Court Rules That Landfill Cannot Prevent Water Authority From Commenting on Permit

By: Dave Scriven-Young, Attorney at Peckar & Abramson, P.C.

(Originally published at: http://illinoisenvironmentallaw.blogspot.com/2011/01/court-rules-that-landfill-cannot.html)

The Illinois Appellate Court, Fourth District, recently issued an opinion affirming the denial of a preliminary injunction in *Clinton Landfill, Inc. v.Mahomet Valley Water Authority, Case No. 4-10-0704*, which concerned the plaintiff's attempt to get permits for a chemical-waste landfill. Plaintiff filed a motion for a preliminary injunction against the defendant seeking sought to enjoin defendant from contesting or being involved in plaintiff's permitting process on the basis that defendant lacked the authority to do so.

The trial court denied the motion, and the appellate court affirmed: "The trial court did not err by denying plaintiff's motion for a preliminary injunction. Plaintiff failed to raise a fair question (1) of the likelihood of success on the merits, (2) of a clearly ascertained right in need of protection, (3) of irreparable harm, or (4) that the balance of hardships favored plaintiff." Specifically, the Court found that the defendant regulates and maintains the water supply, and, therefore, it has the power to express an opinion about activities that may affect the area's water supply. The defendant's expert report noted that "domestic and municipal water supply wells that produce water from both the glacial sediments and Mahomet Aquifer establish that human[s] are potential receptors of contaminants released from the Clinton Landfill." Therefore, the defendant has the ability to publicly comment on the plaintiff's proposed permit.

This is an interesting opinion because the plaintiff's theory is novel. Should a potentially permittee be allowed to stifle public comment on the proposed permit through a lawsuit? The Court, in a strongly worded opinion, said no.

Stay tuned to the Illinois Environmental Law Blog for more news and developments.