



Memorandum

To: Mayor Laurel Prussing and City Council members

From: Mike Monson, Chief of Staff to the Mayor

Date: March 18, 2015

Re: Amendment to Intergovernmental Agreement Regarding the Clinton Landfill Application To Accept PCBs

Introduction

In early 2012, several local units of governments formed a coalition to oppose Clinton Landfill, Inc.'s operation of a chemical waste landfill over the Mahomet Aquifer. The city of Urbana was one of the initial partners and approved an intergovernmental agreement in December 2011 (along with Champaign, Normal, Savoy and Champaign County) to share legal and consulting costs in challenging the operation of the chemical waste landfill in DeWitt County. Of particular concern were plans by Clinton Landfill, Inc. to accept Polychlorinated Biphenyls (PCBs) at the site.

This proposed amendment to the intergovernmental agreement would authorize hiring legal and technical consultants to represent the coalition at any future local siting hearing conducted by the DeWitt County Board to approve and authorize operation of the chemical waste landfill. The amendment also would authorize using the consultants in any potential appeal of a siting decision to the Illinois Pollution Control Board.

Fiscal Impact

Due to the large number of governments participating in the coalition effort (14 at present), Urbana's estimated costs are between \$13,827 and \$21,185, should a siting hearing occur. Total coalition costs are projected to be between \$171,000 and \$262,000. A budget amendment is not being requested as the costs will likely be incurred during the fiscal 2016 budget year, which begins July 1, and will be included in the upcoming budget.

To date, the city has spent \$10,747 supporting the coalition's efforts.

Background

The Mahomet Aquifer is a crucial groundwater resource that provides drinking water to more than 80 communities and an estimated 700,000 residents in Central Illinois, including Champaign-Urbana. Clinton Landfill, Inc. is a subsidiary of Area Disposal Co. in Peoria that operates the Clinton Landfill.

In 2007, Clinton Landfill, Inc. filed an application with the U.S. EPA for approval to accept PCB wastes in a part of its landfill facility in DeWitt County known Landfill #3. Approval has not yet been granted and consideration of the application has been temporarily suspended pending resolution of local and state approvals.

In January 2010, the Illinois EPA approved operation of a portion of Landfill #3 as a chemical waste unit by granting a “modification” of a 2002 permit to operate the facility as a municipal solid waste landfill. While the municipal waste landfill received local siting approval from the DeWitt County Board in 2002, the county board has never given siting approval to a chemical waste landfill. After getting the state permit approval, the chemical waste unit within Landfill #3 began accepting manufactured gas plant wastes but not PCB wastes, as PCB wastes also require federal permit approval.

Coalition attorneys David Wentworth of Peoria and Albert Ettinger of Chicago subsequently filed a “citizens’ complaint” with the Illinois Pollution Control Board in late 2012 arguing that the chemical waste unit was being operated in violation of the Illinois Environmental Protection Act because of a lack of local siting approval. In September 2013, the Pollution Control Board dismissed the complaint, contending the state EPA had granted permission to operate the chemical waste unit with the permit modification, even if the action violated the requirement for local siting approval. The pollution control board’s decision is being appealed by the coalition and the Illinois Attorney General’s office to the 4th District Appellate Court.

Meanwhile, the coalition won a major victory in July 2014 when the Illinois EPA issued permit modification #47, which suspended Clinton Landfill, Inc.’s authority to operate the chemical waste unit within Landfill #3 until it obtains local siting approval from the DeWitt County Board.

Clinton Landfill, Inc. is now challenging the legal validity of the permit modification #47 to the Illinois Pollution Control Board, with the state Attorney General’s office defending the decision. A decision by the Pollution Control Board is expected in July.

Siting Hearing

Attorneys for the coalition believe there is an increasing likelihood of a siting hearing before the DeWitt County Board. They are asking for approval of the amendment to the intergovernmental agreement to indicate explicit support for participating in the siting hearing and approval of the hiring of outside legal and technical consultants.

A siting hearing is considered likely if either the Illinois Pollution Control Board supports the Illinois EPA’s permit modification #47, or if the 4th District Appellate Court reverses the Pollution Control Board’s earlier dismissal of the citizens’ complaint. Clinton Landfill, Inc., also could decide to seek local siting approval independently.

A siting hearing would likely involve appointment of a hearing officer by the DeWitt County Board and a quasi-judicial type hearing. According to Joseph Hooker, assistant city attorney in Champaign, it is likely that Clinton Landfill Inc.’s highly technical arguments supporting the safety of the chemical waste unit would go unchallenged without coalition participation in a siting hearing.

The city of Champaign, as lead agency for the coalition, is proposing to hire the Chicago law firm of Swanson, Martin & Bell, LLP, and KPRG and Associates Inc. to provide legal representation and expert testimony at any local siting hearing.

KPRG, based in Westmont, Ill., has already previously studied the aquifer and the threat posed by a chemical waste landfill for the Mahomet Valley Water Authority. KPRG's findings raised numerous concerns about a study done by a Clinton Landfill consultant indicating the chemical waste unit would be safe. KPRG concluded that operation of the chemical waste landfill poses an unreasonable risk of contamination to the Mahomet Aquifer.

Swanson, Martin & Bell also has previously represented the Mahomet Valley Water Authority in litigation on the chemical waste landfill issue.

Options:

1. Approve the resolution authorizing the amendment to the intergovernmental agreement. Amendment would authorize hiring of consultants to represent the coalition at any local siting hearing conducted by the DeWitt County Board, plus any appeal of a county board decision to the Illinois Pollution Control Board.
2. Defeat this resolution and provide direction to staff.

Advantages of approval:

- Helps ensure that technical and legal arguments against siting the chemical waste landfill will get a full airing before the DeWitt County Board. Due to the high cost of hiring attorneys and technical experts, arguments challenging the chemical waste landfill would not likely be heard without the financial support of the coalition.
- The estimated cost is modest due to the large number of coalition partners providing financial support.
- Would continue the city's longstanding position in favor of protecting the Mahomet Aquifer.

Disadvantages of approval:

- Would use funds that could be used for other purposes.

Recommendation:

Mayor Prussing recommends approval of the resolution.

RESOLUTION NO. 2015-03-013R

RESOLUTION TO AUTHORIZE EXECUTION OF AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT REGARDING THE CLINTON LANDFILL PERMIT APPLICATION TO ACCEPT POLYCHORINATED BIPHENYLS

(Agreement to Authorize the Hiring of Legal and Technical Consultants to Participate in Any Local Siting Hearing Conducted by DeWitt County Board to Consider Authorizing the Operation of a Chemical Waste Unit in DeWitt County.)

WHEREAS, the City of Urbana (“City”) is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power and perform any function pertaining to its government and affairs, including the power to regulate for the protection of the public health, safety, and welfare; and

WHEREAS, Section 10 of Article VII of the Constitution of the State of Illinois, 1970, provides authority for governments to contract or otherwise associate among themselves to obtain and share services and to exercise, combine or transfer any power of function in any manner not prohibited by law; and

WHEREAS, the Intergovernmental Cooperation Act (5 ILCS 220 *et. seq.*) provides that any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking; and

WHEREAS, the City has joined with the City of Champaign, the Town of Normal, the Village of Savoy, and Champaign County in an intergovernmental agreement order to prosecute and share costs in prosecuting legal challenges to the operation of a chemical waste unit by Clinton Landfill, Inc. in DeWitt County, Illinois; and

WHEREAS, other units of local government have joined with the aforesaid units of local government in prosecuting legal challenges to the operation of the proposed chemical waste unit by Clinton Landfill, Inc.; and

WHEREAS, the Illinois Environmental Protection Agency has agreed with allegations asserted in opposition to Clinton Landfill, Inc.’s proposed chemical waste unit; and

WHEREAS, the aforesaid group of local taxing bodies deem it prudent to anticipate that Clinton Landfill, Inc. will ultimately be required to make an application to the DeWitt County Board for Section 39.2 local siting approval of the Chemical Waste Unit, and to prepare for the aforesaid group’s participation in such a local siting hearing process in order to oppose approval of such an application by CLI; and

WHEREAS, the aforesaid group of local taxing bodies deem it prudent to amend the above-referenced intergovernmental agreement so that they can share in the costs of prosecuting opposition to any effort of Clinton Landfill, Inc. to construct and operate a chemical waste unit in DeWitt County.

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

Section 1. An Amendment to An Intergovernmental Agreement Regarding the Clinton Landfill Permit Application to Accept Polychlorinated Biphenyls between the City of Urbana, City of Champaign, Town of Normal, Village of Savoy, Champaign County, City of Decatur, City of Bloomington, City of Monticello, City of Tuscola, Village of Forsyth, McClean County, Macon County, Piatt County Board, Mahomet Valley Water Authority, all being in the State of Illinois, in substantially the form of the copy of said agreement attached hereto and incorporated by reference herein, 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 to the City Clerk of the City of Urbana, Illinois, and the said City Clerk 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.

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

AYES:

NAYS:

ABSENT:

ABSTAINED:

Phyllis D. Clark, City Clerk

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

Laurel Lunt Prussing, Mayor

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

WHEREAS, several units of local government in Illinois, including the Cities of Champaign and Urbana, the Town of Normal, the Village of Savoy and Champaign County, entered into an intergovernmental agreement in 2012, entitled “Intergovernmental Agreement Regarding the Clinton Landfill Permit Application to Accept Polychlorinated Biphenyls” (hereinafter the “Intergovernmental Agreement”) to share the costs of prosecuting legal challenges to the operation of a chemical waste unit (hereinafter the “Chemical Waste Unit”) by Clinton Landfill, Inc. (hereinafter “CLI”) at its landfill facility in DeWitt County, Illinois (hereafter “Clinton Landfill”); and

WHEREAS, additional units of local government in Illinois subsequently agreed to become additional parties to said Intergovernmental Agreement, including the cities of Bloomington, Decatur, Monticello and Tuscola, the Village of Forsyth, the Counties of McLean, Macon and Piatt, and the Mahomet Valley Water Authority, and hereinafter all of the current parties to said Intergovernmental Agreement will collectively be referred to as the “Parties” or the “Coalition;” and

WHEREAS, the Clinton Landfill is located directly over the Mahomet Aquifer, a crucial and irreplaceable source of drinking water for over half a million citizens in central Illinois; and

WHEREAS, said Chemical Waste Unit is located within a portion of the Clinton Landfill designated and hereinafter referred to as “Landfill #3”; and

WHEREAS the Illinois Environmental Protection Agency (hereinafter the “IEPA” or “Agency”) granted the original permit (hereinafter the “Original Permit”) authorizing the operation of Landfill #3 as a municipal solid waste facility in 2007; and

WHEREAS, the Agency subsequently granted CLI a modification of the Original Permit, designated and hereinafter referred to as “Permit Modification #9”, which authorized the acceptance in the Chemical Waste Unit of wastes that were not authorized by the Original Permit, namely wastes contaminated with polychlorinated biphenyls, (hereinafter “PCBs”) in concentrations regulated by the federal Toxic Substances Control Act, and manufactured gas plant wastes (hereinafter “MPG Wastes”) with levels of toxicity exceeding the regulatory limits set forth in 35 Ill. Adm. Code 721.124(b) of the Illinois Administrative Code; and

WHEREAS, based upon concerns raised by groundwater professionals, including but not limited to, staff members of the Illinois State Water Survey and persons working for KPRG and Associates, Inc., an environmental consulting firm retained by the Mahomet Valley Water Authority, the Coalition deems the operation of the Chemical Waste Unit over the Mahomet Aquifer to pose an unreasonable threat of contamination to the Mahomet Aquifer; and

WHEREAS, the Parties joined together to file a complaint, (hereinafter the “Citizens Complaint”) with the Illinois Pollution Control Board (hereinafter the “IPCB”) in case No. PCB 2013 – 022, pursuant to authority granted in Section 31(d)(1) of the Act (415 ILCS 5/31(d)(1)), in accordance with the terms and conditions of the Intergovernmental Agreement, alleging that the Chemical Waste Unit constituted a “new pollution control facility” as defined by the Act, and that CLI was violating the Act by accepting for disposal in said facility the toxic PCB contaminated waste and MPG waste referenced above without having been granted local siting approval by the DeWitt County Board as required by Section 39.2 of the Act; and

WHEREAS, the IPCB granted a motion by CLI dismissing said Citizens Complaint, and the Coalition filed an appeal with the Illinois Appellate Court for the Fourth Judicial District challenging said dismissal, which appeal is currently pending in said Court; and

WHEREAS, the IEPA has now agreed with the allegations of the Citizen's Complaint, and has issued a new modification of CLI's Original Permit for Landfill #3, designated and hereinafter referred to as "Permit Modification #47", requiring CLI to apply for local siting approval by the DeWitt County Board pursuant to Section 39.2 before continuing operation of the Chemical Waste Unit; and

WHEREAS, CLI has now filed an appeal to the IPCB challenging the validity of Permit Modification #47, and said appeal is currently pending; and

WHEREAS, the Coalition deems it to be prudent to anticipate that CLI will ultimately be required to make an application to the DeWitt County Board for Section 39.2 local siting approval of the Chemical Waste Unit, and to prepare for the Coalition's participation in such a local siting hearing process in order to oppose approval of such an application by CLI.

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

Section 1. Incorporation of Recitals. That the recitals set forth above are hereby incorporated fully into this Amendment.

Section 2. Expansion of Scope of Professional Services Acquired by Lead Agency. That the Intergovernmental Agreement is hereby amended in order to revise Section 4 of said Agreement to expand the scope of contractual services that the Lead Agency is authorized to acquire on behalf of the Coalition Parties to include hiring one or more attorneys and one or more environmental engineers, scientists or other technical professionals to represent the Coalition at any hearings or meetings conducted by the DeWitt County Board that concern an application by CLI for local siting approval, in accordance with Section 39.2 of the Act, for the operation of the Chemical Waste Unit at Landfill #3.

Section 3. Remaining Terms and Conditions of Intergovernmental Agreement to Remain in Full Force and Effect. That except as amended herein, the terms and conditions of the Intergovernmental Agreement shall remain in full force and effect.

<p>CITY OF CHAMPAIGN, ILLINOIS</p> <p>By: _____ City Manager</p> <p>ATTEST:</p> <p>_____</p> <p>City Clerk</p> <p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Attorney for City of Champaign</p> <p>DATE: _____</p>	<p>CITY OF URBANA, ILLINOIS</p> <p>By: _____ Mayor</p> <p>ATTEST:</p> <p>_____</p> <p>City Clerk</p> <p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Attorney for City of Urbana</p> <p>DATE: _____</p>
<p>TOWN OF NORMAL, ILLINOIS</p> <p>By: _____ Town Manager</p> <p>ATTEST:</p> <p>_____</p> <p>Town Clerk</p> <p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Attorney for Town of Normal</p> <p>DATE: _____</p>	<p>VILLAGE OF SAVOY, ILLINOIS</p> <p>By: _____ Village Manager</p> <p>ATTEST:</p> <p>_____</p> <p>Village Clerk</p> <p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Attorney for Village of Savoy</p> <p>DATE: _____</p>

CHAMPAIGN COUNTY, ILLINOIS

By: _____
County Board Administrator

ATTEST:

By: _____
County Clerk

APPROVED AS TO FORM:

Assistant State's Attorney

DATE: _____

CITY OF BLOOMINGTON, ILLINOIS

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM

Attorney for City of Bloomington

DATE: _____

CITY OF DECATUR, ILLINOIS

By: _____
Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM

Attorney for City of Decatur

DATE: _____

CITY OF MONTICELLO, ILLINOIS

By: _____
Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM

Attorney for City of Monticello

DATE: _____

CITY OF TUSCOLA, ILLINOIS

By: _____
Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM

Attorney for City of Tuscola

DATE: _____

MCLEAN COUNTY, ILLINOIS

By: _____
County Board Chairman

ATTEST:

By: _____
County Clerk

APPROVED AS TO FORM

Attorney for McLean County

DATE: _____

VILLAGE OF FORSYTH, ILLINOIS

By: _____
Mayor

ATTEST:

By: _____
Village Clerk

APPROVED AS TO FORM

Attorney for Village of Forsyth

DATE: _____

MACON COUNTY, ILLINOIS

By: _____
County Board Chairman

ATTEST:

By: _____
County Clerk

APPROVED AS TO FORM

Attorney for Macon County

DATE: _____

<p>PIATT COUNTY BOARD, ILLINOIS</p> <p>By: _____ County Board Chairman</p> <p>ATTEST:</p> <p>By: _____ County Clerk</p> <p>APPROVED AS TO FORM</p> <p>_____ Attorney for Piatt County Board</p> <p>DATE: _____</p>	<p>MAHOMET VALLEY WATER AUTHORITY</p> <p>By: _____ Chairman</p> <p>ATTEST:</p> <p>By: _____ Secretary</p> <p>APPROVED AS TO FORM</p> <p>_____ Attorney for Mahomet Valley Water Authority</p> <p>DATE: _____</p>
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