. The Lead Agency will notify all other Members of the termination of a Member and recalculation of shares of the remaining Member's costs.

b. In the event any of the provisions of this Agreement are violated by any signatory, the aggrieved Member may serve written notice upon the other the intention to terminate such Agreement, such notice to contain the reasons for the termination. Unless within five (5) calendar days after the serving of such notice, the violation will cease, and satisfactory Agreements for correction be made, the contract will expire five (5) calendar days after such service. In addition to any other remedies available at law, the defaulting Member will be liable to the other members for any damages sustained by them based on the default. The terminating Member will pay the Lead Agency its proportionate share of the project costs up to the point of termination.

Section 9. Designated Contact Persons. Each member will designate a representative who will be the contact person concerning this Intergovernmental Agreement and a member of the Executive Committee. The Lead Agency will maintain a current listing of the designated contact persons for each jurisdiction. For purposes of this Agreement, the designated contact person will have authority to make decisions concerning direction in the case for such Member and will be added to the service list to receive all filings in the case, if he/she so requests.

CITY OF CHAMPAIGN, ILLINOIS

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

CITY OF URBANA, ILLINOIS

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DATE: _____

Designated Contact Person:

Address: _____

Phone: _____

E-Mail: _____

TOWN OF NORMAL, ILLINOIS

By: _____

Town Manager

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

DATE: _____

Designated Contact Person:

Address: _____

Phone: _____

E-Mail: _____

CHAMPAIGN COUNTY, ILLINOIS

By: _____

City Attorney

DATE: _____

Designated Contact Person:

Address: _____

Phone: _____

E-Mail: _____

VILLAGE OF SAVOY, ILLINOIS

By: _____

Village Manager

ATTEST:

Village Clerk

APPROVED AS TO FORM:

Village Attorney

DATE: _____

Designated Contact Person:

Address: _____

Phone: _____

E-Mail: _____

County Board Administrator

ATTEST:

County Clerk

APPROVED AS TO FORM:

Assistant State's Attorney

DATE:_____

Designated Contact Person:

Address:_____

Phone:_____

E-Mail:_____