

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

vs.

COMMUNITY LANDFILL COMPANY, INC.,
an Illinois corporation, and
the CITY OF MORRIS, an Illinois
municipal corporation,

Respondents.

PCB No. 03-191
(Enforcement-Land)

to: Mr. Mark La Rose
La Rose & Bosco
200 N. La Salle Street, #2810
Chicago, Illinois 60601
(312)642-0434

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph, #2001
Chicago, IL 60601

Mr. Charles Helsten
Hinshaw & Culbertson
100 Park Avenue
Rockford IL 61105-1389
(815)963-9989

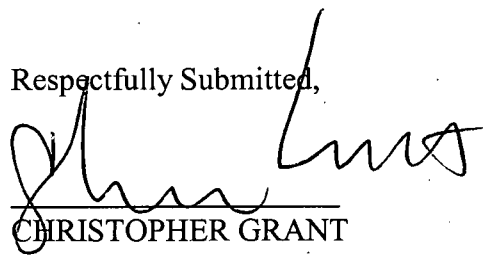
Mr. Scott Belt
105 East Main Street
Suite 206
Morris, Illinois 60450

NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, October 5, 2006, filed with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing, Complainant's Interlocutory Appeal of Hearing Officer Order, a copy of which is attached and herewith served upon you.

Respectfully Submitted,

BY:


CHRISTOPHER GRANT
Assistant Attorneys General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-5388

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PCB No. 03-191

(Enforcement-Land)

**COMPLAINANT'S MOTION FOR INTERLOCUTORY
APPEAL OF THE HEARING OFFICER ORDER GRANTING
COMMUNITY LANDFILL COMPANY'S MOTION TO CANCEL HEARING**

Now comes Complainant, PEOPLE OF THE STATE OF ILLINOIS, pursuant to 35 Ill. Adm. Code 101.518, and moves the Board for an Interlocutory Appeal from the October 3, 2006 Hearing Officer Order, granting Respondent Community Landfill Company, Inc.'s Motion to Cancel Hearing. In support thereof, Complainant states as follows:

1. On September 22, 2006, Respondent Community Landfill Company, Inc. ("CLC") filed Motions to Cancel Hearing in this matter. Complainant responded on September 27, 2006, and Respondent City of Morris responded on September 28, 2006. On October 3, 2006, Hearing Officer Bradley P. Halloran granted CLC's Motion, and cancelled the October 24-27, 2006 hearing date. CLC's Motion to Cancel Hearing is attached hereto as Exhibit A. The October 3, 2006 Hearing Officer Order is attached hereto as Exhibit B.

2. The basis of CLC's Motion in this case was the illness of Mr. Edward Pruim. Edward Pruim is co-owner of Respondent CLC, and acts as secretary/treasurer of the corporation. However, he is not an individual Respondent in Case No. PCB-03-191.

3. Complainant incorporates its Response to Motion to Cancel herein, a copy of which is attached as Exhibit C.

I. CLC's Motion is Legally Insufficient

4. Section 101.510 of the Board Procedural Rules, 35 Ill. Adm. Code 101.510, provides, in pertinent part, as follows:

101.510 Motion To Cancel Hearing

* * *

b) Contents. All Motions to cancel a hearing must set forth a proposed date to reschedule the hearing...

* * *

5. CLC's Motion does not contain a date to reschedule to hearing. Rather, the Motion suggests that Mr. Pruim's health be evaluated in March, 2007. As support, CLC attached two virtually identical physician letters.

6. Failure to identify a date for scheduling hearing renders CLC's Motion insufficient. Further, it prejudices Complainant, who has already obtained a finding of liability against the Respondents. Because the Board has deferred decision on all relief, including compelling the Respondents to comply with the Act and regulations by providing compliant financial assurance, an open-ended delay allows continued violations, with no definite date for resolution.

II. Edward Pruim is not a Necessary Party to this Action.

7. As noted, Edward Pruim is not a party to this case. Although CLC claims that his "...participation in preparation, attendance and testimony is necessary for the defense in this case" (CLC Motion, p. 3), he was not previously identified as a witness, was not named as a person who arranged for financial assurance, and was not otherwise identified as a person with

knowledge of the subject matter of the case. At oral argument on September 28, 2006, CLC counsel represented that CLC would have supplemented interrogatory responses and named him. The Board should consider whether such a position is supportable, given the fact that no mention of his testimony had been made, although hearing was less than one month away. At best this representation indicates a complete disregard for the rules of discovery. Moreover, there is no suggestion that Robert Pruim, who was named in interrogatory responses and provided verification for the interrogatories, is unavailable, or unable to sufficiently represent the corporation.

8. Likewise, the City of Morris' claims that it required Edward Pruim's testimony should be discounted. The City of Morris neither named Edward Pruim as a potential witness, nor sought to depose Mr. Pruim at any time during the four years this case has been pending.

9. The City of Morris once again attempts to avoid the central issue in this case-the Respondents' failure to provide financial assurance. In its Response to CLC's Motion, (Attached without attachments as Exhibit D), the City states that 'the site is essentially closed', and that the 'purpose of financial assurance provisions in the Act have been squarely met'. The City's claims of 'substitute performance' in place of financial assurance have been considered and rejected by the Board on several occasions. Even if the City had begun closure activities (which the State disputes), financial assurance for closure would be required until closure was certified by Illinois EPA. Further, more than \$10,000,000 of financial assurance is required to secure post-closure activities. And yet no compliant financial assurance is in place, despite the Board's February 16, 2006 finding of violation.

10. The State believes that the facts show that Mr. Edward Pruim's participation is not necessary for a full and complete hearing on the remaining issues in this case. Using his

absence as an excuse to delay hearing would allow the Respondents to continue violating the Act for the foreseeable future.

11. Along with this Appeal, Complainant has filed its Motion for Interim Relief. In the event that the Board affirms the Hearing Officers's Order striking the October 24, 2006 Hearing Date, Complainant request that the Board grant it the interim relief requested.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board:

1. Accept this Interlocutory Appeal for consideration;
2. Reverse the October 3, 2006 Hearing Officer ruling in this case;
3. Establish October 24 through 27, 2006 as the date for hearing on all remaining issues; and,
4. Order such other relief as the Board deems appropriate and just.

RESPECTFULLY SUBMITTED,

BY: 

Christopher Grant
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, Illinois 60601
(312) 814-5388

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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vs.) PCB No. 03-191
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COMMUNITY LANDFILL COMPANY,)
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the CITY OF MORRIS, an Illinois)
municipal corporation,)
)
Respondents.)

NOTICE OF FILING

TO: Christopher Grant	Bradley Halloran
Environmental Bureau	Hearing Officer
Assistant Attorney General	Illinois Pollution Control Board
188 West Randolph Street	100 West Randolph
20th Floor	Suite 11
Chicago, Illinois 60601	Chicago, Illinois 60601
Charles F. Helsten	Scott Belt
Hinshaw & Culbertson, LLP	Scott Belt and Associates, PC
100 Park Avenue	105 East Main Street
P.O. Box 1389	Suite 206
Rockford, Illinois 61105-1389	Morris, Illinois 60450

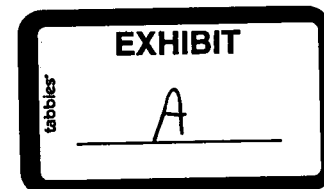
PLEASE TAKE NOTICE that on **SEPTEMBER 22, 2006**, the undersigned caused to be electronically filed with Ms. Dorothy Gunn, Clerk of the Illinois Pollution Control Board, 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60601, the **RESPONDENT COMMUNITY LANDFILL COMPANY, INC.'s MOTION TO CANCEL HEARING**, a copy of which is attached and hereby served upon you.



One of the Attorneys for Community Landfill Co.

Mark A. LaRose
Clarissa C. Grayson
LAROSE & BOSCO, LTD.
Attorney No. 37346
200 North LaSalle Street, Suite 2810
Chicago, Illinois 60610
(312) 642-4414

THIS FILING IS SUBMITTED ON RECYCLED PAPER.



CERTIFICATE OF SERVICE

I, Clarissa C. Grayson, an attorney hereby certify that I caused to be served a copy of the foregoing **RESPONDENT COMMUNITY LANDFILL COMPANY, INC.s' MOTION TO CANCEL HEARING** by placing 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 **22nd** day of **September 2006**, addressed as follows:

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

Scott Belt
Scott Belt and Associates, PC
105 East Main Street
Suite 206
Morris, Illinois 60450

Charles F. Helsten
Hinshaw & Culbertson, LLP
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61105-1389

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



One of the Attorneys for Community Landfill Co.

Mark A. LaRose
Clarissa C. Grayson
LaRose & Bosco, Ltd.
Attorney No. 37346
200 North LaSalle Street
Suite 2810
Chicago, Illinois 60610
(312) 642-4414

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municipal corporation,)	
)	
Respondents.)	

RESPONDENT COMMUNITY LANDFILL COMPANY, INC.'s
MOTION TO CANCEL HEARING

Respondent COMMUNITY LANDFILL COMPANY, INC., by and through its attorneys LaRose & Bosco, Ltd. and pursuant to 35 Ill.Adm. Code 101.510, hereby moves the Illinois Pollution Control Board to cancel the hearing in this matter scheduled for October 24-27, 2006 and in support thereof, states as follows:

1. This matter is currently scheduled for hearing on October 24-27, 2006 at 9:00 a.m. in the Grundy County Administrative Center Board Room, 1320 Union Street, Morris, Illinois, pursuant to Hearing Officer Bradley Halloran's Notice of Hearing dated September 20, 2006.
2. This motion is timely filed pursuant to 35 Ill.Adm.Code 101.510(a) which requires that this Motion to Cancel Hearing be filed no fewer than ten (10) days before the scheduled hearing date, or October 14, 2006.
3. The factual basis for the Motion to Cancel Hearing is set forth herein, in the Affidavit of Clarissa Cutler Grayson (attached as Exh. A and incorporated herein), and in the letters from Mr.

Pruim's physicians, Dr. Daniel Rowan, his cardiologist (see Dr. Rowan letter dated September 22, 2006, attached to the Affidavit as Exh. 1) and Dr. Timothy Wollner, his family physician (see Dr. Wollner letter dated September 21, 2006, attached to the Affidavit as Exh. 2).

4. Edward Pruim, Secretary/Treasurer of CLC, recently underwent emergency quintuple bypass surgery which was complicated by the presence of an aortic aneurism. (See Exh. A, ¶ 3 and attached Exhs. 1 and 2). Mr. Pruim was hospitalized from August 26-September 9, 2006 at both Palos Community Hospital and Christ Hospital. (See Exh. A, ¶ 3 and attached Exhs. 1 and 2). Mr. Pruim was readmitted to Christ Hospital on September 11, 2006 with a blood clot on his lung, and after receiving treatment for this condition, he was released on September 17, 2006. (See Exh. A, ¶ 3 and attached Exhs. 1 and 2). He is currently recovering at his home and is receiving continued treatment for the blood clot and heart condition. (See Exh. A, ¶ 3 and attached Exhs. 1 and 2).

5. In the professional opinion of his physicians, Mr. Pruim is unable to undergo any stressful work-related activities for at least 5-6 months, including any participation by way of testimony or preparation in the legal proceedings now scheduled before the Illinois Pollution Control Board on October 24-27, 2006. (See Exh. A, ¶ 4 and attached Exhs. 1 and 2). The stress of having to prepare for and testify in this matter could seriously and adversely affect Mr. Pruim's recovery and health. (See Exh. A, ¶ 4 and attached Exhs. 1 and 2). He is physically unable to either prepare for or participate in the hearing scheduled for October 24-27, 2006. (See Exh. A, ¶ 4 and attached Exhs. 1 and 2).

6. In the opinion of Mr. Pruim's physicians, his physical condition should be reviewed in March, 2007 for his ability to participate in this proceeding. (See Exh. A, ¶ 5 and attached Exhs. 1 and 2).

7. The history of this matter's proceedings is set forth in the attached Affidavit of Clarissa Cutler Grayson. (See Exh. A, ¶ 6).

8. No previous cancellation requests have been made in this matter. (See Exh. A, ¶ 7). This is the first cancellation request that has been made. (See Exh. A, ¶ 7).

9. Edward Pruim's participation in preparation, attendance and testimony is necessary for the defense of this case.

10. This motion to cancel the hearing should be granted pursuant to 35 Ill. Adm. Code 101.501(b) as the attached affidavit and Exhibits 1 and 2 to the affidavit demonstrate that the request is not made as the result of the movant's lack of diligence. (See Exh. A and attached Exhibits 1 and 2).

WHEREFORE, Respondent Community Landfill Company, Inc. respectfully requests that Hearing Officer Bradley Halloran grant its Motion to Cancel Hearing pursuant to 35 Ill. Adm. Code 101.501, and set the matter for status in March, 2007.

Respectfully submitted,


Attorney for Community Landfill Company

Mark A. LaRose
Clarissa C. Grayson
LaRose & Bosco, Ltd.
200 N. LaSalle Street, Suite 2810
Chicago, IL 60601
(312) 642-4414

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PEOPLE OF THE STATE OF ILLINOIS,)
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)
Respondents.)

AFFIDAVIT OF CLARISSA CUTLER GRAYSON

I, CLARISSA CUTLER GRAYSON, being duly sworn on oath and affirmation, do hereby
depose and state as follows:

1. I am one of the attorneys for Community Landfill Company, Inc. ("CLC") and am a
partner in the law firm of LaRose & Bosco, Ltd. which represents CLC in the above referenced
matter currently pending in the Illinois Pollution Control Board.

2. The factual basis for the Motion to Cancel Hearing is set forth herein and in the letters
from his physicians, Dr. Daniel Rowan, Mr. Pruim's cardiologist (see Dr. Rowan letter dated
September 22, 2006, attached to this Affidavit as Exh. 1) and Dr. Timothy Wollner, Mr. Pruim's
family physician (see Dr. Wollner letter dated September 21, 2006 attached to this Affidavit as Exh.
2).

3. I have been informed that Edward Pruim, Secretary/Treasurer of CLC, recently
underwent emergency quintuple bypass surgery which was complicated by the presence of an aortic
aneurism. (See attached Exhs. 1 and 2). I have been informed that Mr. Pruim was hospitalized from



August 26-September 9, 2006 at both Palos Community Hospital and Christ Hospital. (See attached Exhs. 1 and 2). I have been informed that Mr. Pruim was readmitted to the hospital on September 11, 2006 with a blood clot on his lung, and after receiving treatment for this condition, he was released on September 17, 2006. (See attached Exhs. 1 and 2). I have been informed that he is currently recovering at his home and is receiving continued treatment for the blood clot and heart condition. (See attached Exhs. 1 and 2).

4. I have been informed that in the professional opinion of his physicians, Mr. Pruim will be unable to undergo any stressful work-related activities for at least 5-6 months and that this would include any participation by way of testimony or preparation in the legal proceedings now scheduled before the Illinois Pollution Control Board on October 24-27, 2006. (See attached Exhs. 1 and 2). I have been informed that the stress of having to prepare for and testify in this matter could seriously and adversely affect Mr. Pruim's recovery and health and that Mr. Pruim is physically unable to either prepare for or participate in the hearing scheduled for October 24-27, 2006. (See attached Exhs. 1 and 2).

5. I have been informed that in the opinion of Mr. Pruim's physicians, his physical condition should be reviewed in March, 2007 for his ability to participate in this proceeding. (See attached Exhs. 1 and 2).

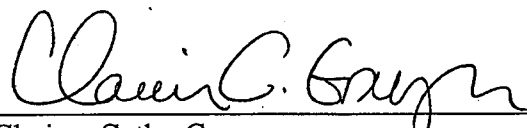
6. The status of this matter's proceedings is as follows. On April 17, 2003, complainant, the People of the State of Illinois, filed a one-count complaint against respondents CLC and the City of Morris alleging failure to provide adequate financial assurance for closure and post-closure operations. On February 16, 2006, the Illinois Pollution Control Board granted summary judgment in favor of the Complainant in its interim opinion and order. On March 31, 2006, both respondents

moved the Board for reconsideration of its interim opinion and order. Both respondents' motions to reconsider were denied by the Board on June 1, 2006. On June 29, 2006, this matter was scheduled for hearing on October 24-27, 2006 by order of Hearing Officer Bradley Halloran.

7. No cancellation requests have been granted in this proceeding. This is the first request for cancellation that has been made.

8. The information contained in this Affidavit is based on my personal knowledge. If called upon to do so, I could competently testify to same.

Further, Affiant sayeth naught.


Clarissa Cutler Grayson

SUBSCRIBED AND SWORN TO
before me this 22 day of
September, 2006


NOTARY PUBLIC





Cardiovascular Consultants, LLP

THOMAS J. QUINN, M.D., F.A.C.C., F.A.C.P.
 JOSEPH W. MULARCZYK, M.D., F.A.C.C.
 DANIEL A. ROWAN, D.O., F.A.C.C., F.A.C.P., F.S.C.A.I.
 EVANS P. PAPPAS, M.D., F.A.C.C.
 CHRISTOPHER J. SULLIVAN, M.D., F.A.C.C.

September 21, 2006

Ms. Clarissa Cutler Grayson
 LaRose & Bosco, Ltd.
 200 N. LaSalle Street, Suite 2810
 Chicago, IL 60602

Re: Edward Pruim

Dear Ms. Grayson:

I am a cardiovascular physician and have practiced medicine for 20 years. Edward Pruim has been my patient for one month, and I am quite familiar with his medical history.

Mr. Pruim recently underwent emergency quintuple bypass surgery, which was complicated by the presence of an aortic aneurysm. Mr. Pruim was hospitalized from August 26 - September 9, 2006 in both Palos Community Hospital and Christ Hospital. I performed an angiogram and examined him numerous times during this hospitalization. Mr. Pruim was readmitted to Christ Hospital on September 11, 2006 with a blood clot on his lung. After receiving treatment for this condition, he was released on September 17, 2006. He is currently recovering at his home and is receiving continued treatment for the blood clot and heart condition. I am continuing to monitor his physical condition.

In my professional opinion, Mr. Pruim will be unable to undergo any stressful work-related activities for at least 5-6 months. This would include any participation by way of testimony or preparation in the legal proceedings now scheduled before the Illinois Pollution Control Board on October 24-27, 2006 and December 11-15, 2006. The stress related to having to prepare for and testify in a legal matter could seriously and adversely affect Mr. Pruim's recovery and health.

As his physician, I advise you that it is my opinion that Mr. Pruim is physically unable to either prepare for or participate in these hearings at this time. It would be my recommendation that his physical condition be reviewed in March, 2007, at which time I would be happy to again render an opinion as to his ability to participate in these legal proceedings.

Thank you. If you have any further questions for me, please do not hesitate to contact me.

Sincerely yours,

Daniel A. Rowan, D.O., FACP, FACC

EXHIBIT

1

09/22/2006 10:25 17084257617

DR. ELSEY DR. WOLLNER

PAGE 01

Timothy S. Wollner, D.O., A.B.F.P.
John C. Elser, M.D., A.B.F.P.
Family Practice
3754 West 95th Street
Evergreen Park, IL 60805

September 21, 2006

Ms. Clarissa Cutler Grayson
LaRose & Bosco, Ltd.
200 North LaSalle Street, Suite 2810
Chicago, IL 60601

Re: Edward Pruim

Dear Ms. Grayson:

I have been Edward Pruim's Family Physician for over ten years. Mr. Pruim recently underwent emergency quintuple bypass surgery which was complicated by the presence of an aortic aneurism. Mr. Pruim was hospitalized from August 26 - September 9, 2006 at both Palos Community Hospital and Christ Hospital. I examined him numerous times during his hospitalization. Mr. Pruim was readmitted to the hospital on September 11, 2006 with a blood clot on his lung. After receiving treatment for this condition, he was released on September 17, 2006. He is currently recovering at his home and is receiving continued treatment for the blood clot and heart condition. I am continuing to monitor his physical condition.

In my professional opinion, Mr. Pruim will be unable to undergo any stressful work-related activities for at least 5 to 6 months. This would include any participation by way of testimony or preparation in the legal proceedings now scheduled for October 24 - 27, 2006 and December 11 - 15, 2006. The stress related to having to prepare for and testify in a legal matter could seriously and adversely affect Mr. Pruim's recovery and health.

As his physician, I advise you that it is my opinion that Mr. Pruim is physical unable to either prepare for or participate in these hearing at this time. It would be my recommendation that his physical condition be reviewed in March, 2007 at which time I would be happy to notify you as to his ability to participate in these legal proceedings.

Thank you. If you have any further questions for me, please do not hesitate to contact me.

Sincerely,



Timothy S. Wollner, D.O., A.B.F.P.

EXHIBIT



ILLINOIS POLLUTION CONTROL BOARD
October 3, 2006

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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v.)	PCB 03-191
)	(Enforcement – Land)
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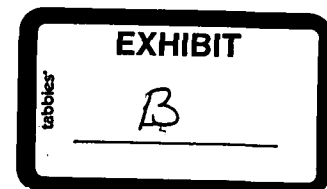
HEARING OFFICER ORDER

On February 16, 2006, the Board granted complainant's motion for summary judgment and directed that this matter proceed to hearing on the issue of remedy. One of the issues involved the respondents' failure to comply with the financial assurance requirements. Both City of Morris (Morris) and Community Landfill Company Inc. (CLC) filed respective motions for reconsideration. On June 1, 2006, the Board affirmed its order of February 16, 2006, granting complainant's motion for summary judgment and again directed that this matter proceed to hearing on the issue of remedy.

On September 22, 2006, respondent CLC filed a motion to cancel the hearing previously scheduled for October 24, 25, 26, and 27, 2006. On September 27, 2006, the complainant filed a response objecting to CLC's motion to cancel the hearing. On September 28, 2006, respondent City of Morris (Morris) filed its response to both CLC's motion to cancel the hearing and complainant's response in opposition. A telephonic status conference was held on September 28, 2006, where oral arguments were entertained. After considering the oral responses and reading the written motions and responses, the hearing officer orally notified the parties on September 28, 2006, that CLC's motion to cancel the scheduled hearing was granted. Today's order grants the motion and cancels the hearing.

CLC Motion To Cancel Hearing

CLC represents in its motion that Edward Pruim, the secretary and treasurer of CLC, underwent emergency quintuple bypass surgery that was complicated by the presence of an aortic aneurism. Edward Pruim was hospitalized from August 26, 2006 to September 9, 2006. Edward Pruim was readmitted to the hospital on September 11, 2006, with a blood clot on his lung. Pruim was released on September 17, 2006. Finally, CLC represents that Edward Pruim is recovering at his home and is receiving continued treatment for the blood clot and heart condition.



CLC's attachments to its motion include an affidavit from CLC's attorney and letters from Dr. Daniel Rowan, Edward Pruim's cardiologist and Dr. Timothy Wollner, Edward Pruim's family physician. Both physicians state that Edward Pruim should not undergo any stressful work-related activities for at least five to six months. The prohibited activities would include any participation by way of testimony or preparation for the hearing. Finally, both physicians recommend that Edward Pruim's physical condition be reviewed again in March 2007, to ascertain whether he can partake in a hearing.

Complainant's Response In Opposition

Complainant argues that CLC's motion to cancel the hearing should be denied because Edward Pruim is not a party to this matter, and has no involvement in the prosecution of this matter. Complainant represents that Edward Pruim has yet to be disclosed as a witness and that CLC's claim that Edward Pruim testimony is necessary is a revelation. Finally, complainant argues that Edward Pruim's brother, who is the president of CLC and has been disclosed as a witness, would be able to provide all the necessary assistance to CLC. Complainant continues and states that since the financial assurance documents for the landfill reveal that financial assurance was arranged by R. Michael McDermont, Mark A. LaRose and Robert Pruim, Edward Pruim's testimony is not necessary.

Morris' Response To CLC's Motion To Cancel And To Complainant's Response

Morris argues that it would be prejudiced if the hearing is not canceled and continued until such time as Edward Pruim can be compelled to testify. Morris argues that since Edward Pruim is the treasurer and chief financial officer of CLC, and since post-closure matters relate to financial issues at issue here, it is essential that Morris be allowed to question Edward Pruim. On October 2, 2006, Morris filed a witness list pursuant to the August 17, 2006 hearing officer order. Edward Pruim is listed as one of the witnesses. Finally, Morris represents that preliminary closure activities have been initiated at the site and represents, as reflected in the attached deposition of expert witness Devin Moose, that based upon the current status of activities at the site, no eminent or substantial threat to the human health and environment is posed by the site in question.

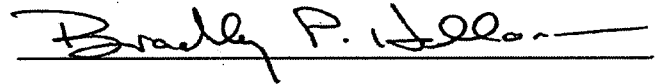
Discussion

After reviewing the motion to cancel, the respective responses and taking the oral arguments into consideration, I find good cause to grant CLC's motion to cancel the hearing scheduled for October 24, 25, 26, and 27, 2006. Due to the issues that need to be addressed at hearing on the issue of remedy, it appears imperative that Edward Pruim, as a financial officer of CLC, be present at the hearing and available to testify. Additionally, I find that CLC's request to cancel was not the result of CLC's lack of diligence.

Telephonic Status Conference

The parties or their legal representatives are directed to participate in a telephonic status conference with the hearing officer on December 7, 2006, at 11:00 a.m. Please note the time change. The telephonic status conference must be initiated by the complainant, but each party is nonetheless responsible for its own appearance. At the status conference, the parties must be prepared to discuss the status of the above-captioned matter.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line.

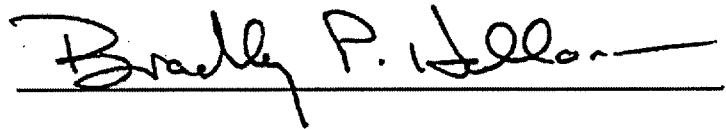
Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on October 3, 2006, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on October 3, 2006:

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601

A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
312.814.8917

PCB 2003-191
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200 North LaSalle Street
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PCB 2003-191
Christopher J. Grant
Office of the Attorney
General
Environmental Bureau
188 West Randolph, 20th
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PCB 2003-191
Jennifer A. Tomas
Office of the Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, IL 60601

PCB 2003-191
Scott M. Belt
Scott M. Belt & Associates,
P.C.
105 E. Main Street
Suite 206
Morris, IL 60450

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

PCB No. 03-191)

(Enforcement-Land))

COMMUNITY LANDFILL COMPANY, INC.,)

an Illinois corporation, and)

the CITY OF MORRIS, an Illinois)

municipal corporation,)

Respondents.)

to: Mr. Mark La Rose
 La Rose & Bosco
 200 N. La Salle Street, #2810
 Chicago, Illinois 60601
 (312)642-0434

Mr. Bradley P. Halloran
 Hearing Officer
 Illinois Pollution Control Board
 100 W. Randolph, #2001
 Chicago, IL 60601

Mr. Charles Helsten
 Hinshaw & Culbertson
 100 Park Avenue
 Rockford IL 61105-1389
 (815)963-9989

Mr. Scott Belt
 105 East Main Street
 Suite 206
 Morris, Illinois 60450

NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, September 27, 2006, filed with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing, Complainant's Response to the Respondent Community Landfill Company Inc.'s Motion to Cancel Hearing, a copy of which is attached and herewith served upon you.

Respectfully Submitted,

BY:

CHRISTOPHER GRANT

Assistant Attorneys General

Environmental Bureau

188 W. Randolph St., 20th Flr.

Chicago, IL 60601

(312) 814-5388

EXHIBIT

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Respondents.)

**COMPLAINANT'S RESPONSE IN OPPOSITION TO COMMUNITY LANDFILL
COMPANY, INC.'S MOTION TO CANCEL HEARING**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, and responds to Respondent COMMUNITY LANDFILL COMPANY INC.'s ("CLC's") Motion to Cancel Hearing, as follows:

1. On September 22, 2006, CLC filed its Motion to Cancel Hearing pursuant to 35 Ill. Adm. Code 101.510, requesting that the Board cancel hearing on remedy in this matter indefinitely. As a preliminary matter, Complainant believes that this Motion should have been directed to Hearing Officer Bradley P. Halloran and not to the Board. In either case, Complainant does not believe that CLC has provided a legitimate basis for either cancelling or delaying the October 24, 2006 hearing. Complainant therefore requests that CLC's Motion to Cancel Hearing be denied.

2. The basis of CLC's request is the declining health of Mr. Edward Pruim. Edward Pruim is an officer and, along with CLC President Robert Pruim, part owner of CLC. The State certainly sympathizes with Mr. Pruim and his family. However, aside from CLC's unsupported

claim that his participation in "...attendance and testimony is necessary for the defense of this case" (Motion, par. 9), CLC provided no legitimate basis for its request to cancel the hearing in PCB 03-191.

3. Edward Pruim is not a party to this matter, and has had no involvement in the prosecution of this case. Moreover, CLC has never disclosed Edward Pruim as either a fact or opinion witness, although Complainant first requested witness information and disclosure in its January, 2004 discovery requests. CLC's claim that Edward Pruim's 'testimony is necessary' is the first that Complainant has learned of such testimony. Had CLC called him as witness at hearing, Complainant would have vigorously objected.

4. CLC's defense will not be prejudiced by Edward Pruim's incapacity, because Mr. Robert Pruim, president of CLC, can provide all necessary assistance to the corporation. According to CLC's Interrogatory Responses, financial assurance for the landfill was arranged for by "R. Michael McDermont, Mark A. LaRose and Robert Pruim". However, Edward Pruim's name is not mentioned in the responses to any of the State's Interrogatories. Moreover, the Responses were verified by Robert Pruim, not Edward Pruim. Clearly, Robert Pruim possesses sufficient knowledge about the issues in this case to effectively participate in CLC's defense.

5. It is important that hearing in this matter be held as scheduled. On February 21, 2006, the Board entered Summary Judgment, finding that the Respondents violated 415 ILCS 5/21(d)(2) (2004), and 35 Ill. Adm. Code Sections 811.700(f) and 811.712(b). However, the Board held off granting relief, including the interim relief requested by Complainant, until it had the opportunity to review evidence related to Sections 33(c) and 42(h) of the Act. Complainant

believes that ongoing violations exist at the Landfill and seeks to complete the record so that the Board may determine the appropriate relief as soon as reasonably possible.

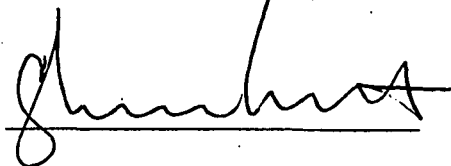
WHEREFORE, Complainant requests that Respondent Community Landfill Company Inc.'s Motion to Cancel Hearing in case PCB 03-191 be denied.

BY: 

Christopher Grant
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, Illinois 60601
(312) 814-5388

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 27th day of September, 2006, the foregoing Response to Respondent Community Landfill Company Inc.'s Motion to Cancel Hearing, and Notice of Filing, upon the persons listed on said Notice by facsimile transmission, hand delivery, and/or placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.

A handwritten signature in black ink, appearing to read 'Christopher Grant', is written over a horizontal line.

CHRISTOPHER GRANT

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PCB No. 03-191)

COMMUNITY LANDFILL COMPANY, INC.,)
an Illinois Corporation, and CITY OF MORRIS,)
an Illinois Municipal Corporation,,)

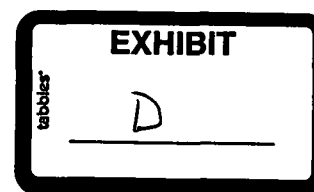
Respondents.)

**RESPONSE TO RESPONDENT, COMMUNITY LANDFILL COMPANY,
INC.'S MOTION TO CANCEL HEARING AND COMPLAINANT, STATE
OF ILLINOIS' RESPONSE IN OPPOSITION TO MOTION TO CANCEL
HEARING**

NOW COMES the CITY OF MORRIS, an Illinois Municipal Corporation, by and through its attorneys, HINSHAW & CULBERTSON LLP, and for its Response to both the Motion of Respondent, Community Landfill Company, Inc.'s, Motion to Cancel Hearing and the Complainant, State of Illinois', Response in Opposition to same, states as follows:

1. As indicated in oral arguments presented to Hearing Officer Bradley Halloran earlier today, the City has and continues to maintain that it is essentially a putative, ancillary Respondent in this matter, essentially caught in a "cross-fire" between the Complainant State of Illinois and Respondent Community Landfill Company, Inc. (the entity which, even by this Honorable Board's admission at Page 14 of its February 16, 2006 Interim Order, conducted the day to day waste disposal activities at the facility in question. In turn, the City has made its position clear that it vigorously objects to having been found a party that "conducted a waste disposal operation" in this Honorable Board's Interim Order of February 16, 2006.

2. The City believes that actual prejudice will result to its position in this matter if this hearing is not continued until such time as Edward Pruim can be compelled to testify. The City has included Edward Pruim on its Witness List for the hearing in question (copy of such



witness designation being marked Exhibit A and attached hereto and incorporated herein by this reference and hereby served upon the parties).

3. Since (as established by the record in this matter) the cost of complying closure, post-closure financial assurance requirements runs literally in the millions of dollars, obviously since the State is claiming that the City is potentially responsible for such costs and expenses, it is essential that a full hearing be afforded to all parties, with all witnesses and all material evidence being received at that hearing.

4. As indicated in oral arguments presented to Hearing Officer Halloran earlier today, based upon its review of other depositions and other testimony given by the Pruim Brothers in other related matters, it fears that if only one corporate representative (i.e., Robert Pruim) is called in this matter that corporate representative will simply demurrer and defer to knowledge possessed by Mr. Edward Pruim (who is presently medically unavailable to testify in this matter at the hearing which is now scheduled). In turn, since Mr. Edward Pruim was the Treasurer and Chief Financial Officer of the corporation, and since closure post-closure matters by their very essence relate to financial issues, the City submits that it is absolutely essential that it be allowed to question Mr. Edward Pruim in detail as to why the parties find themselves in the present situation they do before this Honorable Board.

5. The City respectfully submits that its position in this matter is entirely consistent with this Honorable Board's Supplemental Order of June 1, 2006, which clarifies and expands upon the Board's Initial Interim Order of February 6, 2006. The text of that Order makes clear that (pursuant to Section 33(c) and 42(h) of the Illinois Environmental Protection Act), not only Board Member Melas, but the entire Board expects a full, complete and detailed explanation as to: (1) how the landfill facility in question found itself in the condition it did as of the initiation

of this enforcement action; (2) who was responsible for the condition of the landfill; (3) what (if any) further steps have been taken to address concerns raised by the State during the course of this action.

6. In response to the State's allegation that a "hearing" on the "proposed remedy" is necessary in this matter, the City notes that at Page 4 of the Board's order of June 1, 2006, the Board notes that the purpose of the Act (and the financial assurance obligations set forth therein), are to ensure that neither health nor the environment is harmed from the operation of a municipal solid waste landfill. The Board's June 1, 2006 goes further in noting that the Board must interpret the Act as it applies "...**in each individual instance.**" (Emphasis added). As indicated in oral arguments had before Hearing Officer Halloran earlier today, in his 106 page deposition, expert witness Devin Moose has indicated that based upon the current status of activities which have been undertaken at the facility in question, no eminent and substantial threat to the human health and the environment is posed by the facility in question. (See pp. 70-75). As noted by Mr. Moose in his deposition, the site is essentially closed, and for the past two years, site characterization and preliminary closure activities have been undertaken by the City (pending final resolution of the City's alleged status as a party responsible for the posting of closure, post-closure financial assurance) to assure that the human health and/or the environment are not harmed. (See pp. 76-80 and Moose Deposition Exhibit 8). As such, (and as noted by Mr. Moose in his deposition testimony), the purpose of the financial assurance provisions of the Act have been squarely met. In turn, accordingly, there is no immediate need for the conducting of a remedy hearing in this matter, and the more paramount concern is affording all parties a complete hearing on all issues and factors noted by the Board in its June 1, 2006 order.

7. In summary, the City wishes to again make clear that it does not take sides with or support one part or the other in this matter. Rather, the City's sole and controlling concern is that it be afforded a full and fair hearing on all the evidence which exist in this case.

8. In turn, it is the City's fear that if it is not allowed to examine the Treasurer and Chief Financial Officer of the Co-Respondent, Community Landfill Company, Inc. in this matter, it could be substantially prejudiced, and the tax payers of the City could face exposure for literally millions of dollars of closure, post-closure obligations without having been afforded the opportunity to fully and completely present its case. Put a different way, this Honorable Board has consistently held in hearings such as this that for its own benefit (as well as the benefit of each party to such an action) a complete and full hearing on all relevant evidence should be conducted, and that the needs of all parties for a complete and full hearing should be satisfied. The City would submit that the basic precepts of fundamental fairness established by this Board required nothing less.

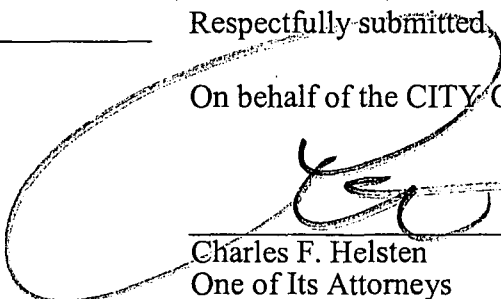
WHEREFORE, the City of Morris respectfully requests that the hearing in this matter be continued until such time as both Edward and Robert Pruim are physically and medically able to testify in this matter.

Dated: _____

9/28/06

Respectfully submitted,

On behalf of the CITY OF MORRIS



Charles F. Helsten
One of Its Attorneys

Charles F. Helsten
Hinshaw & Culbertson LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
815-490-4900

AFFIDAVIT OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on 9-28, 2006, she caused to be served a copy of the foregoing upon:

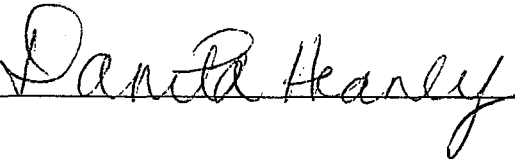
Mr. Christopher Grant
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Environmental Bureau
188 W. Randolph St., 20th Fl.
Chicago, IL 60601

Mark LaRose
Clarissa Grayson
LaRose & Bosco, Ltd.
200 N. LaSalle, Suite 2810
Chicago, IL 60601

Ms. Dorothy Gunn, Clerk
Pollution Control Board
100 W. Randolph, Suite 11-500
Chicago, IL 60601

Bradley Halloran
Hearing Officer
Pollution Control Board
100 W. Randolph, Suite 11
Chicago, IL 60601

A copy of the same was enclosed in an envelope in the United States mail at Rockford, Illinois, proper postage prepaid, before the hour of 5:00 p.m., addressed as above.



HINSHAW & CULBERTSON
100 Park Avenue
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Rockford, IL 61105-1389
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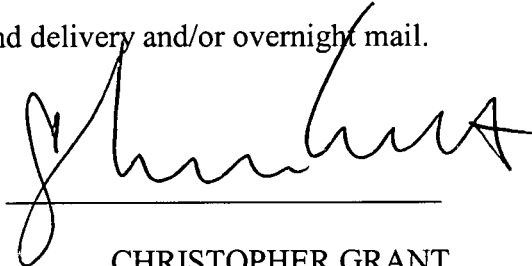
Respondents.

PCB No. 03-191

(Enforcement-Land)

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 5th day of October, 2006, the foregoing Interlocutory Appeal of Hearing Officer Order, and Notice of Filing, upon the persons listed on said Notice by hand delivery and/or overnight mail.



CHRISTOPHER GRANT