

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **RECEIVED**
CLERK'S OFFICE

MAY 30 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)

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 MAY 30, 2006, the undersigned filed an original and nine copies of **RESPONDENT ROBERT PRUIM'S AND EDWARD PRUIM'S MOTION FOR RECONSIDERATION OF THE ILLINOIS POLLUTION CONTROL BOARD'S ORDER DATED APRIL 20, 2006** 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 Respondents

Mark A. LaRose
Clarissa C. Grayson
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**RESPONDENTS EDWARD PRUIM'S and ROBERT PRUIM'S
MOTION FOR RECONSIDERATION OF THE ILLINOIS POLLUTION CONTROL
BOARD'S ORDER DATED APRIL 20, 2006**

Respondents EDWARD PRUIM and ROBERT PRUIM (jointly "the Pruims"), by and through their attorneys, LaRose & Bosco, Ltd., and pursuant to 35 Ill. Adm. Code 101.520(b), hereby move the Illinois Pollution Control Board ("the Board") for reconsideration of its Order dated April 20, 2006, and in support thereof, state as follows:

1. This motion is timely filed pursuant to 35 Ill. Adm. Code 101.520(a), which allows a motion for reconsideration to be filed within 35 days after receipt of the Order, which the Respondents received on April 25, 2006.¹

¹ The Respondents raise only limited issues in this motion for reconsideration, but contest all of the adverse rulings made by the Board in its April 20, 2006 Order. The Respondents do not waive and expressly reserve the right to file an appeal in the Appellate Court of all of the matters adverse to the Respondents contained in the Board's April 20, 2006 Order.

6. For summary judgment purposes, the nonmoving party must present bona fide evidence that a question of a material fact exists, and it cannot hide behind equivocations or general denials or assertions. Koukoulomatis v. Disco Wheels, Inc., 127 Ill.App.3d 95, 101 (1st Dist. 1984). Here, Mr. Pelnarsh's deposition only generally shows that he referred occasionally to the main office or to the Pruims, and only for those issues not regularly handled at the landfill site. This deposition does not present any question of fact as to the Pruims's lack of personal involvement or active participation in the daily operations of the landfill at all. A conclusion that this deposition implies such involvement by the Pruims requires an inferential leap that is insufficient to survive summary judgment.

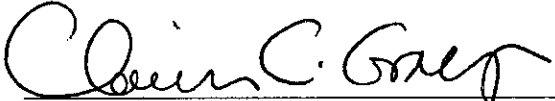
7. The Pruims's affidavits state that they do not have sufficient knowledge as to the truth or falsity of Counts I – III, V – X, and XII – XIX of the Complainant's complaint. These statements are entirely consistent with the Pruims's Motions for Summary Judgment. If the Pruims *did* actively participate in CLC's daily operations, then they would have knowledge of these counts. However, the Pruims's *lack* of knowledge as to these counts shows their *lack* of personal involvement or active participation in the very matters alleged. These affidavits do not present any questions of fact as to the Pruims's lack of personal or active involvement in CLC's daily operations.

8. When a movant for summary judgment supplies facts that are not contradicted, the opposing party cannot rely solely on the pleadings to raise issues of material fact. Kelman v. Univ. of Chicago, 166 Ill.App.3d 137, 141 (2nd Dist. 1988); Golden v. Marshall Field & Co., 134 Ill.App.3d 100, 101-02 (1st Dist. 1985). If the nonmovant does not present counter-affidavits or other evidence to contradict the facts in the movant's affidavit, then courts will take the affidavit supporting summary judgment as true, notwithstanding any contrary averments in

11. Finally, the managerial duties alleged in Counts IV, V, XVII, and XIX present no questions of fact as to the Pruims's personal involvement or active participation in CLC's day-to-day operations. The Pruims's duties to make financial assurance and permit decisions invoke their roles as corporate officers; they do not involve participation in the daily operations of the landfill. Further, the Pruims's affidavits show that they lack knowledge of these very counts, which shows a lack of personal involvement or active participation in those alleged violations. The Complainant improperly relies solely on the allegations of their pleadings to contradict this fact, and presents no other evidence to the contrary. Therefore, no question of fact exists as to the absence of the Pruims's personal liability in the allegations of Counts IV, V, XVII, and XIX.

WHEREFORE, the Respondents EDWARD PRUIM and ROBERT PRUIM respectfully request that the Illinois Pollution Control Board reconsider its denial of summary judgment against the Respondents, by finding that no genuine issue of material fact exists as to the Respondents' lack of personal liability.

Respectfully submitted,



Attorney for Edward Prum & Robert Prum

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CERTIFICATE OF SERVICE

I, Clarissa C. Grayson, an attorney, hereby certify that I served copies of the foregoing **RESPONDENT ROBERT PRUIM'S AND EDWARD PRUIM'S MOTION FOR RECONSIDERATION OF THE ILLINOIS POLLUTION CONTROL BOARD'S ORDER DATED APRIL 20, 2006** by placing the same in first-class, postage, prepaid envelopes and depositing same in the U.S. Mail Box located at 200 North LaSalle Street, Chicago, Illinois, this 30th day of **May 2006**, addressed as follows:

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

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