

ILLINOIS POLLUTION CONTROL BOARD  
April 20, 2006

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB 97-193  
) (Enforcement - Land)  
COMMUNITY LANDFILL COMPANY, ) (consolidated)  
INC., )  
)  
Respondent. )  
\_\_\_\_\_ )

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB 04-207  
) (Enforcement – Land)  
EDWARD PRUIM and ROBERT PRUIM, )  
)  
Respondents. )

ORDER OF THE BOARD (by G.T. Girard):

On January 13, 2006, respondents Robert Pruum and Edward Pruum (jointly the Pruims), each filed a motion for summary judgment and a memorandum in support (RP Memo and EP Memo, respectively). The complainant responded on February 6, 2006 (Resp.), and included a motion seeking voluntary dismissal of certain counts. On February 24, 2006, the Pruims filed a motion for leave to file a reply and a reply. The Board grants the motion to file a reply.

Upon reviewing the extensive record before the Board, the Board finds that summary judgment is not appropriate as there are genuine issues of material fact which can only be resolved at hearing. Therefore, the Board denies the motion for summary judgment and directs the hearing officer to proceed to hearing expeditiously.

**BACKGROUND**

On May 21, 2004, complainant filed a nineteen-count complaint against the Pruims alleging numerous violations of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2004)) and the Board's regulations. The Board docketed that case as PCB 04-207. Robert Pruum is the President of Community Landfill Company (CLC) (RP Memo at 8) and Edward Pruum is the Secretary (EP Memo at 8). The allegations in the complaint revolve around the

Pruims' management, operation, and ownership of CLC and the Morris Community Landfill in Morris, Grundy County. Comp. at 1. CLC is the respondent in the consolidated case before the Board, People v. Community Landfill Company, Inc., PCB 97-193.

On September 10, 2004, the Pruims filed a motion to dismiss the complaint in PCB 04-207 along with a memorandum in support of the motion. The complainant filed a response on October 4, 2004, and the Pruims filed a reply on October 18, 2004. In a November 4, 2004 order, the Board denied the motion to dismiss and accepted the complaint for hearing. On February 17, 2005, the Board granted a motion to consolidate PCB 04-207 and PCB 97-193.

Prior to filing the complaint in PCB 04-207, on December 5, 2003, complainant filed a motion for leave to file a third amended complaint in PCB 97-193. On January 30, 2004, CLC filed a response in opposition to the third amended complaint. On March 18, 2004, the Board denied the motion for leave to file a third amended complaint in PCB 97-193. The Board stated: "the Board finds that the third amended complaint would prejudice the other parties, is not timely, and that complainant previously had the opportunity to amend the complaint." Community Landfill Company, PCB 97-193, slip. op. at 5 (Mar. 18, 2004).

The complainant and CLC have been involved in extensive litigation in PCB 97-193. The following is a brief history of that case, taken from the Board's March 18, 2004 order:

CLC operates a permitted landfill located at 1501 Ashley Road in Morris, Grundy County. The approximate 119-acre site consists of two parcels, Parcel A and Parcel B. On May 1, 1997, complainant filed an initial six-count complaint alleging that CLC violated various sections of the Illinois Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2002)) and the Board's landfill regulations (35 Ill. Adm. Code 807). Specifically the complaint included allegations that the CLC allowed uncovered refuse, leachate seeps, and landscape waste at the landfill. On April 3, 1998, complainant filed an amended complaint adding Counts VII through X. These counts relate to the depositing of excess waste in Parcel B at elevations above the permitted height. On November 24, 1999, a second amended complaint was filed by complainant adding Counts XI through XXII. These additional counts include further allegations that the improper handling of asbestos and improper disposal of waste tires violated the Act and Board's regulations. Counts XI through XXII also include allegations that several permit provisions were violated.

On July 31, 2000, complainant filed a partial motion for summary judgment (concerning Counts V and XII) and on October 30, 2000, CLC filed a cross-motion for summary judgment. On April 5, 2001, the Board entered an order granting complainant's motion for summary judgment on Count V, but denying both motions for summary judgment on Count XII and directing the parties to hearing on Count XII and the issue of penalties for Count V. People v. Community Landfill Company, Inc., PCB 97-193 (Apr. 5, 2001). On July 26, 2001, the Board granted a motion to reconsider the April 5, 2001 order. In the order of July 26, 2001, the Board denied complainant's motion for summary

judgment on Count XII and thus granted CLC's motion. *See People v. Community Landfill Company, Inc.*, PCB 97-193 (July 26, 2001) and *People v. Community Landfill Company, Inc.*, PCB 97-193 (Aug. 23, 2001).

On October 15, 2001, complainant filed another partial motion for summary judgment. On October 24, 2001, the hearing officer allowed CLC 90 days to conduct discovery and an additional 30 days to file a response to the motion for summary judgment. On March 1, 2002, CLC filed a cross-motion for partial summary judgment. On October 3, 2002, the Board granted the complainant's motion for summary judgment on Counts III, IV, VII, VIII, IX, X, XIII, XIV, XVI, XXI, and in part on Count XIX. *People v. Community Landfill Company, Inc.*, PCB 97-193 (Oct. 3, 2002). The Board also granted CLC's motion for summary judgment on Counts XI, XVIII, and XXII and dismissed Counts XI, XVIII, and XXII. *People v. Community Landfill Company, Inc.*, PCB 97-193 (Oct. 3, 2002). The Board further found that genuine issues of material fact existed on Counts I, II, VI, XV, XVII, and XX; and therefore, denied both motions for summary judgment on those counts. *People v. Community Landfill Company, Inc.*, PCB 97-193 (Oct. 3, 2002).

### **STANDARD OF REVIEW FOR MOTIONS FOR SUMMARY JUDGMENT**

Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998). 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." *Id.* Summary judgment "is a drastic means of disposing of litigation," and therefore it should be granted only when the movant's right to the relief "is clear and free from doubt." *Id.*, citing *Purtill v. Hess*, 111 Ill. 2d 299, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on its pleadings, but 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).

### **PRUIM'S MOTIONS FOR SUMMARY JUDGMENT**

The Pruims filed virtually identical motions for summary judgment and corresponding memorandums in support. Therefore citations will be to only one of the memorandums. The Pruims put forth two main arguments for summary judgment. The first is that the Pruims were acting only in their capacity as corporate officers and cannot be held personally liable for the acts of the corporation. The second is that the complaint is untimely and prejudicial. The arguments will be summarized in turn.

#### **Pruims' Personal Liability**

The Pruims assert that the law immunizes corporate officers from corporate liabilities and debts and more than a corporate title is required in order for an officer to be held liable for a

corporation's violations of environmental laws. EP Memo at 5-6, citing Safeway Insurance v. Daddono, 344 Ill. App. 3d 215, 219, 777 N.E.2d 693, 696, 267 Ill. Dec. 890, 893; People v. Tang 346 Ill. App. 3d 277, 284, 805 N.E.2d 243, 250, 281 Ill. Dec. 875, 882. The Pruims argue that in order for personal liability to attach to them, the complainant must prove that the Pruims had personal involvement or active participation in the management of the corporation. EP Memo at 6, citing Tang, 805 N.E.2d at 253-54.

The Pruims point out that the Board has found that active participation and personal involvement with the day-to-day operations of a facility are prerequisites to establishing personal liability. EP Memo at 7. The Pruims rely on People v. Skokie Valley Asphalt, et al., PCB 96-98 (Sept. 2, 2004) to support this contention. The Pruims state that in Skokie Valley the Board found corporate officers personally liable for violations where the corporate officers corresponded and met with environmental governmental officials, and were present for environmental investigations and inspections. EP Memo at 7. The Pruims also point to People v. Draw Drape, et al., PCB 03-51 (Aug. 19, 2004) to support their argument. In that case, the Pruims assert the Board "emphasized the extent of the corporate officer's control over the companies in finding liability against the vice-president." EP Memo at 7, citing Draw Drape.

The Pruims maintain that the Board's decisions are consistent with both federal and state court decisions. EP Memo at 7. The Pruims note that the Illinois Appellate Court found the Seventh Circuit court's reasoning in Browning-Ferris Industries of Illinois v. TerMaat, 195 F.3d 953 (7th Cir. 1999) instructive when deciding People v. Agpro, 345 Ill. App. 3d 1011, 803 N.E.2d 1007, 281 Ill. Dec. 386 (2nd Dist. 2004). *Id.* In Agpro, the court affirmed the liability of the company president for violations committed by the company and emphasized that the evidence demonstrated that the president "personally ran the operations at the site, directly supervised the employees, and personally applied fertilizer and pesticides to the farm field by operating a floater." Agpro 803 N.E.2d at 1019; EP Memo at 7.

The Pruims argue that the facts in this proceeding establish that neither Edward Pruim nor Robert Pruim were involved with the day-to-day operations of the landfill. EP Memo at 9. Neither of the Pruims has ever been present at the site when an Agency inspection occurred. *Id.* Rather, the Pruims assert, their responsibilities include typical corporate functions, such as paying bills, securing customers, and managing collections. *Id.*

In contrast, the Pruims maintain that Jim Pelnarsh was responsible for the daily operation of the landfill and between 1994 and 1999, made the decision of where to put waste in both Parcel A and B. EP Memo at 9. Mr. Pelnarsh dealt with the environmental engineer and other employees, holds the prior conduct certification, and sets tipping fees. *Id.* Mr. Pelnarsh met with the Agency inspectors and was at the site for all the inspections. *Id.* The Pruims assert that all of these facts establish that Mr. Pelnarsh and not the Pruims was responsible for the day-to-day operations at the landfill. EP Memo at 10.

The Pruims assert that summary judgment should be granted on all counts because the complainant has failed to establish that the Pruims had personal involvement or actively participated in the day-to-day operations of the landfill. EP Memo at 10. Further, the activities taken by the Pruims are consistent with corporate responsibilities required as officers in the

corporation and the acts, which allegedly resulted in the violations, are acts for which the company is responsible. EP Memo at 17, 19.

### **Untimely and Prejudicial Complaint**

The Pruims state:

In its answer filed on January 4, 2005, respondent pled an affirmative defense that complaint'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. EP Memo at 19; RP Memo at 19.

The Pruims argue that the allegations in the complaint were known to complainant when the complaint was filed in PCB 97-193. EP Memo at 19. Further the specific allegations against each of the Pruims are based on documents since the complaint in PCB 97-193 was filed. *Id.* The Pruims argue that the proper time to file a complaint against the Pruims individually was in 1997 or maybe 1999, but not in 2004 and the complaint should be dismissed. EP Memo at 21.

### **RESPONSE**

The complainant seeks voluntary dismissal of certain counts and responds in opposition to the motion for summary judgment. The following paragraphs will first address the voluntary dismissal and then the response to the motion for summary judgment.

#### **Dismissal**

The complainant seeks to dismiss certain counts because continued prosecution of the counts is not necessary to obtain the relief complainant is seeking. Resp. at 2. Specifically, complainant asks that counts XIII, XIV, XV, XVI, and XVIII as alleged in the complaint filed in PCB 04-207 be dismissed in favor of the Pruims only. *Id.*

#### **Summary Judgment**

The complainant responds to both primary issues raised by the Pruims in there motion. The Board will address each below.

#### **Personal Liability**

Complainant asserts that any arguments concerning the personal liability of the Pruims should be raised in post-hearing briefs. Resp. at 5. Complainant maintains that the exhibits and testimony provide sufficient proof to hold Pruims liable for the alleged violations under the applicable law. Resp. at 6. According to complainant, CLC is a small, closely-held company with only two shareholders, the Pruims. *Id.* CLC never had more than four employees during the period covered by the complaint and only the Pruims could sign checks. *Id.*

The complainant asserts that Mr. Pelnarsh “reported to the ‘main office’” which was not at the landfill. Resp. at 8. Mr. Pelnarsh opened and closed the gates to the landfill, and if he needed an immediate decision, he contacted one of the Pruims. *Id.* As described by complainant, Mr. Pelnarsh’s testimony indicates that setting fees, pricing and billing was done from the main office. *Id.* Also, complainant indicates that Mr. Pelnarsh’s testimony demonstrates that he did not have the authority to sign checks and financial assurance was the responsibility of the main office. *Id.*

The complainant argues that as sole officers, shareholders, and directors of CLC only the Pruims had the authority to cause the company to take the actions necessary to avoid many of the alleged violations. Resp. at 9. Further, the complainant maintains only the Pruims could commit the funds which might be necessary. Resp. at 10. Also, only the Pruims benefited from the continuing operation of the landfill in violation of the Act, according to the complainant. *Id.*

The complainant also argues that the signature of the Pruims on documents concerning the alleged overheight demonstrates that the violations were knowing and willful. Resp. at 11. Complainant asserts that as sole owners and officers of the company, the Pruims had a legal obligation to cease operations when they knew the landfill had reached capacity. Resp. at 12.

The complainant argues that there is “more than enough” evidence to allow the Board to find personal involvement by the Pruims. Resp. at 16. The complainant asserts that any significant decisions were made by the Pruims, including the decision to continue operation of the landfill in violation of the Act. *Id.* Complainant therefore asks that summary judgment be denied. Resp. at 17.

### **Untimely and Prejudicial Complaint**

The complainant argues that no evidence of prejudice has been offered and no authority has been cited to support the Pruims’ assertion that the complaint is untimely and prejudicial. Resp. at 15. Complainant asserts that inclusion of the Pruims is necessary to avoid prejudice to complainant because many of the violations at the landfill remain unaddressed and the profits and losses of CLC flow directly to the Pruims. *Id.*

## **DISCUSSION**

The Board will first address the issue of dismissal of certain counts. Next the Board will discuss arguments concerning personal liability of the Pruims. Finally, the Board will discuss the issue as to whether or not the complaint is untimely and prejudicial.

### **Dismissal**

The Board grants the complainant’s motion to dismiss certain counts of the complaint in PCB 04-207. Specifically, the Board will dismiss counts XIII, XIV, XV, XVI, and XVIII of the complaint in PCB 04-207. As the complaint in PCB 04-207 alleges violation against only the Pruims, the dismissal of these counts is only as to the Pruims.

### **Personal Liability**

It is well settled that summary judgment is a drastic means of disposing of litigation and should be only granted where the movant's right to judgment is clear and free from doubt. Fiumetto v. Garrett Enterprises, Inc., 321 Ill. App. 3d 946, 749 N.E.2d 992, 1004, 255 Ill. Dec. 510, 522 (2nd Dist. 2001). In considering a motion for summary judgment, the record must be construed liberally in favor of the opposing party and strictly against the movant. *Id.* Thus, the Board must determine that: (1) the Pruims have demonstrated that no issue of material fact exists; and (2) the record, construed strictly against the Pruims, supports a finding that as a matter of law, the Pruims are entitled to judgment. Based on the record the Board cannot do so.

The Board does find the legal arguments presented by the Pruims compelling and agrees that complainant must demonstrate that the Pruims actively participated in the operations of the landfill in order to establish personal liability. However, the Pruims have failed to prove that no issue of material fact remains. Specifically, the deposition testimony provided to the Board calls into question whether or not the Pruims actively participated in the operations of the landfill. For example, while the Pruims assert and testify that Mr. Pelnarsh was charged with operating the facility, Mr. Pelnarsh's deposition included with the response indicates that he referred to the main office for aspects of the operation. Based on the evidence before the Board and construing the facts strictly against the Pruims, the Board cannot find that the Pruims did not actively participate in the day-to-day operations of the facility. Therefore, summary judgment is denied. The Pruims are free to raise this issue again in any post-hearing briefs.

### **Untimely and Prejudicial Complaint**

The Pruims have raised the same arguments on this issue as were raised in a motion to dismiss, which the Board denied. *See People v. Edward Pruum and Robert Pruum*, PCB 04-207 (Nov. 4, 2004). The Board stated: "the Board has consistently found that there is no statute of limitation under the Act and a defense of *laches* does not warrant dismissal." *Id.* The Board is equally unconvinced that the facts support summary judgment on this issue. The Pruims have alleged as an affirmative defense that the complaint is untimely and prejudicial; however the facts have not changed since the Board ruled on the motion to dismiss. Further, the Pruims have cited no authority, which convinces that Board that summary judgment should be entered on this issue. Therefore the motion for summary judgment is denied. The Pruims are free to raise this issue in any post-hearing briefs as an affirmative defense.

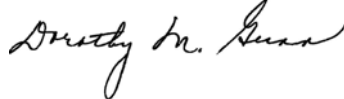
### **CONCLUSION**

The Board finds that there are genuine issues of material fact and therefore summary judgment is not appropriate. Thus, the Board denies each of the Pruims' motions for summary judgment. The Board grants complainant's motion to dismiss certain counts of the complaint and counts XIII, XIV, XV, XVI, and XVIII as alleged in the complaint filed in PCB 04-207 are dismissed.

The parties are directed to proceed to hearing in this matter expeditiously. In PCB 97-193, the Board has already ruled on two motions for summary judgment and narrowed the issues for hearing. Now in PCB 04-207, the Board has ruled on a motion to dismiss and a motion for summary judgment. Therefore, the Board expects that hearing will be scheduled and completed within the next six months.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order April 20, 2006, by a vote of 4-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board