

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
EDWARD PRUIM and ROBERT PRUIM,)
)
Respondents.)

PCB No. 04-207
(Enforcement – Land)

RECEIVED
CLERK'S OFFICE
JAN 13 2006
STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
COMMUNITY LANDFILL COMPANY,)
INC.,)
)
Respondent.)

PCB No. 97-193
(Enforcement – Land)
(consolidated)

NOTICE OF FILING

TO: Christopher Grant
Environmental Bureau
Assistant Attorney General
188 West Randolph Street
20th Floor
Chicago, Illinois 60601


Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on **JANUARY 13, 2006**, the undersigned filed an original and nine copies of:

- 1) **RESPONDENT EDWARD PRUIM'S MOTION FOR SUMMARY JUDGMENT;**
- 2) **RESPONDENT EDWARD PRUIM'S MEMORANDUM IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT; and**
- 3) **JOINT EXHIBITS A-W TO RESPONDENTS EDWARD PRUIM AND ROBERT PRUIM'S MEMORANDA IN SUPPORT OF THEIR MOTIONS FOR SUMMARY JUDGMENT**

THIS FILING IS SUBMITTED ON RECYCLED PAPER.

with Ms. Dorothy Gunn, Clerk of the Illinois Pollution Control Board, 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60601, a copy of which is attached and hereby served upon you.



One of the Attorneys for Edward Pruim

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**RESPONDENT EDWARD PRUIM'S MEMORANDUM IN SUPPORT OF HIS
MOTION FOR SUMMARY JUDGMENT**

Respondent, Edward Pruim, by and through his attorneys, LaRose & Bosco, Ltd., and pursuant to 35 Ill. Adm. Code 101.516 hereby moves for Summary Judgment as to all counts of the complaint in PCB No. 04-207 (Enforcement) (consolidated with PCB No. 97-193 (Enforcement)), and in support thereof, states as follows:¹

I. INTRODUCTION

The allegations addressed herein against Edward Pruim have been the subject of more than eight (8) years of intense litigation in an almost identical matter before the Illinois Pollution Control Board ("the Board") against Community Landfill Company ("CLC"), captioned PCB 97-193 (Enforcement) ("the 1997 case"). The ongoing litigation in the 1997 case has included: a complaint

¹ Although separate Motions for Summary Judgment and Memoranda in Support thereof have been filed on behalf of each respondent in PCB No. 04-207 (Enforcement), one (1) set of Joint Exhibits A-W has been filed and each exhibit will be referred to herein as "Exh. ____".

THIS FILING IS SUBMITTED ON RECYCLED PAPER.

filed in 1997, a First Amended Complaint filed in 1998, a Second Amended Complaint filed in 1999, and substantive rulings on liability both for and against CLC in both 2001 and 2002.

The People failed in its attempt to file a Third Amended Complaint in the 1997 case wherein it sought leave to add Edward Pruim and Robert Pruim individually as additional defendants. The People's Motion for Leave to File a Third Amended Complaint was unanimously denied by the Board on March 18, 2004 on the grounds that to grant this leave would be prejudicial, untimely and that the complainant previously had the opportunity to amend the complaint. (See Exh. A).

Complainant then filed a "new" complaint ("Complaint" or "the 2004 case") naming Edward Pruim and Robert Pruim individually as respondents, which was timely answered on January 4, 2005. (See Exh. B). It is important to note that the allegations contained in the complaint in the 2004 case against Edward Pruim and Robert Pruim individually are nearly identical to those contained in its failed, proposed Third Amended Complaint. Complainant's sole specific allegations in the 2004 case against Edward Pruim and Robert Pruim are based on documents that the Illinois Environmental Protection Agency ("Agency") has had in its possession since 1993, 1995 and 1996, long before the original complaint was even filed in the 1997 case against CLC. The two cases were consolidated by the Board's order of February 17, 2005.

For the following reasons, the Board should grant summary judgment on behalf of respondent Edward Pruim:

(1) Because Edward Pruim had no personal involvement with or active participation in the day-to-day operation of the landfill that would give rise to personal liability, the Board should grant summary judgment in his favor on Counts I, II, III, VI, VII, VIII, IX, X, XII, XIII, XIV, XV, XVI, and XVIII of the 2004 case;

(2) Because the managerial functions Edward Pruim performed were within the scope of

his capacity as a corporate officer and only constitute personal involvement or active participation in the management of the corporation, the Board should grant summary judgment in his favor on Counts VII, VIII, IX and X of the 2004 case;

(3) Because Edward Pruium should not be held liable for the company's alleged failure to perform certain administrative tasks, the Board should grant summary judgment in Edward Pruium's favor on Counts IV, V, XVII and XIX; and

(4) Because the lengthy delay by the People in bringing this action against Edward Pruium has resulted in undue prejudice to respondent, the Board should grant summary judgment in his favor on all counts.

II. PROCEDURAL HISTORY

On May 1, 1997, complainant filed its first complaint in this matter. The 1997 complaint named CLC as the sole respondent and contained six (6) counts alleging violations relating to managing refuse and litter, leachate flow, landscape waste, financial assurance, failure to file a significant modification permit, and water pollution. Complainant then filed a First Amended Complaint on April 3, 1998; again CLC was the only respondent. The First Amended Complaint included four (4) additional counts alleging violations relating to overheight of the landfill.

On November 24, 1999, over CLC's strenuous objections, complainant filed a Second Amended Complaint, again only naming CLC as respondent. The Second Amended Complaint included twelve (12) additional counts, for a total of twenty-two counts, alleging violations relating to asbestos, used tires, the gas collection facility, leachate disposal, final cover, financial assurance, and failure to provide revised cost estimates.

The 1997 case has been the subject of the exchange of hundreds of documents comprising thousands of pages, numerous depositions, and cross-motions for summary judgment by the parties.

On April 5, 2001, the Board ruled against CLC on its motion for summary judgment in regard to Counts V and XII of the Second Amended Complaint. CLC filed a motion for reconsideration on May 15, 2001. On July 26, 2001, the Board reversed its decision on Count XII by finding in favor of CLC on liability and dismissing that count. The Board affirmed its ruling against CLC on Count V and ordered a hearing on penalty.

On October 3, 2002, the Board issued an extensive order regarding the parties' cross-motions for summary judgment in the 1997 case against CLC. The Board found in favor of CLC on Counts XI, XVIII, and XXII of the Second Amended Complaint and dismissed those counts against CLC. The Board denied the Complainant's motion for Summary Judgment on Counts I, II, VI, XV, XVII, XIX (in part) and XX of the Second Amended Complaint, and ordered a hearing on liability on those counts. Finally, the Board found in favor of Complainant on Counts III, IV, V, VII, VIII, IX, X, XIII, XIV, XVI, XIX (in part) and XXI and ordered a hearing on penalty on those counts. (See Exh. C).

On December 5, 2003, Complainant filed a motion before the Board wherein it requested leave to file its Third Amended Complaint naming Edward Pruim and Robert Pruim, the principals of CLC, as additional respondents. That motion was unanimously denied by the Board on March 18, 2004. (See Exh. A). On May 21, 2004, Complainant then filed a complaint against Edward Pruim and Robert Pruim individually, which, after the Board dismissed Count XII of the 2004 complaint, left eighteen (18) counts remaining against Edward Pruim and Robert Pruim individually. Because the underlying allegations in the 1997 and 2004 cases are identical, the Board consolidated them on February 17, 2005. For the Board's convenience, a chart summarizing the current status of the counts in the 1997 case with a cross-reference to the 2004 complaint is attached as Exhibit D.

There are scant differences between the Second Amended Complaint in the 1997 case and the complaint in the 2004 case that is the subject of the present Motion for Summary Judgment.

Complainant has simply taken the Second Amended Complaint and for the most part inserted general allegations against the respondent that he "caused or allowed" certain acts to occur in violation of the Environmental Protection Act ("the Act").

III. LEGAL STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when the pleadings and depositions, together with any affidavits and other items in the record, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill.2d 460, 693 N.E.2d 358 (1998); People v. City of Waukegan, PCB 01-104, slip op. at 2 (August 23, 2001). Even so, while the nonmoving party does not have to prove its case, it must "present a factual basis which would arguably entitle [it] to a judgment." Gauthier v. Westfall, 266 Ill.App.3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994); Waukegan, PCB 01-104, slip op. at 2.

In ruling on a motion for summary judgment, the Board "must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party." Dowd, 181 Ill.2d at 483, 693 N.E.2d at 370; Waukegan, PCB 01-104, slip op. at 2. However, while summary judgment "is a drastic means of disposing of litigation," it should be granted when the movant's right to the relief "is clear and free from doubt." Dowd, 181 Ill.2d at 483, 693 N.E.2d at 370 *citing* Purtill v. Hess, 111 Ill.2d 229, 240 489 N.E.2d 867, 871 (1986). Finally, the Board's procedural rules provide that "if the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment." 35 Ill. Adm. Code 101.516.

IV. LEGAL STANDARD FOR PERSONAL LIABILITY OF A CORPORATE OFFICER

In most instances, the law immunizes corporate officers from corporate liabilities and debts. Safeway Ins. Co. v. Daddono, 344 Ill.App.3d 215, 219, 777 N.E. 2d 693 (2002); People v. Tang, 346

Ill.App.3d 277, 284, 805 N.E.2d 243, 250 (1st Dist. 2004). More than a corporate title is required in order for an officer to be held liable for corporate violations of environmental protection laws. Tang, 346 Ill.App.3d at 287, 805 N.E.2d at 252. In order for liability to attach to respondent personally, as an officer of Community Landfill Company, the complainant has the burden of proving that Edward Prum had personal involvement or active participation in the acts resulting in liability, not just personal involvement or active participation in the management of the corporation. Tang, 346 Ill.App.3d at 289, 805 N.E.2d at 253-54. The participation and involvement must be in a wrongful act, not merely in a corporation's operations. Id.

In addressing the issue of potential owner/operator liability of a parent corporation for the environmental acts of its subsidiary, the Supreme Court articulated the standard for imposing direct liability in U.S. v. Bestfoods, 524 U.S. 51, 66-69 (1998). In order to impose direct liability in this situation, the Supreme Court held that “[A]n operator must manage, direct, or conduct operations specifically related to pollution, that is, operations having to deal with the leakage or disposal of hazardous waste ... activities that involve the facility but which are consistent with the parent's investor status, such as monitoring the subsidiary's performance, supervision of the subsidiary's finance and capital budget decisions, and articulation of general policies and procedures, should not give rise to direct liability...” Id. At 62, 72.

In applying the Bestfoods analysis to the question of individual liability for alleged violations at a landfill, the Seventh Circuit in Browning-Ferris Indus. of Ill. v. Ter Maat, 195 F.3d 953 (7th Cir. 1999) held that if the defendant “operated the landfill personally, rather than merely directing the business of the corporations of which he was the president . . . he is personally liable.” If defendant did not merely direct the general operations of the companies, *but supervised the day-to-day operations of the landfill*—for example, negotiating waste-dumping contracts with the owners of the

wastes or directing where the wastes were to be dumped . . . then he would be deemed the operator, jointly with his companies, of the site itself. Id. at 986 (emphasis supplied) (citations omitted).

The Second District Appellate Court of Illinois found the Seventh Circuit's reasoning in TerMaat "instructive" in deciding People v. Agpro, 345 Ill.App.3d 1011, 1028, 803 N.E.2d 1007, 1020 (2nd Dist. 2004). In affirming the liability of the company president for violations committed by the company, the court emphasized that the evidence had shown that the president "personally ran the operations at the site, spent a great deal of time at the site, directly supervised the employees, and personally applied fertilizer and pesticides to farm fields by operating a floater." Agpro, 345 Ill.App.3d at 1028, 803 N.E.2d at 1019. The trial court also specifically found that the corporate officer admitted in a conversation with an IEPA inspector that he intentionally rinsed out the floaters on the gravel at the site. Id. The court held that this was exactly the type of personal involvement or active participation required to hold a corporate officer individually liable under the Act. Id.

Similarly, the Illinois Pollution Control Board has only found liability based on similar active participation and personal involvement with the day-to-day operations of a facility. In People v. Skokie Valley Asphalt, et.al, the Board found the corporate officers personally liable for violations where their active participation and personal involvement included responsibility for the day-to-day operation of the site, both were present for environmental investigations and inspections, and both corresponded and met with environmental government officials. People v. Skokie Valley Asphalt, 2004 WL 2008898, *10 (Ill.Pol.Control Bd.). Similarly, in People v. Draw Drape, et.al, the Board emphasized the extent of the corporate officer's control over the companies in finding liability against the vice-president. People v. Draw Drape, 2004 WL 1909732, *3-4 (Il.Pol.Control.Bd.). The Board relied on the facts that the vice-president was one of only two people who had "knowledge of the operations at, and the volatile organic material ("VOM") emissions from, the

drycleaning facility.” Id. The Board emphasized that the vice-president operated and managed the companies and was “responsible for the day-to-day operation of both companies.” Id. Finally, the Board emphasized that the vice-president was the only person who had dealings with or conferred with or corresponded or met with government regulators ... in all matters related to the Complaint.” Id.

As will be shown in Section V below, the facts in these cases where liability has been found against a corporate officer are readily distinguishable from those in the matter presently before the Board. The complainant simply has not provided any evidence whatsoever that respondent Edward Pruum had any involvement in the day-to-day operation of the landfill to meet the standard of action participation and personal involvement as is required. Complainant has not proven that respondent Edward Pruum’s general involvement in the corporation resulted in active participation in the acts that would result in liability.

V. SUMMARY JUDGMENT SHOULD BE GRANTED IN FAVOR OF RESPONDENT EDWARD PRUIM ON ALL COUNTS BECAUSE HE DID NOT HAVE ANY PERSONAL INVOLVEMENT WITH OR ACTIVE PARTICIPATION IN THE DAY-TO-DAY OPERATION OF THE LANDFILL AND THE MANAGERIAL FUNCTIONS HE PERFORMED WERE WITHIN THE SCOPE OF HIS CAPACITY AS A CORPORATE OFFICER AND ONLY CONSTITUTE PERSONAL INVOLVEMENT OR ACTIVE PARTICIPATION IN THE MANAGEMENT OF THE CORPORATION.

As stated above, in order for liability to attach to respondent personally as an officer of Community Landfill Co., the complainant has the burden of proving that Edward Pruum had personal involvement or active participation in the acts resulting in liability, not simply personal involvement or active participation in the management of the corporation. People v. Tang, 346 Ill.App.3d 277, 289, 805 N.E.2d 243, 253-254 (1st Dist. 2004).

Edward Pruum is the Secretary of Community Landfill Co. (See. Exh. E, p. 32). He has no

involvement with the day-to-day operation of the landfill in that he has never been at the site when the IEPA inspected it; he has never personally received any letters from the IEPA with regards to inspections; and is not aware of any specific dates of any inspections. (See Exh. E., pp. 11-12 and 25-26). Edward Pruim testified that he does not get out to the site very often, that he had very limited contact with Jim Pelnarsh and was never very active in the day-to-day operation. (See Exh. E, pp. 25-26). His responsibilities included typical corporate functions of securing customers, paying bills, managing collections, etc. (See Exh. W, pp. 12-13). Clearly, his involvement is limited to those acts typically performed by corporate officers in his capacity.

In contrast, Jim Pelnarsh, the site manager of the landfill, was and is responsible for the daily operation of the landfill, and between 1994 and 1999, was the person who made the decision of where to put waste in both Parcel A and Parcel B. (See Exh. E, pp. 24-25). He determined “what comes in, what goes out, and deals with the environmental engineer.” (See Exh. F, p. 26). Jim Pelnarsh is the individual who submits prior conduct certifications wherein the Agency refers to him as “facility manager”. (See Group Exh. G). Pelnarsh himself testified that starting in 1983, he has been the site superintendent in charge of operations and the employees. (See Exh. H, p. 9). Jim Pelnarsh, as site manager, hired and fired the employees. (See Exh. F, p. 28). He was responsible for directing people to pick up litter. (See Exh. F, p. 39). Pelnarsh and the engineers were responsible for the cover. (See Exh. F, pp. 39-40). Jim Pelnarsh set the tipping fees based on what was competitive with other landfills in the area. (See Exh. F, p. 37).

It was Jim Pelnarsh who met with the inspectors concerning the violations in question, and with the IEPA at the site for all inspections. (See Exh. I, p. 21, 23-24; Exh. H, p. 35; Exh. E, p.13).

Inspector Warren Weritz testified that Jim Pelnarsh was his contact at the site and that he met with Pelnarsh every time he went to the landfill. (Exh. I, p. 21). Weritz’s inspection reports are consistent

with his deposition testimony that Jim Pelnarsh was present during his inspections. (See Exhs. J-O).² Inspector Mark Retzlaff testified in another proceeding before the Board that when he went to the landfill, he dealt with James Pelnarsh, Sr. the site operator of the Morris Community Landfill. (See Exh. S, pp. 67-68).³ Mark Retzlaff testified that based on his observation, it is Jim Pelnarsh who was involved in the day-to-day operations of the landfill. (See Exh. S, pp. 68-69).⁴ Inspector Tina Kovaszny's reports all state that it was Jim Pelnarsh who was present at the site. (See Exhs. P-R).⁵ All of these facts affirmatively establish that as the site manager it is Jim Pelnarsh, and not Edward Pruim, who was responsible for the day-to-day operation of the landfill.

A. Summary Judgment should be granted in favor of Respondent on all counts related to the day-to-day operation of the landfill because Complainant has not proven that he had personal involvement or actively participated in the acts that might result in liability

Ten (10) counts of the complaint in the 2004 case (Counts I, II, III, VI, XII, XIII, XIV, XV, XVI and XVIII allege in various ways that Respondent bears personal responsibility for acts directly related to the deposition of waste at the landfill. (See Exh. B-1). Complainant simply has not met its burden of proof that respondent Edward Pruim's involvement with the landfill went beyond his corporate capacity and that he had any personal involvement with or active participation in the acts that might result in liability. There is simply no evidence that Edward Pruim had anything to do with the day-to-day operation of the landfill. Therefore, summary judgment should be granted to respondent on all of the above ten (10) counts related to the day-to-day operation of the landfill.

² Only the cover page and the narrative for each inspection report are included in the exhibits. The complete reports are in the files of the Agency and are incorporated herein by reference.

³ This testimony was presented in a hearing before the Illinois Pollution Control Board in Community Landfill Company, Inc. and the City of Morris v. IEPA, PCB 01-170, on hearing dates October 15-17, 2001. All transcripts of that proceeding are hereby incorporated herein.

⁴ See Footnote No. 3 above

⁵ See Footnote 2 above.

The facts regarding each count are as follows:

1. Count I – Failure to Adequately Manage Refuse

On October 3, 2002, the Board ordered a hearing on CLC's liability on count I in the 1997 case. (See Exh. C). Count I of the 2004 case alleges that respondents "managed, operated and co-owned CLC" and that they (a) failed to remove or cause employees to remove refuse in perimeter ditches and the retention pond and allowed refuse to remain in perimeter ditches; (b) allowed leachate seeps to erode areas of the landfill and expose previously covered refuse; and (c) allowed litter and refuse to remain exposed. (See Exh. B-1). In support of these allegations, Complainant cites nine (9) inspections dating from 1993-1999, including those that occurred on: August 18, 1993 (See Exh. J), April 7, 1994 (See Exh. K), March 22, 1995 (See Exh. L), May 22, 1995 (See Exh. M), July 28, 1998 (See Exh. N), November 19, 1998 (See Exh. O), March 31, 1999 (See Exh. P), May 11, 1999 (See Exh. Q), and July 20, 1999. (See Exh. R).

While CLC contests liability in regard to the allegations against it, there is absolutely no evidence to support any allegations against Edward Pruiim personally, as set forth above. Present at all of those inspections were either Jim Pelnarsh Sr. alone or Jim Pelnarsh Sr. and Jim Pelnarsh Jr. together. (See Exhs. J – R; Exh. I, pp. 39 and 51). Jim Pelnarsh Sr. is variously referred to as the "landfill operator" (see Exhs. J and M), "landfill manager" (Exh. K) or "site manager" (see Exh. Q). Edward Pruiim was not present at the inspection. (See Exh. E, pp. 11-12).

2. Count II -- Failure to Prevent or Control Leachate Flow

On October 3, 2002, the Board ordered a hearing on CLC's liability on count II of the 1997 case. (See Exh. C). Count II of the 2004 case alleges that respondents failed to take sufficient action or direct their employees to take sufficient action to prevent leachate seeps from exiting the landfill. (See Exh. B-1). In support of these allegations, Complainant cites three (3) inspections that occurred

on April 7, 1994, March 22, 1995, and May 22, 1995.

While CLC contests liability in regard to the allegations against it, there is absolutely no evidence to support any allegations against Edward Pruim personally, as set forth above. The inspection reports and Warren Weritz's own testimony show that on those dates, he spoke with Jim Pelnarsh who Weritz variously refers to as "landfill manager" or "landfill operator". (See Exh. I, pp. 27-28, 39 and 51; Exhs. K, L and M). Edward Pruim was not present at the inspection. (See Exh. E, pp. 11-12).

3. Count III – Failure to Properly Dispose of Landscape Waste

CLC conceded that summary judgment was appropriate as to the issue of liability only and on October 3, 2002, a hearing was ordered on penalty on count III of the 1997 case. (See Exh. C). Count III of the 2004 case alleges that respondents caused and allowed the landfilling of landscape waste at the site. (Exh. B-1). In support of these allegations, Complainant cites three (3) inspections that occurred on August 18, 1993, April 7, 1994, and July 28, 1998.

Even though CLC conceded liability, there is absolutely no evidence to support any allegations against Edward Pruim personally, as set forth above. The inspection reports and Warren Weritz's own testimony show that on those dates, he met with either Jim Pelnarsh Sr. or Jim Pelnarsh Jr.; Jim Pelnarsh Sr. is variously referred to by Weritz as the "landfill operator" or the "landfill manager". (See Exh. I, pp. 23-24 and 27-28; Exhs. J, K and L). Edward Pruim was not present at the inspection. (See Exh. E, pp. 11-12).

4. Count VI – Water Pollution

On October 3, 2002, CLC's motion for summary judgment was denied and a hearing ordered on CLC's liability (Count VI of the 1997 case). (See Exh. C). Count VI of the 2004 case alleges that respondents failed to take sufficient action, or direct their employees to take sufficient action, to

prevent leachate from flowing off-site to the Illinois River. (See Exh. B-1). In support of this allegation, Complainant cites one (1) inspection that occurred on May 22, 1995.

While CLC contests liability in regard to the allegations against it, there is absolutely no evidence to support any allegations against Edward Pruim personally, as set forth above. Warren Weritz testified that he spoke with Jim Pelnarsh on that date. (See Exh. I, p. 51). Edward Pruim was not present at the inspection. (See Exh. E, pp. 11-12).

5. Count XII – Improper Disposal of Used Tires

CLC conceded that summary judgment was appropriate as to the issue of liability only and on October 3, 2002, a hearing was ordered on penalty (Count XIII of the 1997 case). (See Exh. C). Count XII of the 2004 case alleges that on July 28, 1998, respondents were allowing the mixing of waste tires with municipal waste and placement of the mixed waste in the active area of Parcel A. (See Exh. B-1).

Even though CLC conceded liability, there is absolutely no evidence to support any allegations against Edward Pruim personally, as set forth above. The inspection report itself states that Jim Pelnarsh Jr. was present during the inspection. (Exh. N). Edward Pruim was not present at the inspection. (See Exh. E, pp. 11-12).

6. Count XIII - Violation of Permit Condition – Movable Fencing

CLC conceded that summary judgment was appropriate as to the issue of liability only and on October 3, 2002, a hearing was ordered on penalty (Count XIV of the 1997 case). (See Exh. C). Count XIII of the 2004 case alleges that no movable fencing was present on March 31, 1999 even though the fill was at a higher elevation than the natural ground line and litter was blowing. (See Exh. B-1).

Even though CLC conceded liability, there is absolutely no evidence to support any

allegations against Edward Pruum personally, as set forth above. Inspector Tina Kovaszny stated in her inspection report that “site manager” Jim Pelnarsh was present during the inspection. (See Exh. P). Edward Pruum was not present at the inspection. (See Exh. E, pp. 11-12).

7. Count XIV – Violation of Permit Condition – Operation of Gas Facility

On October 3, 2002, the Board ordered a hearing on CLC’s liability (Count XV of the 1997 case). (See Exh. C). Count XIV of the 2004 case alleges that on or about March 31, 1999, respondents allowed commencement of operation of a gas facility without having first provided certain information to the IEPA. (See Exh. B-1).

While CLC contests liability in regard to the allegations against it, there is absolutely no evidence to support any allegations against Edward Pruum personally, as set forth above. Inspector Tina Kovaszny stated in her inspection report that she met with “site manager” Jim Pelnarsh. (See Exh. P). There is no mention of Edward Pruum in the inspection report or in Kovaszny’s affidavit. In fact, while there is an issue of fact as to whether the system was actually operating, let alone being operated by CLC, there is no evidence whatsoever that Edward Pruum had anything to do with its alleged operation. (See Exh. C). Edward Pruum was not present at the inspection. (See Exh. E, pp. 11-12).

8. Count XV – Violation of Permit Condition – Landfill Cover

On October 3, 2002, CLC’s motion for summary judgment was denied and a hearing ordered on CLC’s liability (Count XVI of the 1997 case). (See Exh. C). Count XV of the 2004 case alleges that on March 31, 1999 and July 20, 1999, respondents failed to take any action, or authorize their employees to take any action to prevent erosion, ponding or cracks in the landfill cover and failed to provide proper vegetative cover. (See Exh. B-1).

While CLC contests liability in regard to the allegations against it, there is absolutely no

evidence to support any allegations against Edward Pruim personally, as set forth above. Inspector Tina Kovaszny states in her inspection reports that Jim Pelnarsh was present during both inspections and refers to him as the “site manager”. (See Exhs. P and R). Edward Pruim was not present at the inspection. (See Exh. E, pp. 11-12).

9. Count XVI – Violation of Permit Condition – Leachate Disposal

On October 3, 2002, the Board ordered a hearing on CLC’s liability (Count XVII of the 1997 case). (See Exh. C). Count XVI of the 2004 case alleges that on March 31, 1999 and July 20, 1999, respondents caused and allowed leachate to be pumped from the landfill into new cells for added moisture and did not dispose of it at a permitted facility. (See Exh. B-1).

While CLC contests liability in regard to the allegations against it, there is absolutely no evidence to support any allegations against Edward Pruim personally, as set forth above. Inspector Tina Kovaszny states in her inspection reports that Jim Pelnarsh was present during both inspections and refers to him as the “site manager”. (Exhs. P and R). Edward Pruim was not present at the inspection. (See Exh. E, pp. 11-12).

10. Count XVIII – Violation of Permit Condition – Operating Permit and IEPA Approval

On October 3, 2002, the Board ordered a hearing on CLC’s liability (Count XX of the 1997 case). (See Exh. C). Count XVIII of the 2004 case alleges that on March 31, 1999 and July 20, 1999, respondents caused or allowed placement of leachate to be pumped from the landfill into areas that had not been certified or approved by the IEPA. (See Exh. B-1).

While CLC contests liability in regard to the allegations against it, there is absolutely no evidence to support any allegations against Edward Pruim personally, as set forth above. Inspector Tina Kovaszny states in her inspection reports that Jim Pelnarsh was present during both inspections and refers to him as the “site manager”. (Exhs. P and R). Edward Pruim was not present

at the inspection. (See Exh. E, pp. 11-12).

Edward Pruim is a co-owner of the corporation Community Landfill Co., and participated in the management of the corporation to the extent necessary to fulfill his corporate responsibilities. As set forth above, in regard to Counts I, II, III, VI, XII, XIII, XIV, XV, XVI and XVIII, there is no evidence that respondent Edward Pruim had anything to do with the day-to-day operation of the landfill, nor was he present at any of the inspections. Upon which Complainant bases its allegations of his alleged personal liability. (See Exh. E, pp. 11-12). In fact, Edward Pruim testified that he did not have any personal involvement or active participation in the alleged acts that might result in liability for any of the allegations against him personally other than those that involved him acting in his corporate capacity. (See Exh. E, pp. 38-44).

Counts I, II, III, VI, XII, XIII, XIV, XV, XVI and XVIII all allege violations related to the day-to-day operation of the landfill. Summary judgment should be granted in favor of respondent Edward Pruim on these counts in the 2004 case as there is no genuine issue of material fact and complainant has not proven that respondent's position as a corporate officer constitutes active participation in the acts that would result in liability necessary to invoke personal liability against him. Because complainant cannot meet its burden of proof as to respondent Edward Pruim's personal involvement and active participation in the acts resulting in liability, summary judgment should be granted in his favor.

B. Summary Judgment should be granted in favor of Respondent on all counts related to the company's allegedly causing any overheight in Parcel B.

The next category of alleged violations for which Complainant seeks to impose liability on respondent Edward Pruim relate to the alleged creation of an overheight in Parcel B. Specifically, these counts address the company's allegedly depositing waste in unpermitted portions of the landfill

(Count VII); allegedly conducting a waste disposal operation without a permit (Count VIII); allegedly causing open dumping (Count XIX); and allegedly failing to obtain a supplemental permit to increase the permitted elevation of the landfill (Count X). (See Exh. B-1). On October 3, 2002, CLC's motion for summary judgment was denied on all of these counts and a hearing ordered on penalty. (See Exh. C).

Complainant appears to base its entire case for personal liability against respondent Edward Pruim relating to an alleged overheight primarily on his having signed two solid waste landfill capacity certifications on April 19, 1993 and January 16, 1995. (See Exhs. T and U). However, beyond these two forms executed in his corporate capacity, there is no evidence whatsoever that he had any active participation or personal involvement in anything related to any alleged overheight. While respondent testified that he believes he would have reviewed these documents before signing, he also testified that he believed the engineering company was in charge of environmental compliance. (See Exh. E, p. 18). Indeed, the capacity estimates state that they were prepared by or under the supervision of professional engineers who were hired by the corporation. (See Exhs. T, U and V). The Board's own regulations and the Agency's own form require the signature of a "duly authorized agent", which for a corporation, is a "principal executive officer of at least the level of vice-president". Section 815.102. (See Exhs. T, U and V). Edward Pruim was simply fulfilling his responsibility as an officer of the company. Edward Pruim testified that he only became aware of an alleged overheight after he saw "something" from the IEPA. (See Exh. E, pp. 27-28).

Edward Pruim was fulfilling his duties as a corporate officer. All of these acts are acts for which the company is responsible. While the officers of the corporation bear responsibility (along with the owners) for being the individuals obtaining financial assurance for the site, filing permits, etc., they are acts performed on behalf of the corporation. They do not, either separately or in the

aggregate, rise to the level necessary to constitute Respondent's personal involvement or active participation in the acts allegedly resulting in liability. While the Board found CLC liable, if there is any liability, it is CLC's liability alone. These acts do not constitute personal, direct involvement with pollution control measures, such as dealing with the IEPA, holding himself out as the site operator, personally handling the waste disposal process, running the site operations or supervising the employees. Acts performed on behalf of the corporation are simply not personal involvement or active participation in any alleged acts that might result in liability against him personally. BFI of Illinois, Inc., v. TerMaat, 200 WL 1716330, *1-2, (N.D. Ill. 2000); People v. Agpro, 345 Ill.App.3d 1011, 1028-29, 803 NE 2d 1007, 1019 (2d Dist. 2004). Therefore, summary judgment should be granted on behalf of respondent Edward Prum for Counts VII, VIII, IX and X of the 2004 case.

C. Summary Judgment should be granted in favor of Respondent on all counts related to the company's alleged failure to perform certain administrative tasks

The final category of alleged violations for which Complainant seeks to impose liability on respondent Edward Prum relate to the alleged failure to perform certain administrative tasks on behalf of the corporation. Specifically, these counts address the alleged failure to provide financial assurance (Counts IV and XVII); the alleged failure to timely file a required sig mod application (Count V); and the alleged failure to provide a revised cost estimate (Count XIX). (See Exh. B-1).

On October 3, 2002, CLC's motion for summary judgment in the 1997 case was denied as to Counts IV, V and XXI (Count XIX in the 2004 case) and a hearing on penalty on those counts was ordered by the Board. (See Exh. C). In the same order, the court granted in part and denied in part Count XIX in the 1997 case (Count XVII in the 2004 case) and found CLC liable for failing to increase its financial assurance from \$1,342,500 to \$1,431,360 and ordered a hearing on penalty. It ordered a hearing on CLC's liability as to when the gas system began operation. (See Exh. C).

All of these acts are acts for which the company is responsible. While the officers of the corporation bear responsibility (along with the owners) for being the individuals obtaining financial assurance for the site, filing permits, etc., they are acts performed on behalf of the corporation. They do not constitute respondent's personal involvement or active participation in the acts allegedly resulting in liability. They do not constitute personal, direct involvement with pollution control measures, such as dealing with the IEPA, holding himself out as the site operator, personally handling the waste disposal process, running the site operations or supervising the employees, all of which are acts that the courts and the Board have held constitute personal involvement or active participation in acts that might result in liability. BFI of Illinois, Inc., v. TerMaat, 200 WL 1716330, *1-2, (N.D. Ill. 2000); People v. Agro, 345 Ill.App.3d 1011, 1028-29, 803 NE 2d 1007, 1019 (2d Dist. 2004). Therefore, summary judgment should be granted on behalf of respondent Edward Pruim for Counts IV, V, XVII and XIX of the 2004 case.

VI. SUMMARY JUDGMENT SHOULD BE GRANTED IN FAVOR OF RESPONDENT EDWARD PRUIM BECAUSE THE SEVEN-YEAR DELAY IN BRINGING THIS COMPLAINT HAS RESULTED IN UNDUE PREJUDICE TO RESPONDENT.

In its answer filed on January 4, 2005, respondent pled as an affirmative defense that complainant's filing of the 2004 complaint was untimely and prejudicial. The Board already denied complainant's motion for leave to file a third amended complaint and should now follow the same reasoning it applied at that time and find that the 2004 complaint is untimely and prejudicial. (See Exh. A). As previously set forth in Section II above, the allegations underlying this complaint have been the subject of ongoing litigation since 1997. There is not one single specific allegation against Edward Pruim that was not known to the complainant on May 1, 1997 when it filed its original complaint containing Counts I-VI, nor when it filed its amended complaint on April 3, 1998 adding

Counts VII-X.

There are only two (2) specific allegations against Edward Pruim in the 2004 case. The first is Count VII and relates to the landfill capacity certification he signed on January 15, 1995 (Exh. U) stating there was no remaining capacity in Parcel B as of January 1, 1995 and relating that to the one signed by Robert Pruim on January 15, 1996 reporting that the landfill had received over 540,000 cubic yards for deposit in Parcel B between January 1, 1995 and December 31, 1995. (See Exh. V). The obvious fact is that these documents had been in the possession of the Agency long before the original complaint was filed in 1997 against CLC, much less all of the amended pleadings filed between 1997 and 1999, and finally, a complaint against respondent individually in 2004.

Second, in Count IV, complainant alleges that Edward Pruim should have personal liability for failing to increase financial assurance after the Agency approved its cost estimate on April 20, 1993. (See Exh. B-1). The Agency's knowledge of this alleged failure goes back even further, more than ten (10) years from the time the document was filed until the complaint in the 2004 case was filed against him personally. Such delay should not be condoned by the Board under any circumstances but certainly not in this situation where no fewer than three (3) complaints were filed against the company only as respondents.

Additionally, Count I of the 2004 case contains general allegations against respondent Edward Pruim which were known to the Agency at the time the Complaint was filed on May 1, 1997. (See Exh. B-1). These allegations include that Edward Pruim served as officer and director of CLC; signed and submitted permit applications and reports; arranged for surety bonds and letters of credit; and ensured CLC's compliance with pertinent environmental laws and regulations. (See Exh.B-1). While respondent denies that these corporate officer actions constitute any personal involvement or active participation in any acts that might result in liability, it goes without saying

that any information supporting these allegations was known to Complainant long ago since the documents were in the Agency's own files.

While complainant's attempt at a third amended complaint adding respondents individually failed in 2004, it followed the Board's own direction and filed the 2004 complaint seven (7) years after the original complaint was filed. (See Exh. A). However, the proper time to have filed a complaint against the respondent individually would have been in 1997 or at least in 1999, not in 2004. Its delay and failure to timely file a complaint against respondent individually has meant that respondents have been forced to re-litigate issues that have been before the Board for nearly nine (9) years. Summary judgment should be granted on all counts against respondent on this basis alone.

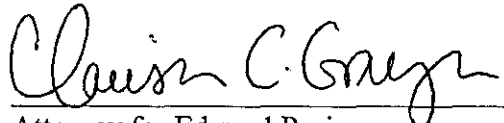
VII. CONCLUSION

WHEREFORE, based on the foregoing, Respondent, EDWARD PRUIM, respectfully requests that the Illinois Pollution Control Board grant its Motion for Summary Judgment in its entirety on all counts in the 2004 case against him individually, and find that

- (1) Edward Pruiim was not involved in the day-to-day operation of the landfill;
- (2) Edward Pruiim's acts as a corporate officer do not constitute personal involvement or active participation in the acts that might result in liability; and
- (3) the delay by the complainant in bringing this complaint against respondent personally has resulted in undue prejudice.

Respectfully submitted,

LaROSE & BOSCO, LTD.


Attorney for Edward Pruiem

Mark A. LaRose
Clarissa C. Grayson
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

EDWARD PRUIM and ROBERT PRUIM,)

Respondents.)

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

COMMUNITY LANDFILL COMPANY,)
INC.,)

Respondent.)

PCB No. 04-207
(Enforcement – Land)

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JAN 13 2006

STATE OF ILLINOIS
Pollution Control Board

PCB No. 97-193
(Enforcement – Land)
(consolidated)

RESPONDENT EDWARD PRUIM'S MOTION FOR SUMMARY JUDGMENT

Respondent, Edward Prum, by and through his attorneys, LaRose & Bosco, Ltd., and pursuant to 35 Ill. Adm. Code 101.516 hereby moves for Summary Judgment as to all counts of the complainant's claims and respondent's affirmative defense in PCB No. 04-207 (Enforcement) (consolidated with PCB No. 97-193 (Enforcement)) and in support thereof, states as follows:

1. The allegations in PCB No. 04-207 against Edward Prum personally are identical to those in the Second Amended Complaint in PCB No. 97-193 against Community Landfill Company, Inc., and have been the subject of more than eight (8) years of intense litigation. Only now, after numerous opportunities, complainant seeks liability against the principals of the company individually.

2. Summary judgment should be granted as to Counts I, II, III, VI, XII, XIII, XIV, XV,

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XVI and XVIII in the 2004 case because complainant has not met its burden of proof that Edward Pruim's involvement with the landfill went beyond his corporate capacity as an officer in the company and that he had any personal involvement or active participation in that might result in liability because he was not involved in the day-to-day operation of the landfill.

3. Summary judgment should be granted as to Counts XVII, XVIII, IX and X in the 2004 case because the acts performed by respondent on behalf of the corporation are simply not personal involvement or active participation in the any alleged acts that might result in liability against him personally.

4. Summary judgment should be granted as to Counts IV, V, XVII and XIX in the 2004 case because any liability for the alleged failure to perform certain administrative tasks is the liability of the company alone and not respondent's personal liability.

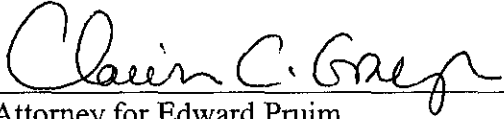
5. Summary judgment should be granted as to all counts because complainant's delay in bringing this complaint has resulted in undue prejudice to respondent.

6. Respondent Edward Pruim has contemporaneously filed a Memorandum in Support of his Motion for Summary Judgment and supporting documentation (Joint Exhibits A-W) that entitles respondent to summary judgment as a matter of law.

WHEREFORE, based on the foregoing, particularly set forth in respondent's Memorandum in Support of his Motion for Summary Judgment, respondent Edward Pruim respectfully requests that the Illinois Pollution Control Board enter judgment in his favor and against the complainant on all claims in their entirety and any other relief that this court deems appropriate.

Respectfully submitted,

LAROSE & BOSCO, LTD.


Attorney for Edward Prum

Mark A. LaRose
Clarissa C. Grayson
LAROSE & BOSCO, LTD.
Attorney No. 37346
200 North LaSalle Street
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(312) 642-4414
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CERTIFICATE OF SERVICE

I, Clarissa C. Grayson, an attorney, hereby certify that I served copies of the foregoing:

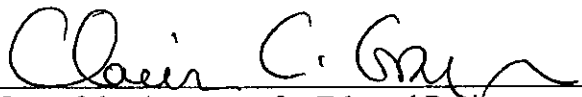
- 1) **RESPONDENT EDWARD PRUIM'S MOTION FOR SUMMARY JUDGMENT;**
- 2) **RESPONDENT EDWARD PRUIM'S MEMORANDUM IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT;** and
- 3) **JOINT EXHIBITS A-W TO RESPONDENTS EDWARD PRUIM AND ROBERT PRUIM'S MEMORANDA IN SUPPORT OF THEIR MOTIONS FOR SUMMARY JUDGMENT**

by placing the same in envelopes and hand-delivering this 13th day of **January 2006**, addressed as follows:

Christopher Grant
Environmental Bureau
Assistant Attorney General
188 West Randolph Street
20th Floor
Chicago, Illinois 60601

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, Illinois 60601

Dorothy M. Gunn
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, Illinois 60601



One of the Attorneys for Edward Prui

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
EDWARD PRUIM and ROBERT PRUIM,)
)
Respondents.)

PCB No. 04-207
(Enforcement – Land)

RECEIVED
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JAN 13 2006
STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
COMMUNITY LANDFILL COMPANY,)
INC.,)
)
Respondent.)

PCB No. 97-193
(Enforcement – Land)
(consolidated)

NOTICE OF FILING

TO: Christopher Grant
Environmental Bureau
Assistant Attorney General
188 West Randolph Street
20th Floor
Chicago, Illinois 60601

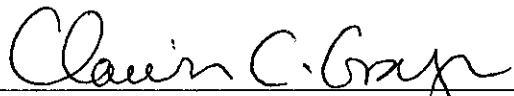
Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on **JANUARY 13, 2006**, the undersigned filed an original and nine copies of:

- 1) **RESPONDENT ROBERT PRUIM'S MOTION FOR SUMMARY JUDGMENT;**
- 2) **RESPONDENT ROBERT PRUIM'S MEMORANDUM IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT; and**
- 3) **JOINT EXHIBITS A-W TO RESPONDENTS EDWARD PRUIM AND ROBERT PRUIM'S MEMORANDA IN SUPPORT OF THEIR MOTIONS FOR SUMMARY JUDGMENT**

THIS FILING IS SUBMITTED ON RECYCLED PAPER.

with Ms. Dorothy Gunn, Clerk of the Illinois Pollution Control Board, 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60601, a copy of which is attached and hereby served upon you.


One of the Attorneys for Robert Peim

Mark A. LaRose
Clarissa C. Grayson
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JAN 13 2006

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

EDWARD PRUIM and ROBERT PRUIM,)

Respondents.)

PCB No. 04-207
(Enforcement – Land)

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

COMMUNITY LANDFILL COMPANY, INC.,)

Respondent.)

PCB No. 97-193
(Enforcement – Land)
(consolidated)

**RESPONDENT ROBERT PRUIM'S MEMORANDUM IN SUPPORT OF HIS
MOTION FOR SUMMARY JUDGMENT**

Respondent, Robert Pruum, by and through his attorneys LaRose & Bosco, Ltd., and pursuant to 35 Ill. Adm. Code 101.516 hereby moves for Summary Judgment as to all counts of the complaint in PCB No. 04-207 (Enforcement) (consolidated with PCB No. 97-193 (Enforcement)), and in support thereof, states as follows:¹

I. INTRODUCTION

The allegations addressed herein against Robert Pruum have been the subject of more than eight (8) years of intense litigation in an almost identical matter before the Illinois Pollution Control Board ("the Board") against Community Landfill Company ("CLC"), captioned PCB 97-193 (Enforcement) ("the 1997 case"). The ongoing litigation in the 1997 case has included: a complaint

¹ Although separate Motions for Summary Judgment and Memoranda in Support thereof have been filed on behalf of each respondent in PCB No. 04-207 (Enforcement), one (1) set of Joint Exhibits A - W has been filed and each exhibit will be referred to herein as "Exh. ____."

THIS FILING IS SUBMITTED ON RECYCLED PAPER.

filed in 1997, a First Amended Complaint filed in 1998, a Second Amended Complaint filed in 1999, and substantive rulings on liability both for and against CLC in both 2001 and 2002.

The People failed in its attempt to file a Third Amended Complaint in the 1997 case wherein it sought leave to add Edward Pruim and Robert Pruim individually as additional defendants. The People's Motion for Leave to File a Third Amended Complaint was unanimously denied by the Board on March 18, 2004 on the grounds that to grant this leave would be prejudicial, untimely and that the complainant previously had the opportunity to amend the complaint. (See Exh. A).

Complainant then filed a "new" complaint ("Complaint" or "the 2004 case") naming Edward Pruim and Robert Pruim individually as respondents, which was timely answered on January 4, 2005. (See Exh. B). It is important to note that the allegations contained in the complaint in the 2004 case against Edward Pruim and Robert Pruim individually are nearly identical to those contained in its failed, proposed Third Amended Complaint. Complainant's sole specific allegations in the 2004 case against Edward Pruim and Robert Pruim are based on documents that the Illinois Environmental Protection Agency ("Agency") has had in its possession since 1993, 1995 and 1996, long before the original complaint was even filed in the 1997 case against CLC. The two cases were consolidated by the Board's order of February 17, 2005.

For the following reasons, the Board should grant summary judgment on behalf of respondent Robert Pruim:

(1) Because Robert Pruim had no personal involvement with or active participation in the day-to-day operation of the landfill that would give rise to personal liability, the Board should grant summary judgment in his favor on Counts I, II, III, VI, VII, VIII, IX, X, XII, XIII, XIV, XV, XVI, and XVIII of the 2004 case;

(2) Because the managerial functions Robert Pruim performed were within the scope of

his capacity as a corporate officer and only constitute personal involvement or active participation in the management of the corporation, the Board should grant summary judgment in his favor on Counts VII, VIII, IX and X of the 2004 case;

(3) Because Robert Pruim should not be held liable for the company's alleged failure to perform certain administrative tasks, the Board should grant summary judgment in Robert Pruim's favor on Counts IV, V, XVII and XIX; and

(4) Because the lengthy delay by the People in bringing this action against Robert Pruim has resulted in undue prejudice to respondent, the Board should grant summary judgment in his favor on all counts.

II. PROCEDURAL HISTORY

On May 1, 1997, Complainant filed its first complaint in this matter. The 1997 complaint named CLC as the sole respondent and contained six (6) counts alleging violations relating to managing refuse and litter, leachate flow, landscape waste, financial assurance, failure to file a significant modification permit, and water pollution. Complainant then filed a First Amended Complaint on April 3, 1998; again CLC was the only respondent. The First Amended Complaint included four (4) additional counts alleging violations relating to overheight of the landfill.

On November 24, 1999, over CLC's strenuous objections, complainant filed a Second Amended Complaint, again only naming CLC as respondent. The Second Amended Complaint included twelve (12) additional counts, for a total of twenty-two counts, alleging violations relating to asbestos, used tires, the gas collection facility, leachate disposal, final cover, financial assurance, and failure to provide revised cost estimates.

The 1997 case has been the subject of the exchange of hundreds of documents comprising thousands of pages, numerous depositions, and cross-motions for summary judgment by the parties.

On April 5, 2001, the Board ruled against CLC on its motion for summary judgment in regard to Counts V and XII of the Second Amended Complaint. CLC filed a motion for reconsideration on May 15, 2001. On July 26, 2001, the Board reversed its decision on Count XII by finding in favor of CLC on liability and dismissing that count. The Board affirmed its ruling against CLC on Count V and ordered a hearing on penalty.

On October 3, 2002, the Board issued an extensive order regarding the parties' cross-motions for summary judgment in the 1997 case against CLC. The Board found in favor of CLC on Counts XI, XVIII, and XXII of the Second Amended Complaint and dismissed those counts against CLC. The Board denied the Complainant's motion for Summary Judgment on Counts I, II, VI, XV, XVII, XIX (in part) and XX of the Second Amended Complaint, and ordered a hearing on liability on those counts. Finally, the Board found in favor of Complainant on Counts III, IV, V, VII, VIII, IX, X, XIII, XIV, XVI, XIX (in part) and XXI and ordered a hearing on penalty on those counts. (See Exh. C).

On December 5, 2003, Complainant filed a motion before the Board wherein it requested leave to file its Third Amended Complaint naming Edward Pruim and Robert Pruim, the principals of CLC, as additional respondents. That motion was unanimously denied by the Board on March 18, 2004. (See Exh. A). On May 21, 2004, Complainant then filed a complaint against Edward Pruim and Robert Pruim individually, which, after the Board dismissed Count XII of the 2004 complaint, left eighteen (18) counts remaining against Edward Pruim and Robert Pruim individually. Because the underlying allegations in the 1997 and 2004 cases are identical, the Board consolidated them on February 17, 2005. For the Board's convenience, a chart summarizing the current status of the counts in the 1997 case with a cross-reference to the 2004 complaint is attached as Exhibit D.

There are scant differences between the Second Amended Complaint in the 1997 case and the complaint in the 2004 case that is the subject of the present Motion for Summary Judgment.

Complainant has simply taken the Second Amended Complaint and for the most part inserted general allegations against the respondent that he "caused or allowed" certain acts to occur in violation of the Environmental Protection Act ("the Act").

III. LEGAL STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when the pleadings and depositions, together with any affidavits and other items in the record, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill.2d 460, 693 N.E.2d 358 (1998); People v. City of Waukegan, PCB 01-104, slip op. at 2 (August 23, 2001). Even so, while the nonmoving party does not have to prove its case, it must "present a factual basis which would arguably entitle [it] to a judgment." Gauthier v. Westfall, 266 Ill.App.3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994); Waukegan, PCB 01-104, slip op. at 2.

In ruling on a motion for summary judgment, the Board "must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party." Dowd, 181 Ill.2d at 483, 693 N.E.2d at 370; Waukegan, PCB 01-104, slip op. at 2. However, while summary judgment "is a drastic means of disposing of litigation," it should be granted when the movant's right to the relief "is clear and free from doubt." Dowd, 181 Ill.2d at 483, 693 N.E.2d at 370 *citing* Purtill v. Hess, 111 Ill.2d 229, 240 489 N.E.2d 867, 871 (1986). Finally, the Board's procedural rules provide that "if the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment." 35 Ill. Adm. Code 101.516.

IV. LEGAL STANDARD FOR PERSONAL LIABILITY OF A CORPORATE OFFICER

In most instances, the law immunizes corporate officers from corporate liabilities and debts. Safeway Ins. Co. v. Daddono, 344 Ill.App.3d 215, 219, 777 N.E. 2d 693 (2002); People v. Tang, 346

Ill.App.3d 277, 284, 805 N.E.2d 243, 250 (1st Dist. 2004). More than a corporate title is required in order for an officer to be held liable for corporate violations of environmental protection laws. Tang, 346 Ill.App.3d at 287, 805 N.E.2d at 252. In order for liability to attach to respondent personally, as an officer of Community Landfill Company, the complainant has the burden of proving that Robert Pruim had personal involvement or active participation in the acts resulting in liability, not just personal involvement or active participation in the management of the corporation. Tang, 346 Ill.App.3d at 289, 805 N.E.2d at 253-54. The participation and involvement must be in a wrongful act, not merely in a corporation's operations. Id.

In addressing the issue of potential owner/operator liability of a parent corporation for the environmental acts of its subsidiary, the Supreme Court articulated the standard for imposing direct liability in U.S. v. Bestfoods, 524 U.S. 51, 66-69 (1998). In order to impose direct liability in this situation, the Supreme Court held that “[A]n operator must manage, direct, or conduct operations specifically related to pollution, that is, operations having to deal with the leakage or disposal of hazardous waste . . . activities that involve the facility but which are consistent with the parent’s investor status, such as monitoring the subsidiary’s performance, supervision of the subsidiary’s finance and capital budget decisions, and articulation of general policies and procedures, should not give rise to direct liability. . . .” Id. At 62, 72.

In applying the Bestfoods analysis to the question of individual liability for alleged violations at a landfill, the Seventh Circuit in Browning-Ferris Indus. of Ill. v. Ter Maat, 195 F.3d 953 (7th Cir. 1999) held that if the defendant “operated the landfill personally, rather than merely directing the business of the corporations of which he was the president . . . he is personally liable.” If defendant did not merely direct the general operations of the companies . . . *but supervised the day-to-day operations of the landfill*—for example, negotiating waste-dumping contracts with the owners of the

wastes or directing where the wastes were to be dumped . . . then he would be deemed the operator, jointly with his companies, of the site itself. Id. at 986 (emphasis supplied) (citations omitted).

The Second District Appellate Court of Illinois found the Seventh Circuit's reasoning in TerMaat "instructive" in deciding People v. Agpro, 345 Ill.App.3d 1011, 1028, 803 N.E.2d 1007, 1020 (2nd Dist. 2004). In affirming the liability of the company president for violations committed by the company, the court emphasized that the evidence had shown that the president "personally ran the operations at the site, spent a great deal of time at the site, directly supervised the employees, and personally applied fertilizer and pesticides to farm fields by operating a floater." Agpro, 345 Ill.App.3d at 1028, 803 N.E.2d at 1019. The trial court also specifically found that the corporate officer admitted in a conversation with an IEPA inspector that he intentionally rinsed out the floaters on the gravel at the site. Id. The court held that this was exactly the type of personal involvement or active participation required to hold a corporate officer individually liable under the Act. Id.

Similarly, the Illinois Pollution Control Board has only found liability based on similar active participation and personal involvement with the day-to-day operations of a facility. In People v. Skokie Valley Asphalt, et.al, the Board found the corporate officers personally liable for violations where their active participation and personal involvement included responsibility for the day-to-day operation of the site, both were present for environmental investigations and inspections, and both corresponded and met with environmental government officials. People v. Skokie Valley Asphalt, 2004 WL 2008898, *10 (Ill.Pol.Control Bd.). Similarly, in People v. Draw Drape, et.al, the Board emphasized the extent of the corporate officer's control over the companies in finding liability against the vice-president. People v. Draw Drape, 2004 WL 1909732, *3-4 (Il.Pol.Control.Bd.). The Board relied on the facts that the vice-president was one of only two people who had "knowledge of the operations at, and the volatile organic material ("VOM") emissions from, the

drycleaning facility.” Id. The Board emphasized that the vice-president operated and managed the companies and was “responsible for the day-to-day operation of both companies.” Id. Finally, the Board emphasized that the vice-president was the only person who had dealings with or conferred with or corresponded or met with government regulators ... in all matters related to the Complaint.” Id.

As will be shown in Section V below, the facts in these cases where liability has been found against a corporate officer are readily distinguishable from those in the matter presently before the Board. The complainant simply has not provided any evidence whatsoever that respondent Robert Pruum had any involvement in the day-to-day operation of the landfill to meet the standard of active participation and personal involvement as is required. Complainant has not proven that respondent Robert Pruum’s general involvement in the corporation resulted in active participation in the acts that would result in liability.

V. SUMMARY JUDGMENT SHOULD BE GRANTED IN FAVOR OF RESPONDENT ROBERT PRUIM ON ALL COUNTS BECAUSE HE DID NOT HAVE ANY PERSONAL INVOLVEMENT WITH OR ACTIVE PARTICIPATION IN THE DAY-TO-DAY OPERATION OF THE LANDFILL AND THE MANAGERIAL FUNCTIONS HE PERFORMED WERE WITHIN THE SCOPE OF HIS CAPACITY AS A CORPORATE OFFICER AND ONLY CONSTITUTE PERSONAL INVOLVEMENT OR ACTIVE PARTICIPATION IN THE MANAGEMENT OF THE CORPORATION.

As stated above, in order for liability to attach to respondent personally as an officer of Community Landfill Co., the complainant has the burden of proving that Robert Pruum had personal involvement or active participation in the acts resulting in liability, not simply personal involvement or active participation in the management of the corporation. People v. Tang, 346 Ill.App.3d 277, 289, 805 N.E.2d 243, 253-254 (1st Dist. 2004).

Robert Pruum is the President of Community Landfill Co. (See Exh. F, p. 10; Exh. W, pp.

11-12.) He had no involvement with the day-to-day operation of the landfill and was responsible only for typical corporate functions such as securing customers, paying bills, managing collections, etc. (See Exh. W., pp. 12-13; Exh. F, pp. 25-26). Robert Prum has never been present at the site during an IEPA inspection. (See Exh. F, p. 38). He was not involved in preparing reports. (See Exh. W, pp. 18-19). Clearly, his involvement is limited to those acts typically performed by corporate officers in his capacity, such as borrowing funds for working capital. (See Exh. W, p. 27).

In contrast, Jim Pelnarsh, the site manager of the landfill, was and is responsible for the daily operation of the landfill, and between 1994 and 1999, was the person who made the decision of where to put waste in both Parcel A and Parcel B. (See Exh. E, pp. 24-25). He determined “what comes in, what goes out, and deals with the environmental engineer.” (See Exh. F, p. 26). Jim Pelnarsh is the individual who submits prior conduct certifications wherein the Agency refers to him as “facility manager”. (See Group Exh. G). Pelnarsh himself testified that starting in 1983, he has been the site superintendent in charge of operations and the employees. (See Exh. H, p. 9). Jim Pelnarsh, as site manager, hired and fired the employees. (See Exh. F, p. 28). He was responsible for directing people to pick up litter. (See Exh. F, p. 39). Pelnarsh and the engineers were responsible for the cover. (See Exh. F, pp. 39-40). Jim Pelnarsh set the tipping fees based on what was competitive with other landfills in the area. (See Exh. F, p. 37).

It was Jim Pelnarsh who met with the inspectors concerning the violations in question, and with the IEPA at the site for all inspections. (See Exh. I, p. 21, 23-24; Exh. H, p. 35; Exh. E, p.13). Inspector Warren Weritz testified that Jim Pelnarsh was his contact at the site and that he met with Pelnarsh every time he went to the landfill. (Exh. I, p. 21). Weritz’s inspection reports are consistent with his deposition testimony that it was Jim Pelnarsh who was present during his inspections. (See

Exhs. J-O).² Inspector Mark Retzlaff testified in another proceeding before the Board that when he went to the landfill, he dealt with James Pelnarsh, Sr. the site operator of the Morris Community Landfill. (See Exh. S, pp. 67-68).³ Mark Retzlaff testified that based on his observation, it is Jim Pelnarsh who was involved in the day-to-day operations of the landfill. (See Exh. S, pp. 68-69).⁴ Inspector Tina Kovaszny's reports all state that it was Jim Pelnarsh who was present at the site. (See Exhs. P-R).⁵ All of these facts affirmatively establish that it is Jim Pelnarsh, and not Robert Pruim, who is responsible for the day-to-day operation of the landfill.

A. Summary Judgment should be granted in favor of Respondent on all counts related to the day-to-day operation of the landfill because Complainant has not proven that he had personal involvement with or actively participated in the acts that might result in liability

Ten (10) counts of the complaint in the 2004 case (Counts I, II, III, VI, XII, XIII, XIV, XV, XVI and XVIII) allege in various ways that respondent bears personal responsibility for acts directly related to the deposition of waste at the landfill. (See Exh. B). Complainant simply has not met its burden of proof that respondent Robert Pruim's involvement with the landfill went beyond his corporate capacity and that he had any personal involvement with or active participation in the acts that might result in liability. There is simply no evidence that Robert Pruim had anything to do with the day-to-day operation of the landfill. Therefore, summary judgment should be granted to respondent on all of the above ten (10) counts related to the day-to-day operation of the landfill.

² Only the cover page and the narrative for each inspection report are included as exhibits herein. The complete reports are in the files of the Agency and are incorporated herein by reference.

³ This testimony was presented in a hearing before the Illinois Pollution Control Board in Community Landfill Company, Inc. and the City of Morris v. IEPA, PCB 01-170, on hearing dates October 15-17, 2001. All transcripts of that proceeding are hereby incorporated herein.

⁴ See Footnote No. 3 above

The facts regarding each count are as follows:

1. Count I – Failure to Adequately Manage Refuse

On October 3, 2002, the Board ordered a hearing on CLC's liability on count I in the 1997 case. (See Exh. C). Count I of the 2004 case alleges that respondents "managed, operated and co-owned CLC" and that they (a) failed to remove or cause employees to remove refuse in perimeter ditches and the retention pond and allowed refuse to remain in perimeter ditches; (b) allowed leachate seeps to erode areas of the landfill and expose previously covered refuse; and (c) allowed litter and refuse to remain exposed. (See Exh. B). In support of these allegations, Complainant cites nine (9) inspections dating from 1993-1999, including those that occurred on: August 18, 1993 (See Exh. J), April 7, 1994 (See Exh. K), March 22, 1995 (See Exh. L), May 22, 1995 (See Exh. M), July 28, 1998 (See Exh. N), November 19, 1998 (See Exh. O), March 31, 1999 (See Exh. P), May 11, 1999 (See Exh. Q), and July 20, 1999. (See Exh. R).

While CLC contests liability in regard to the allegations against it, there is absolutely no evidence to support any allegations against Robert Pruim personally as set forth above. Present at all of those inspections were either Jim Pelnarsh Sr. alone or Jim Pelnarsh Sr. and Jim Pelnarsh Jr. together. (See Exhs. J – R; Exh. I, pp. 39 and 51). Jim Pelnarsh Sr. is variously referred to as the "landfill operator" (see Exhs. J and M), "landfill manager" (Exh. K) or "site manager" (see Exh. Q). Robert Pruim was not present at the inspection. (See Exh. F, p. 38).

2. Count II – Failure to Prevent or Control Leachate Flow

On October 3, 2002, the Board ordered a hearing on CLC's liability on count II of the 1997 case. (See Exh. C). Count II of the 2004 case alleges that respondents failed to take sufficient action or direct their employees to take sufficient action to prevent leachate seeps from exiting the landfill.

⁵ See Footnote 2 above.

(See Exh. B). In support of these allegations, Complainant cites three (3) inspections that occurred on April 7, 1994, March 22, 1995, and May 22, 1995.

While CLC contests liability in regard to the allegations against it, there is absolutely no evidence to support any allegations against Robert Pruim personally, as set forth above. The inspection reports and Warren Weritz's own testimony show that on those dates, he spoke with Jim Pelnarsh who Weritz variously refers to as "landfill manager" or "landfill operator". (See Exh. I, pp. 27-28, 39 and 51; Exhs. K, L and M). Robert Pruim was not present at the inspection. (Exh. F, p. 38).

3. Count III – Failure to Properly Dispose of Landscape Waste

CLC conceded that summary judgment was appropriate as to the issue of liability only and on October 3, 2002, a hearing was ordered on penalty on count III of the 1997 case. (See Exh. C). Count III of the 2004 case alleges that respondents caused and allowed the landfilling of landscape waste at the site. (Exh. B). In support of these allegations, Complainant cites three (3) inspections that occurred on August 18, 1993, April 7, 1994, and July 28, 1998.

Even though CLC conceded liability in regard to the allegations against it, there is absolutely no evidence to support any allegations against Robert Pruim personally, as set forth above. The inspection reports and Warren Weritz's own testimony show that on those dates, he met with either Jim Pelnarsh Sr. or Jim Pelnarsh Jr.; Jim Pelnarsh Sr. is variously referred to by Weritz as the "landfill operator" or the "landfill manager". (See Exh. I, pp. 23-24 and 27-28; Exhs. J, K and L). Robert Pruim was not present at the inspection. (See Exh. F, p. 38).

4. Count VI – Water Pollution

On October 3, 2002, CLC's motion for summary judgment was denied and a hearing ordered on CLC's liability (Count VI of the 1997 case). (See Exh. C). Count VI of the 2004 case alleges that

respondents failed to take sufficient action, or direct their employees to take sufficient action, to prevent leachate from flowing off-site to the Illinois River. (See Exh. B). In support of this allegation, Complainant cites one (1) inspection on May 22, 1995.

While CLC contests liability in regard to the allegations against it, there is absolutely no evidence to support any allegations against Robert Pruim personally., as set forth above. Warren Weritz testified that he spoke with Jim Pelnarsh on that date. (See Exh. I, p. 51). Robert Pruim was not present at the inspection. (See Exh. F, p. 38).

5. Count XII – Improper Disposal of Used Tires

CLC conceded that summary judgment was appropriate as to the issue of liability only and on October 3, 2002, a hearing was ordered on penalty (Count XIII of the 1997 case). (See Exh. C). Count XII of the 2004 case alleges that on July 28, 1998, respondents were allowing the mixing of waste tires with municipal waste and placement of the mixed waste in the active area of Parcel A. (See Exh. B).

While CLC conceded liability, there is absolutely no evidence to support any allegations against Robert Pruim personally, as set forth above. The inspection report itself states that Jim Pelnarsh Jr. was present during the inspection. (Exh. N). Robert Pruim was not present at the inspection. (See Exh. F, p. 38).

6. Count XIII - Violation of Permit Condition – Movable Fencing

CLC conceded that summary judgment was appropriate as to the issue of liability only and on October 3, 2002, a hearing was ordered on penalty (Count XIV of the 1997 case). (See Exh. C). Count XIII of the 2004 case alleges that no movable fencing was present on March 31, 1999 even though the fill was at a higher elevation than the natural ground line and litter was blowing. (See Exh. B).

Even though CLC conceded liability in regard to the allegations against it, there is absolutely no evidence to support any allegations against Robert Pruim personally, as set forth above. Inspector Tina Kovaszny stated in her inspection report that “site manager” Jim Pelnarsh was present during the inspection. (See Exh. P). Robert Pruim was not present at the inspection. (See Exh. F, p. 38).

7. Count XIV – Violation of Permit Condition – Operation of Gas Facility

On October 3, 2002, the Board ordered a hearing on CLC’s liability (Count XV of the 1997 case). (See Exh. C). Count XIV of the 2004 case alleges that on or about March 31, 1999, respondents allowed commencement of operation of a gas facility without having first provided certain information to the IEPA. (See Exh. B).

While CLC contests liability in regard to the allegations against it, there is absolutely no evidence to support any allegations against Robert Pruim personally, as set forth above. Inspector Tina Kovaszny stated in her inspection report that she met with “site manager” Jim Pelnarsh. (See Exh. P). There is no mention of Robert Pruim in the inspection report or in Kovaszny’s affidavit. In fact, while there is an issue of fact as to whether the system was actually operating, let alone being operated by CLC, there is no evidence whatsoever that Robert Pruim had anything to do with its alleged operation. (See Exh. C). Robert Pruim was not present at the inspection. (See Exh. F, p. 38).

8. Count XV – Violation of Permit Condition – Landfill Cover

On October 3, 2002, CLC’s motion for summary judgment was denied and a hearing ordered on CLC’s liability (Count XVI of the 1997 case). (See Exh. C). Count XV of the 2004 case alleges that on March 31, 1999 and July 20, 1999, respondents failed to take any action, or authorize their employees to take any action to prevent erosion, ponding or cracks in the landfill cover and failed to provide proper vegetative cover. (See Exh. B).

While CLC contests liability in regard to the allegations against it, there is absolutely no

evidence to support any allegations against Robert Pruim personally, as set forth above. Inspector Tina Kovaszny states in her inspection reports that Jim Pelnarsh was present during both inspections and refers to him as the “site manager”. (See Exhs. P and R). Robert Pruim was not present at the inspections. (See Exh. F, p. 38).

9. Count XVI – Violation of Permit Condition – Leachate Disposal

On October 3, 2002, the Board ordered a hearing on CLC’s liability (Count XVII of the 1997 case). (See Exh. C). Count XVI of the 2004 case alleges that on March 31, 1999 and July 20, 1999, respondents caused and allowed leachate to be pumped from the landfill into new cells for added moisture and did not dispose of it at a permitted facility. (See Exh. B).

While CLC contests liability in regard to the allegations against it, there is absolutely no evidence to support any allegations against Robert Pruim personally, as set forth above. Inspector Tina Kovaszny states in her inspection reports that Jim Pelnarsh was present during both inspections and refers to him as the “site manager”. (See Exhs. P and R). Robert Pruim was not present at either of the inspections. (See Exh. F, p. 38).

10. Count XVIII – Violation of Permit Condition – Operating Permit and IEPA Approval

On October 3, 2002, the Board ordered a hearing on CLC’s liability (Count XX of the 1997 case). (See Exh. C). Count XVIII of the 2004 case alleges that on March 31, 1999 and July 20, 1999, respondents caused or allowed placement of leachate to be pumped from the landfill into areas that had not been certified or approved by the IEPA. (See Exh. B).

While CLC contests liability in regard to the allegations against it, there is absolutely no evidence to support any allegations against Robert Pruim personally, as set forth above. Inspector Tina Kovaszny states in her inspection reports that Jim Pelnarsh was present during both inspections and refers to him as the “site manager”. (Exhs. P and R). Robert Pruim was not present

at either of the inspections. (See Exh. F, p. 38).

Robert Pruim is a co-owner of the corporation Community Landfill Company and participated in the management of the corporation to the extent necessary to fulfill his corporate responsibilities. As set forth above, in regard to Counts I, II, III, VI, XII, XIII, XIV, XV, XVI and XVIII, there is no evidence that he had anything to do with the day-to-day operation of the landfill, nor was he present at any of the inspections upon which complainant bases its allegations of his alleged personal liability. (See Exh. F, p. 38). In fact, Robert Pruim testified that he did not have any personal involvement or active participation in the alleged acts that might result in liability for any of the allegations against him personally, other than those that involved him acting in his corporate capacity. (See Exh. F, pp. 63-69).

Counts I, II, III, VI, XII, XIII, XIV, XV, XVI and XVIII all allege violations related to the day-to-day operation of the landfill. Summary judgment should be granted in favor of respondent Robert Pruim on those counts of the 2004 case as there is no genuine issue of material fact and the complainant has not proven that respondent's position as a corporate officer constitutes active participation in the acts that would result in liability necessary to invoke personal liability against him. Because complainant cannot meet its burden of proof as to respondent Robert Pruim's personal involvement and active participation in the acts resulting in liability, summary judgment should be granted in his favor.

B. Summary Judgment should be granted in favor of Respondent on all counts related to the company's allegedly causing any overheight in Parcel B.

The next category of alleged violations for which Complainant seeks to impose liability on respondent Robert Pruim relate to the alleged creation of an overheight in Parcel B. Specifically, these counts address the company's allegedly depositing waste in unpermitted portions of the landfill

(Count VII); allegedly conducting a waste disposal operation without a permit (Count VIII); allegedly causing open dumping (Count XIX); and allegedly failing to obtain a supplemental permit to increase the permitted elevation of the landfill (Count X). (See Exh. B). On October 3, 2002, CLC's motion for summary judgment was denied on all of these counts and a hearing ordered on penalty. (See Exh. C).

Complainant appears to base its entire case for personal liability against respondent Robert Pruim relating to an alleged overheight primarily on his having signed a solid waste landfill capacity certification on January 15, 1996, stating that the landfill had received over 540,000 cubic yds. of waste in 1995. (See Exh. V). However, beyond this form, executed in Robert Pruim's corporate capacity, there is no evidence whatsoever that he had any active participation or personal involvement in anything related to any alleged overheight. Robert Pruim was not involved with the preparation of the reports. (Exh. W, pp. 18-19). He has not seen any documents regarding allegations of overheight and does not recall seeing any engineering reports. (Exh. F, pp. 49-50). Indeed, the capacity estimates state that they were prepared by or under the supervision of professional engineers who were hired by the corporation. (See Exhs. T, U and V). The Board's own regulations and the Agency's own form require the signature of a "duly authorized agent", which for a corporation, is a "principal executive officer of at least the level of vice-president". Section 815.102. (See Exhs. T, U and V). Robert Pruim was simply fulfilling his responsibility as an officer of the company. Robert Pruim testified that he only became aware of an alleged overheight after he saw "something" from the IEPA. (See Exh. E, pp. 27-28).

Robert Pruim was fulfilling his duties as a corporate officer. All of these acts are acts for which the company is responsible. While the officers of the corporation bear responsibility (along with the owners) for being the individuals obtaining financial assurance for the site, filing permits,

etc., they are acts performed on behalf of the corporation. They do not, either separately or in the aggregate, rise to the level necessary to constitute Respondent's personal involvement or active participation in the acts allegedly resulting in liability. While the Board found CLC liable, if there is any liability, it is CLC's liability alone. They do not constitute personal, direct involvement with pollution control measures, such as dealing with the IEPA, holding himself out as the site operator, personally handling the waste disposal process, running the site operations or supervising the employees. Acts performed on behalf of the corporation are simply not personal involvement or active participation in any alleged acts that might result in liability against him personally. BFI of Illinois, Inc., v. TerMaat, 200 WL 1716330, *1-2, (N.D. Ill. 2000); People v. Agpro, 345 Ill.App.3d 1011, 1028-29, 803 NE 2d 1007, 1019 (2d Dist. 2004). Therefore, summary judgment should be granted on behalf of respondent Robert Pruim for Counts VII, VIII, IX and X of the 2004 case.

C. Summary Judgment should be granted in favor of Respondent on all counts related to the company's alleged failure to perform certain administrative tasks

The final category of alleged violations for which Complainant seeks to impose liability on respondent Robert Pruim relate to the alleged failure to perform certain administrative tasks on behalf of the corporation. Specifically, these counts address the alleged failure to provide financial assurance (Counts IV and XVII); the alleged failure to timely file a required sig mod application (Count V); and the alleged failure to provide a revised cost estimate (Count XIX). (See Exh. B).

On October 3, 2002, CLC's motion for summary judgment in the 1997 case was denied as to Counts IV, V and XXI (Count XIX in the 2004 case) and a hearing on penalty on those counts was ordered by the Board. (See Exh. C). In the same order, the court granted in part and denied in part Count XIX in the 1997 case (Count XVII in the 2004 case) and found CLC liable for failing to increase its financial assurance from \$1,342,500 to \$1,431,360 and ordered a hearing on penalty. It

ordered a hearing on CLC's liability as to when the gas system began operation. (See Exh. C).

All of these acts are acts for which the company is responsible. While the officers of the corporation bear responsibility (along with the owners) for being the individuals obtaining financial assurance for the site, filing permits, etc., they are acts performed on behalf of the corporation. They do not constitute respondent's personal involvement or active participation in the acts allegedly resulting in liability. If there is any liability, it is CLC's liability alone. They do not constitute personal, direct involvement with pollution control measures, such as dealing with the IEPA, holding himself out as the site operator, personally handling the waste disposal process, running the site operations or supervising the employees, all of which are acts that the courts and the Board have held constitute personal involvement or active participation in acts that might result in liability. BFI of Illinois, Inc., v. TerMaat, 200 WL 1716330, *1-2, (N.D. Ill. 2000); People v. Aggro, 345 Ill.App.3d 1011, 1028-29, 803 NE 2d 1007, 1019 (2d Dist. 2004). Therefore, summary judgment should be granted on behalf of respondent Robert Pruium for Counts IV, V, XVII and XIX of the 2004 case.

VI. SUMMARY JUDGMENT SHOULD BE GRANTED IN FAVOR OF RESPONDENT ROBERT PRUIUM BECAUSE THE SEVEN-YEAR DELAY IN BRINGING THIS COMPLAINT HAS RESULTED IN UNDUE PREJUDICE TO RESPONDENT.

In its answer filed on January 4, 2005, respondent pled as an affirmative defense that complainant's filing of the 2004 complaint was untimely and prejudicial. The Board already denied complainant's motion for leave to file a third amended complaint and should now follow the same reasoning it applied at that time and find that the 2004 complaint is untimely and prejudicial. (See Exh. A). As previously set forth in Section II above, the allegations underlying this complaint have been the subject of ongoing litigation since 1997. There is not one single specific allegation against Robert Pruium that was not known to the complainant on May 1, 1997 when it filed its original

complaint containing Counts I-VI, nor when it filed its amended complaint on April 3, 1998 adding Counts VII-X.

There are only two (2) specific allegations against Robert Pruim in the 2004 case. The first is contained in Count VII and relates to the landfill capacity certification Edward Pruim signed on January 15, 1995 stating there was no remaining capacity in Parcel B as of January 1, 1995. (See Exh. U). The complaint relates that certificate to the one signed by Robert Pruim on January 15, 1996 reporting that the landfill had received over 540,000 cubic yards for deposit in Parcel B between January 1, 1995 and December 31, 1995. (See Exh. V). The obvious fact is that these documents had been in the possession of the Agency long before the original complaint was filed against CLC in 1997, much less all of the amended pleadings were filed between 1997 and 1999, and finally, a complaint against respondent individually in 2004.

Second, in Count IV, complainant alleges that Robert Pruim should have personal liability for failing to increase financial assurance after the Agency approved its cost estimate on April 20, 1993. (See Exh. B). The Agency's knowledge of this alleged failure goes back even further than the previous example, more than ten (10) years from the time the document was filed until the complaint in the 2004 case was filed against him personally. Such delay should not be condoned by the Board under any circumstances but certainly not in this situation where no fewer than three complaints were filed against the company only as the respondent.

Additionally, Count I of the 2004 case contains general allegations against respondent Robert Pruim which were known to the Agency at the time the Complaint was filed on May 1, 1997. (See Exh. B). These allegations include that Robert Pruim served as officer and director of CLC; signed and submitted permit applications and reports; arranged for surety bonds and letters of credit; and ensured CLC's compliance with pertinent environmental laws and regulations. (See Exh.B). While

respondent denies that these corporate officer functions constitute personal involvement or active participation in any acts that might result in liability, it goes without saying that any information supporting these allegations was known to Complainant long ago since the documents were in the Agency's own files.

While complainant's attempt at a third amended complaint adding respondents individually failed in 2004, it followed the Board's own direction and filed the 2004 complaint seven (7) years after the original complaint was filed. (See Exh. A). However, the proper time to have filed a complaint against the respondent individually would have been in 1997 or at least in 1999, not in 2004. Its delay and failure to timely file a complaint against respondent individually has meant that respondents have been forced to re-litigate issues that have been before the Board for nearly nine (9) years. Summary judgment should be granted on all counts against respondent on this basis alone.

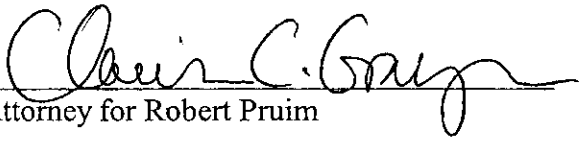
VII. CONCLUSION

WHEREFORE, based on the foregoing, Respondent ROBERT PRUIM respectfully requests that the Illinois Pollution Control Board grant its Motion for Summary Judgment in its entirety on all counts in the 2004 case against him individually, and find that:

- (1) Robert Pruim was not involved in the day-to-day operation of the landfill;
- (2) Robert Pruim's acts as a corporate officer do not constitute personal involvement or active participation in the acts that might result in liability; and
- (3) the delay by the complainant in bringing this complaint against respondent personally has resulted in undue prejudice.

Respectfully submitted,

LaROSE & BOSCO, LTD.


Attorney for Robert Pruim

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

EDWARD PRUIM and ROBERT PRUIM,)

Respondents.)

PCB No. 04-207
(Enforcement – Land)

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

COMMUNITY LANDFILL COMPANY,)
INC.,)

Respondent.)

PCB No. 97-193
(Enforcement – Land)
(consolidated)

RESPONDENT ROBERT PRUIM'S MOTION FOR SUMMARY JUDGMENT

Respondent, Robert Pruim, by and through his attorneys, LaRose & Bosco, Ltd., and pursuant to 35 Ill.Adm. Code 101.516 hereby moves for Summary Judgment as to all counts of the complainant's claims and respondent's affirmative defense in PCB No. 04-207 (Enforcement) (consolidated with PCB No. 97-193 (Enforcement)) and in support thereof, states as follows:

1. The allegations in PCB No. 04-207 against Robert Pruim personally are identical to those in the Second Amended Complaint in PCB No. 97-193 against Community Landfill Company, Inc., and have been the subject of more than eight (8) years of intense litigation. Only now, after numerous opportunities, complainant seeks liability against the principals of the company individually.
2. Summary judgment should be granted as to Counts I, II, III, VI, XII, XIII, XIV, XV,

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XVI and XVIII in the 2004 case because complainant has not met its burden of proof that Robert Pruim's involvement with the landfill went beyond his corporate capacity as an officer in the company and that he had any personal involvement or active participation in that might result in liability because he was not involved in the day-to-day operation of the landfill.

3. Summary judgment should be granted as to Counts XVII, XVIII, IX and X in the 2004 case because the acts performed by respondent on behalf of the corporation are simply not personal involvement or active participation in the any alleged acts that might result in liability against him personally.

4. Summary judgment should be granted as to Counts IV, V, XVII and XIX in the 2004 case because any liability for the alleged failure to perform certain administrative tasks is the liability of the company alone and not respondent's personal liability.

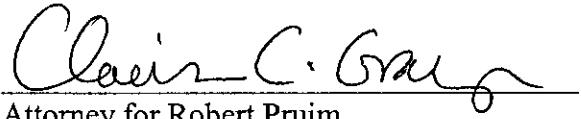
5. Summary judgment should be granted as to all counts because complainant's delay in bringing this complaint has resulted in undue prejudice to respondent.

6. Respondent Robert Pruim has contemporaneously filed a Memorandum in Support of his Motion for Summary Judgment and supporting documentation (Joint Exhibits A-W) that entitles respondent to summary judgment as a matter of law.

WHEREFORE, based on the foregoing, particularly set forth in respondent's Memorandum in Support of his Motion for Summary Judgment, respondent Robert Pruim respectfully requests that the Illinois Pollution Control Board enter judgment in his favor and against the complainant on all claims in their entirety and any other relief that this court deems appropriate.

Respectfully submitted,

LAROSE & BOSCO, LTD.

A handwritten signature in cursive script, reading "Clarissa C. Grayson", written over a horizontal line.

Attorney for Robert Pruiem

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Clarissa C. Grayson
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CERTIFICATE OF SERVICE

I, Clarissa C. Grayson, an attorney, hereby certify that I served copies of the foregoing:


- 1) **RESPONDENT ROBERT PRUIM'S MOTION FOR SUMMARY JUDGMENT;**
- 2) **RESPONDENT ROBERT PRUIM'S MEMORANDUM IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT; and**
- 3) **JOINT EXHIBITS A-W TO RESPONDENTS EDWARD PRUIM AND ROBERT PRUIM'S MEMORANDA IN SUPPORT OF THEIR MOTIONS FOR SUMMARY JUDGMENT**

by placing the same in envelopes and hand-delivering this 13th day of **January 2006**, addressed as follows:

Christopher Grant
Environmental Bureau
Assistant Attorney General
188 West Randolph Street
20th Floor
Chicago, Illinois 60601

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, Illinois 60601

Dorothy M. Gunn
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, Illinois 60601



One of the Attorneys for Robert Pruum

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