

JAN 18 2011

ORDINANCE NO. 2836

J. Ronald Colyer
City Clerk

AN ORDINANCE TO AUTHORIZE A CONSENT
JUDGMENT ORDER TO BE TAKEN AND ENTERED BY
THE MONROE COUNTY, ILLINOIS CIRCUIT COURT, IN
AND FOR THE 20TH JUDICIAL CIRCUIT OF ILLINOIS, IN
WATERLOO, ILLINOIS, IN THE MATTER OF THE STATE
OF ILLINOIS VS. THE CITY OF COLUMBIA, ILLINOIS,
CASE NO. 2005-CH-33

WHEREAS, in the matter of the "People of the State of Illinois, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, Plaintiff, vs. City of Columbia, an Illinois Municipal corporation, Defendant, the Illinois Attorney General filed suit against the City of Columbia, Illinois (the "City") for and on behalf of the Illinois Environmental Protection Agency (the "IEPA") on June 20, 2005, in the Monroe County, Illinois Circuit Court, in and for the 20th Judicial Circuit of Illinois, in Waterloo, Illinois, Case No. 2005-CH-33, alleging the City was guilty of committing 8 violations of the Illinois Environmental Protection Act and/or IEPA regulations in connection with the closure of the City's Municipal Landfill;

WHEREAS, in said suit the State of Illinois is seeking, among other things, to recover up to \$50,000 from the City for each alleged violation and up to an additional \$10,000 for each day that an alleged violation continues and to recover the attorney fees incurred by the State in the prosecution of the suit;

WHEREAS, said suit remains pending and undetermined at this time and during the pendency of the suit the City has been able to obtain permits from the IEPA for the closure of its municipal landfill and for monitoring of ground water at the landfill site after the closure of the landfill;

WHEREAS, the parties have arrived at an amicable resolution of their controversy on terms that are mutually agreeable to the parties (which involves the City performing three (3) supplemental environmental projects to restore, protect and enhance the environment in the City and which relieves the City of any obligation to pay a fine, court costs or attorney fees to the State of Illinois for the prosecution of said law suit); and,

WHEREAS, it is necessary and appropriate that the court shall enter a Consent Order/Consent Judgment (a "Consent Order") in the law suit, the same to be pre-approved by the parties as to form and content, disposing of the litigation, which Consent Order shall be in the form attached hereto and by reference made part hereof.

NOW, THEREFORE, be it ordained by the Mayor and City Council of the City of Columbia, Illinois, as follows:

Section 1. The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference, the same as if set forth in this Section of this Ordinance verbatim, as findings of the City Council of the City of Columbia, Illinois.

Section 2. The City Council of the City of Columbia, Illinois approves of the entry of a Consent Order in the form attached hereto (which Consent Order is by reference made part hereof), and which is hereby approved as to form; and, the City Council of the City agrees that the City shall do and perform its obligations created by the Order pursuant to the Order being entered by the Monroe County, Illinois Circuit Court and agrees to be bound thereby.

Section 3. The Mayor is hereby authorized and directed to sign the Consent Order for and on behalf of the City, (to acknowledge the City's acceptance thereof and agreement to be bound thereby), in as many counterparts as the Mayor shall determine; and, the City Clerk is hereby authorized and directed to attest the same and affix thereto the corporate seal of the City.

Section 4. This Ordinance shall be in full force and effect, from and after its passage, as provided by law.

Alderman Ebersohl moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Niemietz, and the roll call vote was as follows:

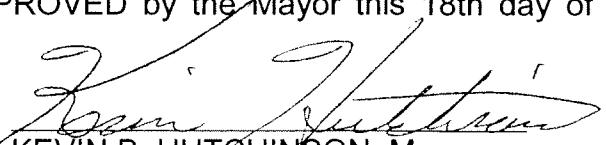
YEAS: Aldermen Ebersohl, Agne, Niemietz, Hejna, Oberfell and Roessler.

NAYS: None.

ABSENT: Aldermen Row and Stumpf.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 18th day of January, 2011.



KEVIN B. HUTCHINSON, Mayor

ATTEST:



J. RONALD COLYER, City Clerk

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

CERTIFICATE OF TRUE COPY

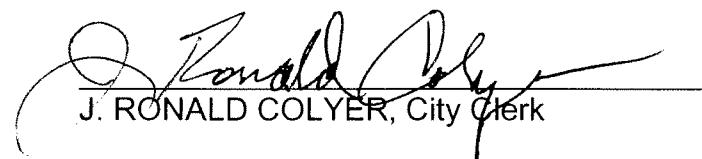
I, J. Ronald Colyer, hereby certify that I am the duly elected and acting City Clerk of the City of Columbia, Illinois and as such I am the keeper of the books, records, files and corporate seal of said City.

I do further certify that Ordinance No. 2836 entitled:

**AN ORDINANCE TO AUTHORIZE A CONSENT
JUDGMENT ORDER TO BE TAKEN AND ENTERED BY
THE MONROE COUNTY ILLINOIS CIRCUIT COURT, IN
AND FOR THE 20TH JUDICIAL CIRCUIT OF ILLINOIS, IN
WATERLOO, ILLINOIS, IN THE MATTER OF THE STATE
OF ILLINOIS VS. THE CITY OF COLUMBIA, ILLINOIS,
CASE NO. 2005-CH-33**

to which this certificate is attached, is a true, perfect, complete and correct copy of said ordinance as adopted at a regular meeting of the Columbia, Illinois City Council held on the 18th day of January, 2011.

IN WITNESS WHEREOF, I have made and delivered this certificate for the uses and purposes hereinabove set forth this 19th day of January, 2011.



J. RONALD COLYER, City Clerk

(SEAL.)

IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT
MONROE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS ex rel.)
LISA MADIGAN, Attorney General of the State)
of Illinois,)
Plaintiff,)
v.)) No. 2005 CH 33
CITY OF COLUMBIA,)
an Illinois municipal corporation,)
Defendant.)

CONSENT ORDER

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Defendant, CITY OF COLUMBIA, an Illinois municipal corporation, ("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. (2008), and the Illinois Pollution Control Board ("Board") Regulations, alleged in the

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

1. On June 20, 2005, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (2008), against the Defendant.

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 (2008).

3. At all times relevant to the Complaint, Defendant City of Columbia ("the City") was and is an Illinois municipal corporation that is located in Monroe County, Illinois and that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Defendant City of Columbia owned and operated a general municipal refuse landfill (the "landfill facility" or "landfill site") which is a "sanitary landfill" as that term is defined in Section 3.445 of the Act, 415 ILCS 5/3.445, and which is a "waste disposal site" as that term is used in Section 3.540 of the Act, 415 ILCS 5/3.540.

B. Allegations of Non-Compliance

Plaintiff contends that the Defendant has violated the following provisions of the Act and Board Regulations:

Count I: Sections 21(d)(1), 21(d)(2), and 22.17 of the Act, 415 ILCS 5/21(d)(1), 21(d)(2), and 22.17 (2008), Sections 807.302 and 807.508 of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 807.302 and 807.508, and Special Condition A. 1 of Supplemental Permit No. 1998-126-SP.

Count II: Sections 21(d)(1) and 21(o)(11) of the Act, 515 ILCS 5/21(d)(1) and 21(o)(11) (2008), Section 807.302 and 807.508 of the Pollution Control Board's Land Pollution Regulations, 35 Ill. Adm. Code 807.302 and 807.508, and Special Condition B. 2 of Supplemental Permit No. 1998-126-SP.

C. Non-Admission of Violations

The Defendant 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, the Defendant does not affirmatively admit the allegations of violation within the Complaint and referenced above, and this Consent Order shall not be interpreted as including such admission.

II. APPLICABILITY

This Consent Order shall apply to and be binding upon the Parties to the Consent Order, and any officer, director, agent, or employee of the Defendant, as well as any successors or assigns of the Defendant. The Defendant 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. This Consent Order may be used against the Defendant in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes

of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2008).

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. Penalty

In lieu of a monetary penalty which would have required the City to pay \$6,500.00 to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund, the City is ordered to complete Supplemental Environmental Projects (“SEPs”) as specified in Section III. C. below.

B. Environmental Compliance

1. The City submitted a groundwater assessment plan for monitoring the groundwater emanating from the landfill site at issue.
2. A groundwater study was conducted by the City.
3. The City ultimately performed the prerequisites to receive a Landfill Monitoring Permit from the Illinois EPA and a Landfill Closure Permit from the Illinois EPA.
4. The City shall comply with the terms and conditions of the Landfill Monitoring Permit and the Landfill Closure Permit.
5. The Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the City's facility

which is the subject of this Consent Order, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

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

7. The City shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

C. Supplemental Environmental Projects

1. In order to promote the goals of the Act to restore, protect and enhance the quality of the environment, the City shall perform the following Supplemental Environmental Projects ("SEPs") consisting of (a) the Palmer Creek Clean Up behind Gedern Estates and Gedern Village, (b) the Ramsey Lane (Near DD Road) Creek Clean Up Around the Bridge, and (c) the implementation of a drop-off site for the ultimate proper disposal of small batteries and implementation of a drop-off site for the ultimate proper disposal of compact fluorescent light bulbs. The settlement value of the SEPs is Thirteen Thousand Six Hundred Dollars (\$13,600.00) and will offset penalties sought by the Plaintiff as stated in Section III. A.(above) in this matter. The Parties to the Consent Order agree that this SEP shall consist of the following:

a. "Palmer Creek Clean Up Behind Gedern Estates and Gedern Village" shall consist of removing trash, debris, refuse, tree limbs, etc. from the creek and creek banks. The

City shall provide City workers, City equipment, and rented equipment if necessary to perform the work. The goal is to clean up the environment and reduce erosion of the creek banks.

b. "Ramsey Lane (Near DD Road) Creek Clean Up Around Bridge" shall consist of removing trash, debris, refuse, tree limbs, etc. from the creek banks and area encompassing the bridge. The City shall provide City workers, City equipment, and rented equipment if necessary to perform the work. The goal is to clean up the environment, reduce erosion and enhance the flow of the creek.

c. Implementation of a drop-off site for the ultimate proper disposal of small batteries which shall include Alkaline/Lithium Batteries (i.e. sizes A, AA, AAA, C, D, 9 volt etc) shall occur at a location within the City and shall be on a weekly basis at times appropriate for the convenience of the citizens of the City. Large batteries for cars, boats, and equipment are not included in this battery disposal SEP. The implementation of a drop-off site for the ultimate proper disposal of compact fluorescent light bulbs shall occur at a location within the City and shall be on a weekly basis at times appropriate for the convenience of the citizens of the City.

2. The Defendant shall complete the SEPs specified in paragraphs 1.(a) and 1.(b) (immediately preceding this paragraph) no later than June 30, 2011, or sooner, and, within 30 days thereafter, shall submit a project completion report, including a summary of all expenditures, to the contact persons identified in Section III. G. (below) for review and confirmation that the SEPs were performed pursuant to this Order. The project completion report shall include the following certification by a responsible corporate official of the Defendant:

I certify under penalty of law that this document was prepared under my direction or

supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted based on my inquiry of those persons directly responsible for gathering the information, and that the information submitted in or accompanying this notification of final compliance is to the best of my knowledge true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and or imprisonment for knowing violations.

3. In the event that the SEPs cannot be completed, the Defendant shall pay the sum of \$6,500.00 as a penalty pursuant to the following procedures no later than the date by which the SEPs should have been completed.

All payments required by this Consent Order shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The name, case number and the Defendant's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

4. By signature on this Consent Order, the Defendant certifies that, as of the date of entry of this Order, it is not required to perform or develop the foregoing SEPs by any federal, state or local law or regulation, nor is it required to perform or develop the SEPs by agreement or injunctive relief in any other case. The Defendant further certifies that it has not received, and is

not presently negotiating to receive credit for, the SEPs in any other enforcement action.

5. Any public statement, oral or written, in print, film or other media, made by the Defendant making reference to any SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Illinois Attorney General and the Illinois EPA for alleged violations of the Illinois Environmental Protection Act and regulations promulgated thereunder."

D. Force Majeure

1. Force majeure is an event arising solely beyond the control of the Defendant, which prevents the timely performance of any of the requirements of this Consent Order and shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, and labor disputes beyond the reasonable control of the Defendant. An increase in costs associated with implementing any requirement of this Consent Order shall not, by itself, excuse the Defendant for a failure to comply with such a requirement.

2. When a force majeure event occurs which causes or may cause a delay in the performance of any of the requirements of this Consent Order, the Defendant shall orally notify the Illinois EPA pursuant to Section III.G. (below) within forty-eight (48) hours of the occurrence. Written notice shall be given to the Plaintiff as soon as practicable, but no later than ten (10) calendar days after the claimed occurrence. This section shall be of no effect as to the particular event involved if the Defendant fails to comply with these notice requirements.

3. Within ten (10) calendar days of receipt of any written force majeure notice, the Plaintiff shall respond in writing regarding the Defendant's claim of a delay or impediment to performance. If the Plaintiff agrees that the delay or impediment to performance has been or will

be caused by circumstances beyond the control of the Defendant and that the Defendant could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay, by a period equivalent to the delay actually caused by such circumstances. Such stipulation may be filed as a modification to this Consent Order. The Defendant shall not be liable for stipulated penalties for the period of any such stipulated extension.

4. If the Plaintiff does not accept the Defendant's claim of a force majeure event, the Defendant must file a petition with the Court within twenty (20) calendar days of receipt of the Plaintiff's determination in order to contest the imposition of stipulated penalties. The Plaintiff shall have twenty (20) calendar days to file its response to said petition. The burden of proof of establishing that a force majeure event prevented the timely performance shall be upon the Defendant. If this Court determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of the Defendant and that the Defendant could not have prevented the delay by the exercise of due diligence, the Defendant shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by this Court.

E. 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 Defendant agrees 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.

F. Dispute Resolution

1. Except as provided herein, the Parties to the Consent Order may seek to informally resolve disputes arising under this Consent Order, including but not limited to the Illinois EPA's decision regarding appropriate or necessary response activity, approval or denial of any report, plan or remediation objective, or the Plaintiff's rejection of a request for modification or termination of the Consent Order. The Plaintiff reserves the right to seek enforcement by the Court where the Defendant has failed to satisfy any compliance deadline within this Consent Order. The following are also not subject to the dispute resolution procedures provided by this section: a claim of force majeure, a failure to make any required payment and any circumstances posing a substantial danger to the environment or to the public health or welfare of persons.

2. The dispute resolution procedure must be invoked by a party through a written notice describing the nature of the dispute and the party's position with regard to such dispute. The other party shall acknowledge receipt of the notice and schedule a meeting to discuss the dispute informally not later than fourteen (14) calendar days from the receipt of such notice.

These informal negotiations shall be concluded within thirty (30) calendar days from the date of the first meeting between the parties, unless the parties agree, in writing, to shorten or extend this period. The invocation of dispute resolution, in and of itself, shall not excuse compliance with any requirement, obligation or deadline contained herein, and stipulated penalties may be assessed for failure or noncompliance during the period of dispute resolution. As part of the resolution of any dispute, the Parties to the Consent Order, by agreement or by order of this Court, may extend or modify the schedule for completion of work under this Consent Order to account for the delay in the work that occurred as a result of dispute resolution.

3. In the event that the parties are unable to reach agreement during the informal negotiation period, the Plaintiff shall provide the Defendant with a written summary of its position regarding the dispute. The position advanced by the Plaintiff shall be considered binding unless, within twenty (20) calendar days of the Defendant's receipt of the written summary of the Plaintiff's position, the Defendant files a petition with this Court seeking judicial resolution of the dispute. The Plaintiff shall respond to the petition by filing the administrative record of the dispute and any argument responsive to the petition within twenty (20) calendar days of service of Defendant's petition. The administrative record of the dispute shall include the written notice of the dispute, any responsive submittals, the Plaintiff's written summary of its position, the Defendant's petition before the Court and the Plaintiff's response to the petition. The Plaintiff's position shall be affirmed unless, based upon the administrative record, it is against the manifest weight of the evidence.

G. Notice and Submittals

Except for payments, the submittal of any notice, reports or other documents required under this Consent Order, shall be delivered to the following designated representatives:

As to the Plaintiff

Phillip McQuillan
Assistant Attorney General (or other designee)
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
Telephone 217 782-2490

Melanie Jarvis
Assistant Counsel, Illinois EPA
1021 North Grand Avenue East
P. O. Box 19276
Springfield, IL 62794-9276
Telephone 217 782-5544

Greg Morris
Bureau of Land, Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
Telephone 217 xxx-xxxx

As to the Defendant

Ronald J. Williams, P.E.
City Engineer/Public Works Director
208 South Rapp Ave.
Columbia, IL 62236 Telephone 618 281-7144 ext. 107

H. Release from Liability

In consideration of the Defendant's full performance of the SEPs, as contained in Section III. C., its commitment to cease and desist as contained in Section III.B.7. above, and completion of all activities required hereunder, the Plaintiff releases, waives and discharges the Defendant from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Plaintiff's Complaint filed on June 20, 2005. The Plaintiff reserves, and this Consent Order is without prejudice to, all rights of the State of Illinois against the Defendant with respect to all other matters, 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. the Defendant'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 may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), other than the Defendant.

I. 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 PLAINTIFF:

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

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

BY: _____
THOMAS DAVIS, Chief
Environmental Bureau

DATE: _____

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

FOR THE DEFENDANT:

CITY OF COLUMBIA,
an Illinois municipal corporation

BY: _____
Mayor

DATE: _____

It is so ordered.

ENTERED:

Dennis B. Doyle
Circuit Judge

DATE: _____