

Maki Iatridis

From: Maki Iatridis
Sent: Wednesday, April 25, 2007 2:27 PM
To: 'Linn Havelick'; 'Steve Brinkman'; Joe Gordon
Cc: 'Anne Walker'
Subject: FW: Board of County Commissioners of Adams County v. Clean Harbors Deer Trail, LLC
Attachments: ADCO v. Clean Harbors Complaint.pdf

Here is a recent complaint filed in State court by Adams County against Clean Harbors to stop the Deer Trail facility from accepting any radioactive wastes. One of the types of relief sought by Adams County is the removal of all radioactive waste previously disposed of there.

Maki

From: Lorri K. Parker [mailto:lparker@lindquist.com]
Sent: Wednesday, April 25, 2007 1:11 PM
To: Maki Iatridis
Cc: Howard Kenison
Subject: Board of County Commissioners of Adams County v. Clean Harbors Deer Trail, LLC

Mr. Iatridis:

Attached is a copy of the Complaint filed today on behalf of Adams County against Clean Harbors Deer Trail, LLC.

Please contact me should you have any questions or require anything further.

Lorri K. Parker
Secretary
Lindquist & Vennum P.L.L.P.
600 17th Street, Suite 1800 S
Denver, CO 80202
303.573.5900 (main)
303.573.1956 (fax)
303.454.0531 (direct)
lparker@lindquist.com

IRS Circular 230 Notice: To ensure compliance with requirements imposed by the IRS, we inform you that, except to the extent expressly provided to the contrary, any federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

4/26/2007

DISTRICT COURT, ADAMS COUNTY, COLORADO	
Address: Adams County Justice Center 1100 Judicial Center Drive Brighton, Colorado 80601	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: Div.:
Plaintiff: BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ADAMS, State of Colorado. v. Defendant: CLEAN HARBORS DEER TRAIL, LLC, a Delaware Limited Liability Company.	
Attorneys for Plaintiff: Name: Howard Kenison, Esq., # 477 Stuart N. Bennett, Esq., # 5682 LINDQUIST & VENNUM P.L.L.P. Address: 600 17 th Street, Suite 1800 South Denver, Colorado 80202 Telephone: 303-573-5900	
COMPLAINT	

Plaintiff, Board of County Commissioners of the County of Adams, State of Colorado ("Adams County"), by and through undersigned counsel, hereby respectfully submits its Complaint and alleges as follows:

I. INTRODUCTION

1. Adams County seeks civil penalties, injunctive and declaratory relief against Defendant Clean Harbors Deer Trail, LLC ("Clean Harbors"). Adams County's claims are based, *inter alia*, on: (1) Clean Harbors' operation of a hazardous waste disposal facility within Adams County's boundaries in violation of the terms of a permit for the facility that Adams County issued to Clean Harbors; (2) Clean Harbors' failure to apply for and obtain a modification of the permit for the operation of the facility in violation of applicable law; and, (3) Clean Harbors' failure to apply for and obtain a permit from Adams County for the operation of a regional low-level radioactive waste facility in violation of applicable law. Clean Harbors' conduct violates the following statutes, rules, and regulations, including the Local Government Land Use Control Enabling Act, C.R.S. § 29-20-101, *et seq.*, the County Planning Code, C.R.S. § 30-28-101, *et seq.*; the Colorado Hazardous Waste Siting Act, C.R.S. § 25-15-200.1, *et seq.*, the

Solid Wastes Act, C.R.S. § 30-20-100.5, *et seq.*, and the Adams County Development Standards and Regulations, 1-01-01, *et seq.* adopted pursuant thereto and the Low-level Radioactive Waste Act, C.R.S. § 24-60-2201, *et seq.*

II. PARTIES, JURISDICTION, AND VENUE

2. Adams County is a body corporate and politic established pursuant to C.R.S. §30-11-101(1), with its principal offices in Adams County, Colorado, at the Adams County Administration Building, 450 South 4th Avenue, Brighton, Colorado 80601.

3. Clean Harbors is a Delaware limited liability company with its principal place of business at 108555 E. Highway 36, in Adams County, Colorado.

4. This Court has jurisdiction pursuant to C.R.S. § 13-1-124(1) and C.R.S. §§ 25-15-210 and 212 and C.R.S. §§ 30-20-113(3), (4).

5. Venue is properly before this Court pursuant to C.R.C.P. 98 and C.R.S. §§ 25-15-210 and 212 and C.R.S. §§ 30-20-113(3), (4).

III. GENERAL ALLEGATIONS AND FACTUAL BACKGROUND

6. Clean Harbors operates a hazardous waste disposal facility located in eastern Adams County near the former town of Last Chance known as Deer Trail (the "Facility"). Under the Hazardous Waste Siting Act, C.R.S. § 25-15-200.1, *et seq.*, before a person may operate a hazardous waste disposal facility they must first obtain a certificate of designation ("CD") from the board of county commissioners of the county in which the facility is to be located.

7. Adams County first authorized the issuance of a CD for the operation of the Facility by Resolution dated August 15, 1983 that contained twelve express conditions ("1983 Resolution"). As pertinent here, condition number 5 expressly stated that the Facility "***shall not accept Polychlorinated Byphenyls [("PCBs")] and Radio Active Waste***" for disposal (emphasis added). The proposed operator at the time was Highway 36 Land Development Company ("Highway 36").

8. Adams County also approved a Conditional Use Permit for the Facility, subject to the prohibitions and pre-conditions contained in the 1983 Resolution.

9. On March 2, 1987, the Colorado Department of Health, now known as the Colorado Department of Public Health and Environment ("CDPHE"), issued a Hazardous Waste Permit to Highway 36 ("1987 State RCRA Permit"). This 1987 State RCRA Permit, in conformance with Adams County's prohibitions imposed by the 1983 Resolution, **specifically prohibited the facility from accepting any radioactive wastes and PCBs in excess of 50 parts per million.**

10. Subsequently, on November 12, 1987, Adams County passed a second Resolution "for siting of a hazardous waste disposal facility subject to such conditions as set out in that resolution dated August 15, 1983. . ." ("1987 Resolution"). The 1987 Resolution also authorized the issuance of a CD ("1987 CD") and a Conditional Use Permit.

11. Under § 2-02-03-02 of Adams County's Development Standards and Regulations, a certificate of designation may only be approved pursuant to a resolution adopted by the Board of County Commissioners. Adams County's Regulations also provide that the Board of County Commissioner's formal approval, including any conditions of approval, to conduct a use allowed by a certificate of designation is a "Permit." Therefore, the 1987 Resolution, and any prior or subsequent resolution, imposing conditions on the use permitted by any CD, constitutes Adams County's formal approval of the use of the Facility. Adams County Development Standards and Regulations §§ 11-02-366 and 02-02-03-03.

12. Adams County's 1987 Resolution, which approved the 1987 CD, also incorporated the 1987 State RCRA Permit, including that Permit's prohibitions on disposal of any radioactive wastes and PCBs in excess of 50 parts per million.

13. The owners of the Facility have changed several times over the history of the Facility. In 1991, Concord Resources Group, Inc. purchased Highway 36 Land Development Company from Browning Ferris Industries. In 1994, Rollins Environmental Services, Inc. purchased Highway 36, and it became known as Rollins' Highway 36. In May of 1997, Rollins Environmental Services, Inc. merged with Laidlaw Environmental Services, Inc. On July 1, 1998, Laidlaw Environmental Services, Inc., a Colorado company, formally changed its corporate name to Safety-Kleen (Deer Trail), Inc. ("Safety-Kleen"), also a Colorado company.

14. The 1987 State RCRA Permit was renewed by CDPHE on February 26, 1998. ("1998 State RCRA Permit"). The 1998 State RCRA Permit prohibited the Facility from accepting PCBs greater than 50 mg/kg or 50 mg/l and radioactive material above background levels, or as approved by CDPHE. For radioactive wastes, background levels were set by CDPHE at exposure rates of no more than 16 micro Roentgens per hour [$\mu\text{R/hr}$].

15. On June 9, 2000, Safety-Kleen filed for Chapter 11 bankruptcy protection. In August of 2002, Clean Harbors obtained approval from the bankruptcy court to purchase the Facility from Safety-Kleen.

16. On August 20, 2002, Clean Harbors submitted an application to Adams County requesting a transfer of the 1987 CD and Conditional Use Permit.

17. Clean Harbors submitted a Permit Renewal Application to CDPHE on September 24, 2002, for the renewal of the 1998 State RCRA Permit, which application was revised two years later on October 14, 2004 ("2004 Permit Renewal Application"). The 2004 Permit Renewal Application included a proposal to dispose of radioactive materials in excess of the 1998 State RCRA Permit limits, one category of which was radium-contaminated materials

from the Denver Radium Superfund Site ("Denver Radium Waste"), and PCBs in excess of the previous 50 mg/kg limit. In connection with the 2004 Permit Renewal Application, Clean Harbors submitted an application to CDPHE for a Radioactive Materials License purportedly pursuant to C.R.S. § 25-11-101 *et seq.* on or about January 31, 2005.

18. By Resolution dated June 14, 2004 ("2004 Resolution"), Adams County formally approved the issuance of a CD to Clean Harbors "subject to the conditions set forth in the [1983 Resolution]" ("2004 CD"). Adams County's formal approval of Clean Harbors' 2004 CD imposed conditions on the use allowed by the CD and prohibited the disposal of radioactive wastes at the Facility, notwithstanding any conflicting provisions of the 1998 State RCRA Permit.

19. On or about April 18, 2005, CDPHE submitted an "Application for Regional Facility Rocky Mountain Low-Level Radioactive Waste Compact" to the Rocky Mountain Low-Level Radioactive Waste Board ("Compact Board") for approval of the Deer Trail Facility as a "Regional Facility" for disposal of low-level radioactive waste pursuant to the Rocky Mountain Low-Level Radioactive Waste Compact ("Compact") and the Low-Level Radioactive Waste Act ("LLRWA"), C.R.S. § 24-60-2201 *et seq.* If properly designated, a Regional Facility may accept low-level radioactive wastes from the three Compact states: New Mexico, Nevada and Colorado and with the approval of the Compact Board radioactive wastes from outside the compact region may be accepted and disposed.

20. Under C.R.S. § 24-60-2206(3), before CDPHE had authority to seek designation of the Facility as a regional low-level radioactive waste disposal facility, Clean Harbors was required to first apply for and obtain, pursuant to C.R.S. § 30-20-103, a separate certificate of designation from Adams County. On June 8, 2005, the Compact Board issued its Designation of Deer Trail as a Limited Regional Disposal Facility. In violation of C.R.S. § 24-60-2206(3) Clean Harbors failed to obtain a separate certificate of designation and, therefore, the Regional Facility designation is of no force and effect and Clean Harbors has no rights or legal authority to accept low-level radioactive wastes thereunder.

21. At no time prior to or since the Compact Board's designation has Clean Harbors obtained from Adams County the required CD nor has Clean Harbors obtained an agreement for payment of an annual fee for the disposal of low-level radioactive wastes in Adams County. This agreement and fee is required by C.R.S. § 24-60-2208, prior to Clean Harbors commencing operations at the Facility with respect to radioactive wastes, radioactive materials, materials containing radioactive wastes, and materials contaminated by radioactive substances.

22. On June 20, 2005, Clean Harbors also submitted an application to modify the 1998 State RCRA Permit ("PCB Modification"). The PCB Modification requested authority to allow for the disposal of "Bulk PCB [Polychlorinated Biphenyls ("P03")] remediation wastes ≥50 ppm.

23. On December 21, 2005, CDPHE issued a final Hazardous Waste Permit effective on January 20, 2006 ("2006 State RCRA Permit") and a Radioactive Materials License that was effective on December 21, 2005.

24. The 2006 State RCRA Permit authorizes the disposal of radioactive wastes that are licensed under the Radioactive Materials License. The Radioactive Materials License purportedly authorizes Clean Harbors to dispose of wastes containing or contaminated with radioactive materials with a maximum activity up to 2,000 pico Curies per gram ("pCi/g").

25. The 2006 State RCRA Permit also authorizes the disposal of a new PCB waste stream, which may include PCBs as well as PCBs mixed with radioactive waste.

26. The new waste streams authorized by the Radioactive Materials License and the 2006 State RCRA Permit constitute changes from the waste streams that Adams County has previously authorized under C.R.S. § 25-15-204(1) and its 2004 Resolution. Any such change requires Adams County's approval under said statute and § 2-02-03-05(10)(c)(1) of Adams County Development Standards and Regulations.

27. The Radioactive Materials License and associated changes in Clean Harbors' operations at the Facility also constitute a substantial change in the design and operation of the Facility for which Clean Harbors was required to obtain Adams County's approval before any such change can become effective. Clean Harbors neither sought nor obtained Adams County's approval in violation of C.R.S. § 25-15-206 and § 2-02-03-05(10)(c)(1)(C) of Adams County Development Standards and Regulations.

28. The changes in Clean Harbors' operations at the Facility authorized by the 2006 State RCRA Permit constitute a substantial change in the design and operation of the Facility for which Clean Harbors was required to obtain Adams County's approval before any such change can become effective. Clean Harbors neither sought nor obtained Adams County's approval in violation of C.R.S. § 25-15-206 and § 2-02-03-05(10)(c)(1)(C) of Adams County Development Standards and Regulations.

29. The designation of the Facility as a regional low-level radioactive waste disposal facility constitutes a substantial change in the design and operation of the Facility for which Clean Harbors was required to obtain Adams County's approval before any such change can become effective. Clean Harbors neither sought nor obtained Adams County's approval in violation of C.R.S. § 25-15-206 and § 2-02-03-05(10)(c)(1)(C) of Adams County Development Standards and Regulations.

30. Clean Harbors pursued a contract with the City and County of Denver ("Denver") for the acceptance and disposal of Denver Radium Street Wastes which are low-level radioactive wastes prohibited by the 2004 Resolution.

31. On December 12, 2006, Clean Harbors entered into a Transportation and Disposal Agreement with Denver to accept six boxes, equivalent to one truckload, of Denver Radium

Street Wastes. On December 18, 2006, Clean Harbors accepted the contracted-for boxes of Denver Radium Street Wastes at the Facility and subsequently disposed of the offending radioactive wastes at the Facility.

32. Adams County has determined that the Denver Radium Street Wastes constitute radioactive wastes, radioactive materials, materials containing radioactive wastes, and materials contaminated by radioactive substances, in violation of the 2004 Resolution.

33. On February 14, 2007, Adams County issued a Notice of Violation to Clean Harbors citing Clean Harbors' violations and demanding Clean Harbors remediate and remove the prohibited wastes within 10 days pursuant to Adams County Development Standards and Regulations § 1-05-07. To date, Clean Harbors has failed to remediate and remove the offending wastes and remains in violation of the 2004 Resolution.

34. On February 14 and 15, 2007, Clean Harbors accepted 45 boxes or containers of radioactive materials from BWAB Real Estate amounting to 181.2 tons or seven and one-half truckloads, of wastes from Denver Radium sites.

35. Adams County determined that the boxes contained radioactive wastes, radioactive materials, materials containing radioactive wastes, and materials contaminated by radioactive substances, in violation of the 2004 Resolution.

36. From March 12 through March 21, 2007, Clean Harbors accepted from Rocky Mountain Bottle Company 135.4 tons of materials described as "used furnace brick". These materials contained hazardous wastes in the form of cadmium and lead, radioactive wastes, radioactive materials, materials containing radioactive wastes and materials contaminated by radioactive substances, in violation of the 2004 Resolution.

37. Upon information and belief, Clean Harbors has waste generator profiles to accept and dispose of low-level radioactive wastes which will, if accepted for disposal, violate Adams County's 2004 Resolution and applicable state and local laws.

IV. CLAIMS FOR RELIEF

First Claim for Relief Violation of Colorado Hazardous Waste Siting Act and Adams County Development Standards and Regulations

38. The preceding paragraphs of this complaint are incorporated herein by reference.

39. The new waste streams authorized by the Radioactive Materials License and the 2006 State RCRA Permit constitute changes to the waste streams authorized by Adams County under C.R.S. § 25-15-204(1) and the 2004 Resolution. Clean Harbors' failure to obtain Adams County's approval of such changes constitutes a violation of C.R.S. § 25-15-204(1) and § 2-02-03-05(10)(c)(1) of the Adams County Development Standards and Regulations.

40. In addition, C.R.S. § 25-15-206 and § 2-02-03-05(10)(c)(1)(C) of the Adams County Development Standards and Regulations require that a substantial change in the design or operation of a hazardous waste disposal site shall be submitted to the board of county commissioners for approval prior to such change becoming effective.

41. The Radioactive Materials License for the Facility, a previously designated hazardous waste disposal site, constitutes a substantial change in its design or operation.

42. The designation of the Facility as a regional low-level radioactive waste disposal facility with the authority to accept radioactive wastes from a three state region and upon approval of the Compact Board from outside the three state region constitutes a substantial change in the Facility's design or operation.

43. The acceptance of PCB Wastes constitutes a substantial change in the Facility's design or operation.

44. Clean Harbors failed to submit these substantial changes to Adams County for its approval in violation of C.R.S. § 25-15-206 and § 02-02-03-05(10)(c)(1)(C) of Adams County Development Standards and Regulations.

45. For violations of the Hazardous Waste Siting Act, Clean Harbors is subject to civil penalties of \$10,000 per day of violation under C.R.S. 25-15-212(1).

Second Claim for Relief
Violation of Colorado Solid Wastes Act

46. The preceding paragraphs of this complaint are incorporated herein by reference.

47. C.R.S. § 30-20-110(1)(c) requires the following minimum standards for solid wastes disposal facilities: (a) a facility comply with all standards, rules and regulations of the department, and all applicable zoning laws and ordinances; (b) no radioactive materials or materials contaminated by radioactive substances be disposed at a facility not specifically designated for that purpose.

48. Clean Harbors has failed to comply with these minimum standards required by Colorado statute.

49. C.R.S. § 30-20-113(1)(c) provides that an operator of a solid wastes disposal facility may not dispose of solid wastes in any manner that violates the provisions of the Solid Wastes Act or any rule adopted pursuant thereto.

50. Clean Harbors has violated this provision by disposing of solid wastes, radioactive wastes, radioactive materials, materials containing radioactive wastes, and materials contaminated by radioactive substances at the Facility, which is not specifically designated for that purpose.

51. Clean Harbors is subject to civil penalties of \$2,000 per day of violation under C.R.S. § 30-20-113(1)(b) and 113(4).

**Third Claim for Relief
Violation of Low-Level Radioactive Waste Act**

52. The preceding paragraphs of this complaint are incorporated herein by reference.

53. C.R.S. § 24-60-2206(3) requires that any person proposing to operate a low-level radioactive waste facility first apply, pursuant to the Colorado Solid Wastes Act, for a certificate of designation from the board of county commissioners of the county in which the proposed facility site is located.

54. Clean Harbors failed to apply to the Adams County Board of County Commissioners for such a certificate of designation specifically designating the Facility as a site in which low-level radioactive may be disposed.

55. Clean Harbors has violated the provisions of the Colorado Solid Wastes Act by disposing of low-level radioactive wastes at the Facility without a certificate of designation from Adams County authorizing such disposal.

56. Clean Harbors is subject to civil penalties under the Colorado Solid Wastes Act of \$2,000 per day of violation under C.R.S. § 30-20-113(1)(b) and 113(4).

57. C.R.S. § 24-60-2208(1)(a) requires that the licensee of a low-level radioactive waste disposal facility come to a mutual agreement with and pay an annual fee to the county in which the facility is located prior to the commencement of any operations at the facility.

58. Clean Harbors has never sought or obtained from Adams County an agreement for the payment of such fees for the operation of the Facility as a Regional Facility.

59. Clean Harbors has accepted low-level radioactive waste for disposal at the Facility, commencing operations without the required fee and agreement.

60. Adams County is entitled to a declaration that Clean Harbors obtained no rights whatsoever under the Radioactive Materials License or the Regional Facility designation because of Clean Harbors' failure to first apply for and obtain a certificate of designation from Adams County for the operation of a low-level radioactive waste disposal facility as required by C.R.S. § 24-60-2206(3), which separate CD must be obtained prior to the issuance of the Radioactive Materials License by CDPHE under C.R.S. § 25-11-101, *et seq.*

61. In addition, Adams County is entitled to a declaration that Clean Harbors may not operate the Facility as low-level radioactive waste disposal facility until such time as it reaches an agreement with Adams County for the payment of fees for the operation thereof.

**Fourth Claim for Relief
Injunctive Relief**

62. The preceding paragraphs of this complaint are incorporated herein by reference.

63. C.R.S. § 25-15-210 declares that any hazardous waste disposal site that is operated or maintained in violation of the Hazardous Waste Siting Act or regulation shall be deemed a public nuisance, and such violation may be enjoined by the court upon action brought by the board of county commissioners of the county wherein the violation occurred.

64. Clean Harbors has operated or maintained the Facility in violation of the Hazardous Waste Siting Act and therefore the Facility is a public nuisance. Adams County is therefore entitled to an injunction prohibiting Clean Harbors from operating or maintaining the Facility in violation of the Hazardous Waste Siting Act until such time as it obtains Adams County's approval of the changes to the waste streams and of the substantial changes in the operation and design of the Facility.

65. C.R.S. § 30-20-113(3) declares that any solid wastes disposal site that is operated or maintained in violation of the part 1 of the Solid Wastes Act shall be deemed a public nuisance and such violation may be enjoined by the board of county commissioners of the county wherein the violation occurred.

66. Clean Harbors has operated or maintained the Facility in violation of the Solid Wastes Act and the Low-level Radioactive Wastes Act which incorporates provisions of the Solid Wastes Act. Therefore the Facility is a public nuisance. Adams County is therefore entitled to an injunction prohibiting Clean Harbors from operating or maintaining the Facility in violation of the Solid Wastes Act and the Low-level Radioactive Wastes Act until such time as it obtains Adams County's certificate of designation specifically designating the Facility for disposal of low-level radioactive wastes and radioactive materials or solid wastes contaminated with radioactive substances.

67. Under Adams County's Development Standards and Regulations, § 01-05-05, Adams County is entitled to initiate injunction or abatement proceedings against any person who fails to comply with any of the provisions of the standards and regulations or any requirement or condition imposed pursuant to the standards and regulations.

68. Clean Harbors has failed to comply with the terms and conditions imposed by the 2004 Resolution.

69. Adams County is therefore entitled to an injunction and an order of abatement requiring Clean Harbors to remove all prohibited radioactive materials from the Facility and enjoining Clean Harbors from operating the Facility in violation of the 2004 Resolution and from accepting or disposing of any additional prohibited wastes.

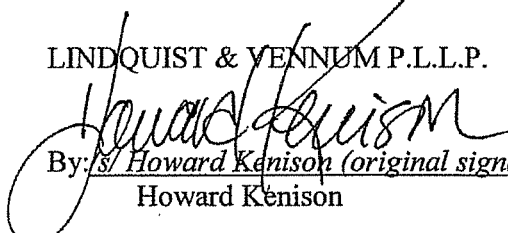
VI. PRAYER FOR RELIEF

WHEREFORE, Adams County prays for entry of a judgment in its favor and against Clean Harbors as follows:

1. To have the Facility deemed a public nuisance pursuant to C.R.S. § 25-15-210 and C.R.S. § 30-20-113(3);
2. Mandatory injunctive relief requiring Clean Harbors to remove and abate all radioactive wastes, radioactive materials, materials containing radioactive wastes, and materials contaminated by radioactive substances from the Facility;
3. Permanent injunctive relief prohibiting Clean Harbors from accepting and disposing any radioactive wastes, radioactive materials, materials containing radioactive wastes, and materials contaminated by radioactive substances or other materials, including PCBs at the Facility;
4. Civil penalties in the amount of \$10,000 per day from December 18, 2006 until such time as all radioactive wastes, radioactive materials, materials containing radioactive wastes, and materials contaminated by radioactive substances are removed from the Facility, pursuant to C.R.S. § 25-15-212;
5. Civil penalties in the additional amount of \$2,000 per day from December 18, 2006 until such time as all radioactive wastes, radioactive materials, materials containing radioactive wastes, and materials contaminated by radioactive substances are removed from the Facility, pursuant to C.R.S. § 30-20-113(4);
6. Declaratory relief as requested in the Third Claim for Relief;
7. And such further or different relief as the court deems proper.

Dated: April 25, 2007

LINDQUIST & VENNUM P.L.L.P.


By: /s/ Howard Kenison (original signature on file)

Howard Kenison

ATTORNEYS FOR PLAINTIFF

Plaintiff's Address:

Adams County Administration Building
450 South 4th Avenue
Brighton, Colorado 80601