

OCT - 4 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney)
General of the State of Illinois,)
)
Complainant,)
)
-vs-)
)
EDWARD PRUIM, an individual, and)
ROBERT PRUIM, an individual,)
)
Respondents.)

PCB No. 04-207
(Enforcement)

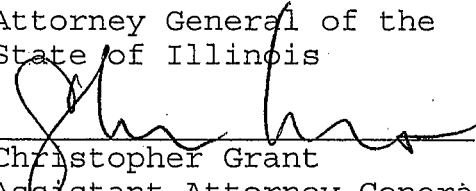
NOTICE OF FILING

PLEASE TAKE NOTICE that I have today, October 4, 2004, filed with the Clerk of the Illinois Pollution Control Board, Complainant's Response to Motion to Dismiss, a copy of which is attached and herewith served upon you.

Respectfully Submitted,

LISA MADIGAN
Attorney General of the
State of Illinois

By:


Christopher Grant
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COMPLAINANT'S RESPONSE TO MOTION TO DISMISS

Now comes Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and in response to Respondents' Motion to Dismiss, states as follows:

On May 21, 2004, Complainant filed its Complaint in this matter. Respondent Robert Pruim was personally served on May 28, 2004. Edward Pruim was served by certified mail on July 10, 2004.

BACKGROUND

Respondents are co-owners of Community Landfill Company ("CLC"), an Illinois corporation. Complainant has filed two cases against CLC, which are open and pending before the Board. The older of the two cases, PCB 97-193, alleges violations similar to the alleged violation in the instant case. The second pending matter, PCB 03-191, alleges unrelated violations.

On March 18, 2004, the Board rejected Complainant's attempt

to include allegations against Edward and Robert Pruim in PCB 97-193, through amendment. However, the Board stated that "...nothing in this order prevents the complainant from filing a separate enforcement action against the new respondents named in the third amended complaint [i.e. the Pruims]." Complainant has done so in the instant case.

A motion to dismiss admits all well pled facts in the complaint, and all inferences must be drawn in favor the nonmovant. *Skokie Valley Asphalt Co., Inc. et al*, PCB 96-98 (June 5, 2003), slip op. at 7. Respondents seek dismissal on the basis that:

1. the Board's March 18, 2004 order in PCB 97-193 precludes the filing of the instant complaint, and:
2. Complainant has failed to adequately plead the violations against the Respondents.

Respondents' arguments fail to provide grounds for dismissal of this matter. The Board's prior order in PCB 97-193 does not bind this case. Moreover, Complainant has more than adequately alleged violations against the Respondents. Respondents' Motion to Dismiss should be denied, and the Respondents should be directed to appropriately answer Complainant's complaint.

THE MARCH 18, 2004 BOARD ACTION

In its March 18, 2004 order, the Board applied factors interpreting 735 ILCS 5/2-616(a) (Citing *Zubi v. Acceptance*

Indemnity Insurance Co. 323 Ill. App. 3d 28). Specifically the Board found that the earlier finding of violation against the original Respondent would prejudice the additional Respondents. Slip op. at 4. Additionally the Board found that addition of the Respondents to that case was not timely.

The factors applied to Complainant's attempted amendment in PCB 97-193 have no applicability to the instant case. CLC is not a party to the instant case, and could therefore not be prejudiced. Neither are Respondents Edward Pruiam and Robert Pruiam prejudiced in this case by a prior finding of liability, against another entity, in PCB 97-193.

The Board has consistently recognized that no statute of limitations applies to enforcement proceedings under the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2002). *People v. Feabody Coal Company*, PCB 99-134 (June 5, 2003, slip op. at 6. See also *Pielet Brothers Trading, Inc. v. Pollution Control Board*, 110 Ill. App. 3d 752.

Respondents' arguments are akin to the affirmative defense of laches. However laches is not a proper basis for a motion to dismiss. See e.g. *People v. Skokie Valley Asphalt*, PCB 96-98 (June 5, 2002, slip op. at 6) (delay of 17 years before Complainant initiated enforcement not grounds for dismissal).

COMPLAINANT HAS PLED SUFFICIENT FACTS TO SUPPORT LIABILITY

Respondents also claim that Complainant has failed to plead sufficient facts against the Respondents.

In support of their argument, Respondents cite *People v. Tang*, 346 Ill. App. 3d 277 (1st Dist. 2004). However, Complainant believes that the pleading standards adopted by the *Tang* Court should not be considered by the Board in consideration of this motion. The applicable standard was described in *People v. C.J.R. Processing et al.*, 269 Ill. App. 3d 1013 (3d Dist. 1995). Both the site of alleged violations and the location of hearing in case is Grundy County, within the jurisdiction of the Appellate Court of Illinois, Third District. Any appeal from the Board's ruling would be heard in that Court. Because the *Tang* and *C.J.R.* cases set different pleading standards, the *Tang* case is not binding and should not be considered persuasive.

In *C.J.R.*, the Court reversed dismissal of the individual Defendant by the trial court. The Third District held that the General Assembly intended to impose liability on those responsible for harming the environment, including corporate officers. The court stated that "[i]mposing liability only upon the corporations and not the individuals would undermine the [Environmental Protection] Act's purposes." 269 Ill. App. 3d, at 1018.

In *C.J.R.*, the Court stated that corporate officers could be

held liable for personal involvement or active participation in a violation of the Act. 269 Ill. App. 3d 1018. However, the Court found that the State sufficiently plead against the corporate officer by merely alleging that the Defendant "caused or allowed" the violations. *Id.* Thus, the 3d District set an extremely liberal pleading standard for individual liability under the Act.

There is a split between the 1st and 3d Districts on the pleading issue. Where *C.J.R.* held that it was sufficient to plead that an individual defendant 'caused or allowed' the violations, the *Tang* Court stated: "The State has made conclusory allegations that Tang "caused or allowed" certain actions to occur in violation of the Act". 346 Ill. App. 3d, at 289. The *Tang* Court stated that a Plaintiff "...must allege facts establishing that the corporate officer had personal involvement or active participation in the management of the corporation. *Id.* This is essentially the same standard cited in the *C.J.R.* decision. However, unlike *C.J.R.*, allegations that an individual "caused or allowed" violations were deemed to be insufficient.

Complainant again notes that, to the extent that *Tang* disagrees with *C.J.R.*, it should not be considered by this Court-*C.J.R.* is the applicable law. However, Complainant believes that under either standard, it has sufficiently plead violations of the Act against the Respondents, individually. In their motion, Respondents emphasize the use of 'caused and/or allowed'

allegations in the Complaint. The *Tang* Court did not focus on the mere use of 'cause or allow', but rather the absence of specific factual allegations i.e. 'causing or allowing the violation'.

A fair reading of the Complaint shows that Complainant has alleged, *inter alia*, the following facts:

Incorporated by reference in all counts: Edward Pruum and Robert Pruum managed, operated, and co-owned CLC, directed and managed the deposit of waste in the landfill, negotiated bonds and letters of credit pertaining to the landfill, were responsible for signing and submitting all required Illinois EPA reports and permit applications, and were responsible CLC's compliance with regulations.

COUNT I: Edward Pruum and Robert Pruum [who controlled operations at the landfill] allowed leachate seeps to erode the landfill, allowed refuse to remain in perimeter ditches, and allowed litter and refuse to remain exposed and uncontained at the landfill.

COUNT II: Edward Pruum and Robert Pruum [who were responsible for CLC's compliance with regulations], failed to take action to prevent landfill leachate from entering waters of the state, and thus 'allowed' violations of the Act.

COUNT III: Edward Pruum and Robert Pruum [who managed the deposit of waste at the landfill], caused the landfilling of landscape waste on July 28, 1998.

COUNT IV: Edward Pruum and Robert Pruum [who arranged for surety bonds and letters of credit for landfill operations] failed to increase CLC's financial assurance as required.

Count V: Edward Pruum and Robert Pruum [who controlled CLC and were responsible for submitting all permit applications] failed to cause CLC to timely submit its application for significant modification of permit until three years after it was due.

Count VI: Edward Pruum and Robert Pruum [who controlled CLC and managed its operations] failed to take action, and failed to direct employees to take action, to prevent leachate flow into waters of the State.

Count VII: Edward Pruim and Robert Pruim [who managed the deposit of waste] caused waste to be deposited in unpermitted portions of the Morris Community Landfill.

Count VIII: [similar fact allegations to Count VII]

Count IX: [similar fact allegations to Count VII]

Count X: Edward Pruim and Robert Pruim [who were responsible for obtaining CLC's permits] failed to obtain a required permit for waste disposal over 580 feet.

Count XII: Edward Pruim and Robert Pruim [who directed and managed landfill operations], allowed waste tires to be mixed with municipal solid waste at the landfill on July 28, 1998.

Count XIII: Edward Pruim and Robert Pruim [who directed and managed landfill operations] failed to prevent blowing litter at the landfill, and thereby allowed violations of CLC's permit.

Count XIV: Edward Pruim and Robert Pruim [who owned, controlled and managed CLC] allowed commencement of gas control operations at the facility in violation of CLC's Permit.

Count XV: Edward Pruim and Robert Pruim [who owned, controlled and managed CLC] failed to take corrective action in response to visible permit violations, including erosion, cracking, and lack of vegetative cover.

Count XVI: Edward Pruim and Robert Pruim [who controlled landfill operations], caused leachate to be pumped into cells, in violation of CLC's permit.

Count XVII: Edward Pruim and Robert Pruim [who owned CLC, arranged for landfill financial assurance, and were responsible for CLC's compliance with regulations] caused CLC to submit inadequate financial assurance for a period from January 22, 1997 until September 1, 1999.

Count XVIII: Edward Pruim and Robert Pruim [who managed waste disposal at the landfill and were responsible for CLC's compliance with regulations] allowed deposit of leachate waste into a new cell without first obtaining Illinois EPA approval.

Count XIX: Edward Pruim and Robert Pruim [who arranged for disposal of waste at the landfill and were responsible for ensuring CLC's compliance with regulations] failed to cause CLC to provide required updates to CLC's closure cost estimates from

December 26, 2004 until July 26, 1996.

The Complainant has not merely alleged that Edward and Robert Pruim 'caused and allowed' violations (all that is required under *C.J.R.*), it has provided specific factual allegations related to acts and omissions, and has, where appropriate, named the dates of these acts and omissions. Even if the Complaint was reviewed under the *Tang* standard, with all well pleaded facts and inferences taken as true [*Skokie Valley Asphalt*, slip op. at 7] the Complaint sufficiently alleges violations of the Act to hold Edward Pruim and Robert Pruim liable.

COUNT XI: RESPONDENTS' ARGUMENT REGARDING RES JUDICATA

Although Complainant does not agree that Res Judicata applies in this matter due to a lack of identity of the parties, Complainant consents to dismissal of Count XI.

CONCLUSION

Complainant has alleged that Respondents Edward Pruim and Robert Pruim have violated numerous provisions of the Act and Board regulations. There is no 'implied bar' to individual liability under the Act, simply because a business organization has been created. The Third District Court of Appeals not only recognized such liability, it found application to individuals to be in conformance with the Act's purposes. 269 Ill. App. 3d 1018.

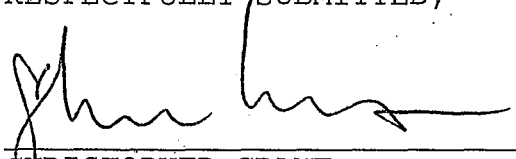
Respondents' reliance on the Board's March 18, 2004 order [in PCB 97-193] is inapt. The standards applicable to amendment of the complaint in that case do not provide a basis for a dismissal in this action. Moreover, in its order, the Board made clear that its ruling did not prevent the Complainant from filing the instant case.

The complaint properly alleges numerous violations against the Respondents. The *C.J.R.* decision established a liberal pleading standard under the Act. However, the instant complaint contains numerous specific factual allegations, more than enough to meet stricter pleading standards.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court deny Defendants' Motion to Dismiss.

RESPECTFULLY SUBMITTED,

BY:


CHRISTOPHER GRANT
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Assistant Attorney General
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(312) 814-5388

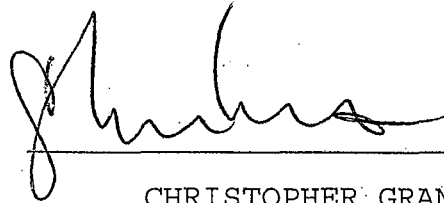
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CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 4th day of October, 2004, Complainant's Response to Motion to Dismiss, and Notice of Filing, upon the persons listed below by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago.



CHRISTOPHER GRANT

SERVICE LIST:

Mr. Mark Larose
Ms. Clarissa Grayson
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200 N. La Salle Street, #2810
Chicago, IL 60601

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph
Chicago, Illinois 60601 [via hand delivery]