

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)

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
Jennifer Van Wie
Environmental Bureau
Assistant Attorney General
69 W. Washington, 18th Floor
Chicago, Illinois 60602
cgrant@atg.state.il.us
jvanwie@atg.state.il.us

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
hallorab@ipcb.state.il.us

PLEASE TAKE NOTICE that on **SEPTEMBER 8, 2008**, the undersigned caused to be electronically filed with Mr. John Therriault, of the Illinois Pollution Control Board, 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60601, the **RESPONDENTS' COMMUNITY LANDFILL COMPANY, INC., ROBERT PRUIM AND EDWARD PRUIM'S MOTION IN LIMINE TO BAR COMPLAINANT'S EXPERT WITNESSES AND REPORT AND ANY OTHER PREVIOUSLY UNDISCLOSED WITNESSES OR, ALTERNATIVELY, TO CANCEL HEARING SET FOR OCTOBER 20-23, 2008 FOR CAUSE AND TO REOPEN DISCOVERY**, a copy of which is attached and hereby served upon you.

/s/ Clarissa Y. Cutler
One of Respondents' Attorneys

Mark A. LaRose
LaRose & Bosco, Ltd.
200 N. LaSalle Street, Suite 2810
Chicago IL 60601
(312) 642-4414
Atty. No. 37346

Clarissa Y. Cutler (f/k/a Grayson)
Attorney at Law (formerly with LaRose & Bosco, Ltd.)
155 North Michigan Avenue, Suite 375
Chicago IL 60601
(312) 729-5067
Atty No. 44745

INTRODUCTION

The above captioned consolidated matters have been extensively litigated for more than ten (10) years. By Order of Hearing Officer Bradley Halloran on June 12, 2008, the matters were set for hearing on October 20-23, 2008. (See Order dated June 12, 2008, attached as Exhibit A and incorporated herein.) In compliance with discovery schedules, Respondents had long ago deposed the Complainant's named expert witness John Nosari on September 10, 2003. (See Deposition Transcript of John Nosari, attached as Exhibit B and incorporated herein.) Discovery in the above captioned consolidated matters closed nearly three (3) years ago on October 12, 2005. (See Order dated September 13, 2005, attached as Exhibit C and incorporated herein).

Notwithstanding these clear and unambiguous orders, Complainant only now seeks to present a different expert witness at hearing, Gary Styzens, who has heretofore been undisclosed. In addition, Complainant seeks to present a report prepared by Mr. Styzens that was only presented to Respondents on August 27, 2008, less than two (2) weeks ago and less than sixty (60) days prior to hearing. (See Styzens Report dated August 26, 2008, attached as Exhibit D and incorporated herein). For a myriad of reasons, which are presented in further detail below, the late disclosure and attempted substitution of Mr. Styzens and his report for Mr. Nosari constitute the utmost in unfair discovery tactics by Complainant which, if allowed to proceed, would result in extreme prejudice to Respondents. Complainant's tactics should not be sanctioned by the Hearing Officer or by the Illinois Pollution Control Board. Since Respondents have not had the opportunity to conduct full discovery, Complainant's witnesses Gary Styzens and/or John Nosari should be barred from testifying, as should Brian White and Blake Harris.

Alternatively, if the Hearing Officer determines that the witnesses should be permitted to testify, (to the prejudice of Respondents) the hearing dates of October 20-23, 2008 should be stricken to allow for additional discovery depositions to be taken of all late and previously undisclosed witnesses at the State's expense. Pursuant to 35 Ill.Adm Code 101.510(b), the Affidavit of Clarissa Y. Cutler is attached as Exhibit E and incorporated herein in support of the motion to cancel hearing.

FACTS

In February 2003, Complainant named John Nosari as its expert witness. Accordingly, on September 10, 2003, **almost five years ago**, Respondents deposed Mr. Nosari, who was represented by Assistant Attorney General Christopher Grant. During his deposition, Mr. Nosari was questioned by Mr. LaRose, counsel for Respondents, on the subject of his opinions and reports as follows:

Q. "Have you made any of the – have you made any determination as to any of the component parts of economic benefit?

A. No.

Q. That is your assignment, however?

A. That is my assignment.

Q. And before you testify in this case, you intend to do that?

A. That's correct.

Q. Chris, I'm not going to belabor a lot. I mean, if he doesn't have any conclusions. But once he gets them, I'd like to talk to him about it before the witness stand.

Mr. Grant: No, that's fine. I don't have any problem. As a matter of fact, we're going to ask him to prepare some sort of report which I will consider that that's a continuing obligation to supplement interrogatories that we have."

(See Exh. B, Nosari Deposition, pp. 25-26; Exh. E, ¶ 3).

Pursuant to Hearing Officer Bradley Halloran's Order dated September 13, 2005, discovery in the consolidated matters closed on October 12, 2005. (See Exh. C). Assistant Attorney General Christopher Grant did not tender a report prepared by Mr. Nosari prior to this date. On June 12, 2008, the matters were set for hearing on October 20-23, 2008. (See Exh. A; Exh. E, ¶¶ 3 and 4). To date, Mr. Nosari has not tendered a report. (Exh. E, ¶ 5).

On August 4, 2008, that Complainant hinted in writing as to its intention to provide an expert report "in the near future...as soon as it becomes available." (See Grant to Cutler letter dated August 4, 2008, attached as Exhibit F and incorporated herein.) Complainant also mentioned that "in the interest of saving money on consultants" it intended to ask "to substitute Illinois EPA employee Gary Styzens for John Nosari". It is not clear who Complainant intended "asking" for this last minute substitution. Complainant further states that "Gary and John developed the opinion together, and either can testify to its conclusions." (See Exh. F). Shortly thereafter, counsel for Respondent informed counsel for Complainant of their objection to this substitution and proposed late tender of a report authored by a different expert than Mr. Nosari. (See Exh. E, ¶ 6). However, it was not until August 27, 2008, that Complainant actually provided a report which in fact is authored solely by Gary Styzens, and does not

mention John Nosari as having either written the report or developed the opinion, contrary to the Complainant's earlier assertion. (See Exh. D and Exh. E, ¶ 7). In addition, Complainant's August 4, 2008 letter alludes to its intention to elicit substitute testimony from EPA employee Brian White and another newly mentioned witness EPA employee Blake Harris. Both of them should be barred from presenting any testimony as well.

LEGAL STANDARDS

The supreme court rules on discovery are mandatory rules of procedure that courts and counsel must follow. Dep't. of Transportation v. Crull, 294 Ill.App.3d 531, 537, 228 Ill.Dec. 834, 690 NE 2d 143 (1998). Rule 213(g) states that upon written interrogatory, a party must disclose the subject matter, conclusions, opinions, qualifications, and all reports of a witness who will offer opinion testimony. Ill. Sup. Ct. Rule 213(g). Rule 213(i) imposes on a party the continuing duty to supplement discovery responses whenever new or additional information subsequently becomes known to that party. Ill. Sup. Ct. Rule 213(i). Furthermore, Rule 218(c) states that all dates for the disclosure of opinion witnesses and the completion of discovery shall be chosen to ensure that discovery will be completed not later than 60 days before the date on which the trial court reasonably anticipates the trial will commence.¹ Ill Sup. Ct. Rule 218(c) (emphasis added). The purpose behind Rule 213 is to avoid surprise and to discourage tactical gamesmanship. Dep't. of Transportation v. Crull, 294 Ill.App.3d 531, 537, 228 Ill.Dec. 834, 690 NE 2d 143 (1998). An expert's testimony is limited to the fair scope of opinions disclosed during discovery. Sinclair v. Berlin, 325 Ill.App.3d 458, 452-53, 758 N.E.2d

¹ Since the Hearing Officer entered an order closing discovery on October 12, 2005, the Board rule allowing discovery at least ten (10) days prior to the hearing does not apply. 35 Ill.Adm.Code Section 101.616(c).

442, 470 (2001). Courts have the authority to enter a wide range of orders when a party unreasonably fails to comply with discovery rules and orders. Ill. Sup. Ct. Rule 219(c).

ARGUMENT

As outlined above, Complainant had nearly five (5) years to present a report prepared by its previously disclosed witness John Nosari, who was deposed on September 10, 2003. Instead, Complainant has showed a complete lack of diligence by waiting until August 27, 2008 to disclose a report that is prepared not by John Nosari but by somebody else, Gary Styzens, who had never been mentioned before August 4, 2008. It is completely unfair to expect Respondents to prepare for Styzens' testimony in just over a month when Complainant has had five (5) years to supplement discovery and properly present him as a witness (along with his report).

Complainant is likely to argue that there is still time for Respondent to prepare by deposing these newly disclosed witnesses in an expedited manner and that the hearing should go forward as scheduled. However, as noted above, such a compressed time frame is clearly not contemplated by the supreme court rules, particularly when discovery was closed on October 12, 2005 by order of the hearing officer nearly three (3) years ago. Complainant's dilatory behavior and lax attitude toward these well established discovery rules and set discovery deadlines should not be tolerated.

The testimony of both John Nosari and Gary Styzens should be barred. The testimony of John Nosari should be barred since his name does not appear on the report tendered by the Complainant on August 27, 2008, even though Assistant Attorney Grant stated in September 2003 that a report would be forthcoming nearly five (5) years ago. (See Exh. D.) The testimony of Gary Styzens should be barred since he was not

disclosed as a witness officially until his report was tendered to Respondent on August 27, 2008, less than sixty (60) days prior to hearing and almost three (3) years after discovery was closed on October 12, 2005. (See Exh. C.) Similarly, the testimony of Brian White and Blake Harris should be barred since Respondents were not given the opportunity to depose them.

Alternatively, in the event the hearing officer determines that the witnesses should be allowed to testify, the hearing dates of October 20-23, 2008 should be stricken for cause solely due to Complainant's conduct and through no responsibility of Respondents. Discovery should be reopened in order to allow Respondents adequate time to depose the newly disclosed witnesses and to prepare its defenses accordingly. A new hearing date should be scheduled in accordance with the sixty day time frame after discovery is concluded as set forth above. Fundamental fairness as well as adherence to established discovery rules demand no less. In compliance with Section 101.510(b), Respondents propose that the hearing be rescheduled after January 15, 2009, which would allow for the depositions of the newly disclosed witnesses, as well as enable Respondents to name any responsive witnesses of their own.

CONCLUSION

WHEREFORE, based on the foregoing, Respondents respectfully request that Hearing Officer Bradley Halloran GRANT their Motion to Bar Complainant's Expert Witnesses and Report and Any Other Previously Undisclosed Witnesses. Alternatively, if the Hearing Officer determines that the witnesses should be permitted to testify, Respondents respectfully request that he GRANT their Motion to Cancel Hearing Set for

October 20-23, 2008 For Cause and to Reopen Discovery, finding good cause and that the motion was not brought as the result of lack of diligence.

Respectfully Submitted,


One of Respondents' Attorneys

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

Clarissa Y. Cutler
Attorney at Law
155 North Michigan Avenue, Suite 375
Chicago IL 60601
(312) 729-5067

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.	)	PCB No. 04-207
	)	(Enforcement – Land)
EDWARD PRUIM and ROBERT PRUIM,)	
)	
Respondents.)	
<hr/>		
PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.	)	PCB No. 97-193
	)	(Enforcement – Land)
COMMUNITY LANDFILL COMPANY,	)	(consolidated)
INC.,)	
)	
Respondent.)	

EXHIBIT LIST TO:
RESPONDENTS' COMMUNITY LANDFILL COMPANY, INC., ROBERT PRUIM AND
EDWARD PRUIM'S MOTION *IN LIMINE* TO BAR COMPLAINANT'S EXPERT
WITNESSES AND REPORT AND ANY OTHER PREVIOUSLY UNDISCLOSED
WITNESSES OR, ALTERNATIVELY, TO CANCEL HEARING SET FOR OCTOBER
20-23, 2008 FOR CAUSE AND TO REOPEN DISCOVERY

- Exhibit A – Order dated June 12, 2008 setting hearing for October 20-23, 2008
- Exhibit B – Excerpts from John Nosari's deposition transcript taken September 10, 2003
- Exhibit C – Order dated September 13, 2005, closing discovery on October 12, 2005
- Exhibit D – Gary Styzen's report dated August 26, 2008
- Exhibit E – Affidavit of Clarissa Y. Cutler dated September 8, 2008
- Exhibit F – Letter from Christopher Grant to Clarissa Cutler dated August 4, 2008

ILLINOIS POLLUTION CONTROL BOARD

June 12, 2008

RECEIVED
CLERK'S OFFICE

JUN 12 2008

STATE OF ILLINOIS
Pollution Control Board

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

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

HEARING OFFICER ORDER

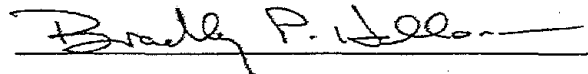
On June 5, 2008, all parties participated in a telephonic status conference with the hearing officer. Discussion centered on scheduling a hearing in these matters for the week of October 20 through the 23, 2008. All parties agreed that these dates were acceptable. To that end, the hearing is scheduled for October 20, 21, 22 and 23, 2008. The time and location will be noted in a notice of hearing.

The parties were informed that a written pre-hearing status report will be requested in the above-captioned matters and that a briefing schedule will be discussed at the next status conference.

The parties or their legal representatives are directed to appear at a telephonic status conference with the hearing officer on July 17, 2008, at 9:30 a.m. The telephonic conference must be initiated by the complainant, but each party is nonetheless responsible for its own appearance. At the conference, the parties must be prepared to discuss the status of the above-captioned matter and potential hearing dates.

EXHIBIT A

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 June 12, 2008, 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 June 12, 2008:

John T. Therriault
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
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601
(312) 814-8917

PCB 2004-207
Clarissa C. Grayson,
LaRose & Bosco, Ltd.
200 North LaSalle Street
Suite 2810
Chicago, IL 60601

PCB 2004-207
Christopher J. Grant
Office of the Attorney General
Environmental Bureau
500 South Second Street
Springfield, IL 62706

PCB 2004-207
Jennifer A. Tomas
Office of the Attorney General
Environmental Bureau
500 South Second Street
Springfield, IL 62706

PCB 2004-207
Robert Pruiam
Community Landfill Company
c/o Morris Community Landfill
1501 Ashley Road
Morris, IL 60450

PCB 2004-207
Edward Pruiam
Community Landfill Company
c/o Morris Community Landfill
1501 Ashley Road
Morris, IL 60450

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)	
ILLINOIS,)	
)	
Petitioner,)	
)	
vs.	)	No. PCB No. 97-193
)	
COMMUNITY LANDFILL COMPANY,)	
INC., an Illinois Corporation,)	
)	
Respondent.)	

Discovery deposition of JOHN NOSARI,
taken before Tammy S. Wagahoff, CSR, at the instance
of the Respondent, on the 10th day of September, 2003,
at the hour of 2:00 p.m., at Andrews Engineering, 3535
Mayflower Boulevard, Springfield, Illinois, pursuant
to attached stipulation.

ASSOCIATED COURT REPORTERS
1-800-252-9915
P.O. Box 684
Taylorville, Illinois 62568



1 Q. Let's say that by depositing waste in excess
2 of the above, in excess of their permitted capacity,
3 they secured a million dollars in additional gross
4 revenues.

5 A. Good, okay.

6 Q. Let's say that -- before I go into the next
7 step, I want to clarify one thing. Why would you use
8 gross profit as opposed to net profit?

9 A. Well, when we're look at economic benefit,
10 we're looking or when -- well, okay, when we're
11 looking at economic benefit, what we're looking at is
12 what actually has changed, what's the difference
13 between had they, you know, had this occurred or had
14 it not occurred. So what we're looking at is those
15 things that are going to be different. So what we
16 would do is we would take the total cash that came in
17 from the service, which would be the revenues. And
18 then we would try to estimate what the additional
19 costs were to this corporation by doing this. In this
20 particular case let's say that they brought in a
21 million dollars, and then we could estimate say that
22 the company incurred an additional \$200,000 in
23 expenses by moving this around or doing whatever they
24 had to do to get it. So then we would be dealing with

1 Q. \$600,000 additional gross profit, right?

2 A. Right, uh-huh.

3 Q. From the overflow, right?

4 A. Correct.

5 Q. Now we have to deduct from that income
6 taxes?

7 A. Correct.

8 Q. Assume a rate for me, 30 percent?

9 A. Let's say 40 percent.

10 Q. So we assume 40 percent?

11 A. That would be \$240,000.

12 Q. In taxes?

13 A. In tax.

14 Q. So \$240,000 in taxes. That's a deduction.

15 So that leaves us with 260, is that right?

16 A. No, 240, I think it's 360.

17 Q. No, it leaves us with 360?

18 A. Correct.

19 Q. So \$360,000 is overflow before taxes, 360 is
20 the additional net gross profit, right?

21 A. Correct.

22 Q. Okay. Now number six, number six really has
23 nothing to do with these numbers, does it?

24 A. Number, what's number six?

1 the \$800,000, the one million plus the \$200,000. We
2 would not take into consideration other costs that are
3 going to be there anyway.

4 Q. Got ya. So, for example, their telephone
5 bill is going to be the same whether they're filling
6 it above the line or below the line?

7 A. That's right.

8 Q. So you're not going to -- unless, unless
9 they could prove that because they were filling it
10 above the line their telephone bill tripled for some
11 reason because they had to talk on the phone more?

12 A. Exactly.

13 Q. Okay. Got ya. So a million bucks in gross
14 revenue, right. Let's just assume for the purpose of
15 our example that the additional variable cost to bring
16 it down to your term gross profit is a half million
17 dollars.

18 A. Okay. Why don't you use something like
19 \$400,000 or \$600,000 because if you use a half a
20 million, that can get confusing.

21 Q. Okay. That's fine. Let's use \$400,000.
22 Let's use \$400,000 for additional variable costs which
23 leaves us with --

24 A. \$600,000.

1 Q. I'm sorry, number six is the calculation of
2 the weight of an estimated weighted average cost of
3 capital. In other words, what they would have to pay
4 to obtain these financial resources.

5 A. That's correct.

6 Q. Does the amount of this number, whether it's
7 a dollar or a million, affect our next calculation?

8 A. No.

9 Q. It's going to cost us a point to get a
10 dollar, it's going to cost us a point to get a million
11 dollars, it's going to cost us a point to get ten
12 million dollars?

13 A. Well, the more you borrow, perhaps the more
14 it's going to cost you. The interest rate could go
15 up. In other words, just like if you own a house,
16 let's say you borrow 95 percent versus borrowing 80
17 percent, the interest rate is going to go up. The
18 more you borrow, the higher the risk so the higher the
19 rate.

20 Q. The more you borrow against the value of the
21 item?

22 A. Yeah. In the case of a business, the more
23 borrowings they have, the higher the risks, so the
24 larger you would expect the interest rate.

1 Q. Okay. So it does have an effect on that?
 2 A. **It can, yeah.**
 3 Q. Have you actually determined this estimated
 4 weighted cost of capital in this case? Or, in other
 5 words, what Community would have to pay to obtain --
 6 A. **No.**
 7 Q. Okay. Is that something that you plan on
 8 doing in the future?
 9 A. **Yes.**
 10 Q. When?
 11 A. **Well, whenever I can get additional**
 12 **information to do it.**
 13 Q. Okay. How are you going to go about it and
 14 what information do you need?
 15 A. **Well, first of all, the tax returns that I**
 16 **got in the last three years, there was no balance**
 17 **sheet that was included. So I need some indicator of**
 18 **the interest rate, appropriate interest rate that**
 19 **would apply in this case. And the question is where**
 20 **would I get that. And the answer is, well, you know,**
 21 **basically taking an auditor's approach here, trying to**
 22 **use the best interest that's available. So in this**
 23 **particular case what we were trying to do is look at**
 24 **the financial position of this firm, the size of the**

1 **owner's equity. That's really the most difficult part**
 2 **in coming up with a weighted average cost of capital.**
 3 **In this case, you know, there's no**
 4 **public stay of common stock, there's no dividend**
 5 **information. So coming up with an appropriate cost**
 6 **for the owner's equity part is going to be different**
 7 **because it's a privately owned corporation.**
 8 **The other thing about this one that's**
 9 **different is that this is a Sub Chapter S Corporation,**
 10 **and it's very possible when this corporation borrows**
 11 **money, it's probably borrowing money not just on the**
 12 **financial resources of the corporation; but the loans**
 13 **could be guaranteed by the stockholders, which would**
 14 **have an effect of reducing the interest rate because**
 15 **it would reduce the risk, especially if they were**
 16 **guarantors of those loans.**
 17 **So the bottom line is I would use the**
 18 **best information available to try to estimate, you**
 19 **know, a fair interest rate to use for the cost of**
 20 **equity.**
 21 Q. Okay. And a run down, that best information
 22 would be complete tax returns including the balance
 23 sheets?
 24 A. **Right. And would also include, you know,**

1 **firm, and the industry it's in and try to get from**
 2 **some source what the appropriate interest rate would**
 3 **be. We could also look at their tax return and see**
 4 **what interest rate they paid, what the total interest**
 5 **rate was.**
 6 Q. Did you do that in this case?
 7 A. **I haven't done it yet, no.**
 8 Q. But you would be able to tell that -- the
 9 last thing you said is see what interest rate they
 10 actually paid, that's in the tax return, right?
 11 A. **Well, if I had the entire tax return, I**
 12 **could calculate it. But based upon the amount of**
 13 **loans that are listed on the balance sheet and from**
 14 **the expenses that they pay.**
 15 Q. Okay.
 16 A. **Now this case is a little bit different than**
 17 **the other two that I told you about because the other**
 18 **two were publicly held corporations. This is a**
 19 **privately held corporation.**
 20 Q. And record keeping is a little bit
 21 different?
 22 A. **Well, the other thing is, you know, we don't**
 23 **have -- in those two cases, the hard part is to**
 24 **estimate the cost of capital, that is the cost of**

1 **information, you know, financial information regarding**
 2 **the shareholders, such as their tax returns. I would**
 3 **look at probably some other information such as what**
 4 **the prime rate was, different interest rates published**
 5 **by the Federal Reserve Board. I could look at Robert**
 6 **Morris and Associates, which is an organizations that**
 7 **publishes financial information for different**
 8 **industries for companies of different industries and**
 9 **different sizes within those industries so that would**
 10 **be a source that I would use.**
 11 Q. What else?
 12 A. **Basically any financial information that I**
 13 **thought would be relevant to the case.**
 14 Q. Let me explore this concept of the
 15 shareholders financial information. Are you saying
 16 that you would use that information to determine
 17 whether or not the actual money they paid in interest
 18 rates needed to be discounted or increased because of
 19 their participation as shareholders. If, in fact, Mr.
 20 Nosari, this company was able to borrow money during
 21 this time at this rate, isn't that the best rate to
 22 use regardless of whether it's a Sub Chapter S or not?
 23 A. **I'm not sure I can answer that right now.**
 24 Q. Okay. What would you need -- let's back up.

1 What additional information would you need to
 2 determine whether or not the money that this company
 3 actually borrowed at arm's length is not the best
 4 indicator of an estimated weighted average cost of
 5 capital?
 6 **A. If they borrowed money at arm's length,**
 7 **okay, and the total cost of that borrowing and the**
 8 **total cost, I'm sorry, the total cost of the borrowing**
 9 **and we would determine what the principal amount of**
 10 **the debt was. Or if we could get the loan**
 11 **information, that would give us what the interest rate**
 12 **was, if that would be consistent with other published**
 13 **information so that, in fact, the rate that was**
 14 **charged would be consistent with the information on**
 15 **the financial statements on the prevailing rates at**
 16 **the time, then that would be good evidence that would**
 17 **be appropriate interest rate to charge.**
 18 Q. If, for example, Community Landfill in 1998
 19 was able to borrow a million bucks at nine percent
 20 amortized over twenty years; and if, in fact, if you
 21 looked at your books a company, privately held Sub
 22 Chapter S Company with these type of resources and
 23 shareholders with those type of resources were getting
 24 those type of rates, that was something that you would

1 **A. Yes, uh-huh.**
 2 Q. Here in Springfield?
 3 **A. Yes.**
 4 Q. And is it your own firm?
 5 **A. Uh-huh (affirmative).**
 6 Q. Forgot to tell you, one of the rules of this
 7 thing, instead of saying uh-huh or huh-uh, you've got
 8 to say yes or no.
 9 **A. Yes, I forgot. I should know that.**
 10 Q. I should have told you that. And what's the
 11 name of your firm?
 12 **A. It's John Nosari, CPA.**
 13 Q. Okay. Is there anything else you do besides
 14 your work at the university? Did they used to call
 15 that Sangamon State?
 16 **A. It was Sangamon State, but it became the**
 17 **third campus of the University of Illinois.**
 18 Q. When?
 19 **A. 1995.**
 20 Q. No kidding. So besides your work at the
 21 U of I and your work at John Nosari, CPA, are you
 22 doing anything else professionally?
 23 **A. Not right now. I mean, I was, as you know,**
 24 **I was in the Air Force reserve for a number of years;**

1 say that's --
 2 **A. That would work, yes.**
 3 Q. Okay. John, do you have, you probably don't
 4 have it here, but do you have a current CV or resume?
 5 **A. I do, but I didn't bring it.**
 6 Q. Can we get one?
 7 MR. GRANT: Yes. You want to
 8 like fax it to me tomorrow?
 9 THE WITNESS: Sure.
 10 MR. LaROSE: That would be
 11 great.
 12 MR. GRANT: You want to attach
 13 it to the dep?
 14 MR. LaROSE: I think I want it
 15 attached to the dep. As far as I'm concerned
 16 personally, his credentials are impeccable. I don't
 17 remember. What the hell. Professionally, I knew you
 18 were a CPA. Tell me what you're doing now.
 19 THE WITNESS: Well, I'm the
 20 chairman of the accounting and economics department at
 21 the University of Illinois in Springfield, associate
 22 professor. I'm responsible for the auditing
 23 curriculum and the accounting.
 24 Q. Are you also in private practice?

1 **and I was at the Air Force Accounting and Finance**
 2 **Center for twelve years.**
 3 Q. Then you found the ten thousand dollar
 4 toilet seat, and they kicked you out?
 5 **A. Right. Well, actually they made me a war**
 6 **time planner. That's true, they did.**
 7 Q. Have you ever been to a landfill?
 8 **A. No, I haven't. I've come close a couple**
 9 **times.**
 10 Q. You've never been to Community Landfill,
 11 this one?
 12 **A. No.**
 13 Q. And do you have a package of documents that
 14 has been supplied to you in this case?
 15 **A. Yes.**
 16 Q. Did you bring those with you?
 17 **A. I did.**
 18 Q. Can I take a look at them, please?
 19 **A. Sure.**
 20 Q. While I'm doing this, will you just go over
 21 the documents that he has and make a list of them?
 22 MS. GRAYSON: Yes.
 23 MR. GRANT: Off the record for
 24 a second.

1 (Off Record Discussion).
 2 MR. LaROSE: In the IBP, Inc.
 3 case, is that an EPA case, too?
 4 THE WITNESS: Right, uh-huh.
 5 Q. Were you able to determine the weighted cost
 6 of capital in that case?
 7 A. Yes.
 8 Q. Based on information that was available
 9 through the public filings?
 10 A. Well, yes, for the most part. How do I want
 11 to say this. Yes, that would be correct, it would be
 12 the information from either their annual reports or
 13 from their SCC filings.
 14 Q. Okay. And what about Panhandle Eastern
 15 Pipeline, were you able to make the same determination
 16 in those cases?
 17 A. Yes, using the same information.
 18 Q. Using the public information. Okay. As I
 19 understand it as we sit here today, John, you do not
 20 have a conclusion as to either economic benefit or as
 21 a component of that estimated cost of capital?
 22 A. That's correct.
 23 Q. Have you made any of the -- have you made
 24 any determination as to any of the component parts of

1 Q. When was the last time you spoke to him?
 2 A. Today.
 3 Q. When was the first time you spoke to him?
 4 A. About three months ago.
 5 Q. And between three months ago and today, you
 6 received -- go ahead.
 7 A. Well, maybe it was three times, three months
 8 ago and then I talked to him yesterday and then I
 9 talked to him today.
 10 Q. Sometime between three months ago and today,
 11 you received from him the pack of documents that he
 12 wanted you to review and hopefully use as part of your
 13 analysis?
 14 A. Right.
 15 Q. I'm not going to delve into anything that's
 16 potentially attorney/client, but did he tell you what
 17 to say today?
 18 A. No.
 19 Q. Okay. Basically be a nice boy and tell the
 20 truth?
 21 A. Right.
 22 Q. Okay. Is your assignment for economic
 23 benefit as far as you know limited only to this
 24 overfill or filling above the permitted line?

1 economic benefit?
 2 A. No.
 3 Q. That is your assignment, however?
 4 A. That is my assignment.
 5 Q. And before you testify in this case, you
 6 intend to do that?
 7 A. That's correct.
 8 Q. Chris, I'm not going to belabor a lot. I
 9 mean, if he doesn't have any conclusions. But once he
 10 gets them, I'd like to talk to him about it before the
 11 witness stand.
 12 MR. GRANT: No, that's fine. I
 13 don't have any problem. As a matter of a fact, we're
 14 going to ask him to prepare some sort of report which
 15 I will consider that that's a continuing obligation to
 16 supplement interrogatories that we have.
 17 MR. LaROSE: And I promise you
 18 I won't waste your time, but I can't just ask him
 19 about it on the witness stand.
 20 MR. GRANT: Oh, no, I
 21 understand.
 22 MR. LaROSE: How many times
 23 have you talked to Mr. Grant about your assignment?
 24 THE WITNESS: Twice.

1 A. Yes.
 2 Q. Are you aware that as part of subsequent
 3 permits issued to this company they were required to
 4 reserve in another area of the landfill as much as
 5 450,000 cubic yards of air space so that the overfill
 6 could be moved from one location to the other?
 7 A. No.
 8 Q. If, in fact, sir, assuming that there is no
 9 more than 450,000 cubic yards of overfill, they are
 10 required to pick that waste up and move it to another
 11 location and fill up other air space that has a value
 12 today, could that affect your analysis of economic
 13 benefit?
 14 A. No.
 15 Q. Why?
 16 A. Well, because when we're looking at the
 17 economic benefit, we're looking at the economic
 18 benefit that they received by exceeding the capacity
 19 or exceeding the permit at that point in time. The
 20 additional cost of moving that landfill to another
 21 location is, you know, relates to another decision in
 22 the sense that the accrual of the economic benefit was
 23 what they received by the revenue that they attained
 24 plus the earnings of the interest up until that point

1 in time.

2 Q. So if they have to give it back the next

3 day, that doesn't count?

4 A. No.

5 Q. Why?

6 A. Because it's a different decision.

7 Q. So if they just in simple terms, if the

8 bottom line of your ultimate calculation is that their

9 economic benefit was a million dollars from doing

10 this?

11 A. Uh-huh (affirmative).

12 Q. Up to the point in time that they have to

13 move it, and the next day it costs them a million

14 five?

15 A. To move it.

16 Q. Not just physically to move it but a million

17 five in taking up additional air space that has a

18 value to it, because, remember, they've got to move it

19 somewhere that has value to it, right? That doesn't

20 count in your analysis?

21 A. No.

22 Q. Why?

23 A. Because it's a different aspect, it's a

24 different decision. It's a different economic event

1 creating the overfill and the cost of the air space

2 today factor into your analyses?

3 A. In other words, what you're saying is let's

4 say that whenever they filled this up, let's say it

5 was 1998, okay, and they were selling this air space

6 for let's say \$10 a cubic yard and the fair market

7 value of it in the year 2003 would be \$15.

8 Q. That's right.

9 A. Okay.

10 Q. Would that factor into your analysis at all?

11 A. I would use the economic, we would use the

12 value that they actually received, which would have

13 been 1998, which would have been the \$10.

14 Q. Okay. And if, in fact, they had to take

15 this waste that they received \$10 for and move it into

16 an available space that they were required to reserve

17 as part of their permit where they could now sell that

18 space for \$15, that won't factor into your analysis?

19 A. Well, what you're talking about here is

20 opportunity cost, your opportunity revenue, which

21 would be what they've foregone, right, because you're

22 going to use it for that.

23 Q. Yes.

24 A. I have to think about it.

1 than the initial economic event that was done when

2 they exceeded their permit.

3 Q. When does the economic benefit analysis end?

4 A. Well, that's a good question. It would end

5 at the present time that they are -- normally it would

6 end when they would be in compliance.

7 Q. Okay. And in this case in order to be in

8 compliance, they have to either have this material

9 left in place, left there with the proper government

10 authorizations or they have to take this material out

11 and move it somewhere where it's not over line?

12 A. Yeah, in this particular case that would

13 probably be right.

14 Q. So in this particular case, even though the

15 economic benefit and analysis would continue until

16 they moved the material, you wouldn't consider the

17 cost of moving the material as part of the economic

18 benefit?

19 A. Well, I don't think so.

20 Q. Are you sure of that?

21 A. No, I'll take a look at it.

22 Q. Okay. When you do your economic benefit

23 analysis, will the cost of the air space, in other

24 words X per cubic yard at the time that they were

1 Q. Okay. If, in fact, sir, the coming into

2 compliance of that is moving this waste for which they

3 were paid let's say \$10 per yard into an available air

4 space that they were required to reserve at \$15 per

5 yard, wasn't the net cost of the overfill \$5, not a

6 net savings?

7 A. Well, see, I don't think so because the

8 problem is they elected to exceed the capacity. And

9 we used the hypothetical year of 1998. So they made

10 the decision to exceed that decision in 1998. They

11 received the benefit of that. Let's say they moved

12 this in 2004. So from 1998 to 2003 they obtained the

13 economic benefit of the initial sales price less the

14 variable cost plus having those funds available until

15 2004.

16 Q. Less taxes?

17 A. Less taxes, right. Okay. Then in the year

18 2004, they now come into compliance.

19 Q. By giving up \$15 per unit for what they have

20 already received \$10 per unit?

21 A. I think the bottom line is, no, you would

22 not take that into consideration because this is the

23 economic benefit they received was from 1998 to 2003.

24 2004, they come into compliance. And I don't believe

1 **we would take into consideration the cost.**
 2 Q. You made a statement that I want to
 3 follow-up on. You said in 1998 they made the decision
 4 to do this. How do you know that? Forget the year.
 5 How do you know anybody made a decision to do
 6 anything?
 7 MR. GRANT: I'm going to
 8 object. I think we've been talking about hypothetical
 9 questions here. We haven't introduced any of the
 10 facts in the case.
 11 MR. LaROSE: Understood. But
 12 he said in this case.
 13 MR. GRANT: It's okay for him
 14 to answer the question. I want to make it clear.
 15 MR. LaROSE: Do you know who
 16 made any decision to do anything?
 17 **A. No, I'm basing it on the fact it occurred.**
 18 Q. And I didn't mean to imply that, you know,
 19 that this was some type of calculated maneuver as
 20 opposed to something that just occurred.
 21 **A. Correct, that I was just basing it on**
 22 **historical fact.**
 23 Q. Okay. If you don't factor in the cost of
 24 them having to come into compliance in your economic

1 **and when it ended. And to go beyond that, I'd have to**
 2 **do some research to answer that question.**
 3 Q. Okay. In fact, sir, if you were doing
 4 anything but an economic benefit analysis, if you were
 5 just doing a financial analysis of this company, the
 6 overfill would have generated some additional income
 7 for a period of time, but ultimately under our
 8 scenario would have resulted in a loss to the company
 9 because of things they would have to do to manage the
 10 overfill in accordance with the law, correct?
 11 **A. Based on the scenario you were talking**
 12 **about?**
 13 Q. Yes.
 14 **A. That would be correct.**
 15 Q. Based on a scenario of having to take the
 16 waste that they made on for several years and move it
 17 to an area that was more valuable in later years, they
 18 actually would have lost money, not gained.
 19 **A. Well, they would have lost some opportunity**
 20 **income, the opportunity income that they've foregone**
 21 **by moving the fill to the new location where they**
 22 **could have sold it for \$15 a yard versus \$10 would**
 23 **have resulted, in fact, resulted in lower revenue in**
 24 **excess of what they originally received, that would be**

1 benefit analysis, where is that factored in?
 2 **A. Well, it's part of their cost of, it's part**
 3 **of the cost of coming into compliance. It's not**
 4 **related to the economic benefit that they obtained**
 5 **when they violated the law because this is another**
 6 **event that is occurring for them to come into**
 7 **compliance.**
 8 Q. Isn't the purpose of figuring out economic
 9 benefit is the economic benefit from the
 10 noncompliance?
 11 **A. Right.**
 12 Q. Okay. And if the cost to come into
 13 compliance ultimately completely wipes out that
 14 economic benefit because it costs more to come into
 15 compliance than the economic benefit, doesn't the
 16 whole economic benefit analysis just go away? Isn't
 17 that the matrix, Mr. Nosari?
 18 **A. Well, I would think so because what we're**
 19 **saying is we're not going to take into consideration**
 20 **that cost of coming into compliance.**
 21 Q. And who says that? You, the EPA, both of
 22 you, some book?
 23 **A. Well, I'll just have to say that it's based**
 24 **on my perception of when the economic events occurred**

1 **correct.**
 2 Q. Right. What is it about the fact that this
 3 analysis is now being performed for the government in
 4 an environmental setting that changes it from just a
 5 standard economic analysis that we just discussed?
 6 **A. Well, this is a similar question to your**
 7 **previous one.**
 8 Q. Understood.
 9 **A. Basically, again, it relates to what you**
 10 **consider point of that decision or point of that**
 11 **economic event. And to go beyond that, as I**
 12 **indicated, I would have to do some additional**
 13 **research.**
 14 Q. As you sit here, you can't point to any law,
 15 rule, regulation, treatise or book that would support
 16 the theory that an economic benefit analysis should
 17 not take into consideration the cost of coming into
 18 compliance?
 19 **A. The only thing I can tell you is that the**
 20 **economic benefit analysis is supposed to result in**
 21 **the, in this case being put in exactly the same**
 22 **position they were had they not done this, okay. So**
 23 **that they, so whatever benefit they received was taken**
 24 **away. And then you're getting involved in a question**

RECEIVED
CLERK'S OFFICE

ILLINOIS POLLUTION CONTROL BOARD

September 13, 2005

SEP 13 2005

STATE OF ILLINOIS
Pollution Control Board

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

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

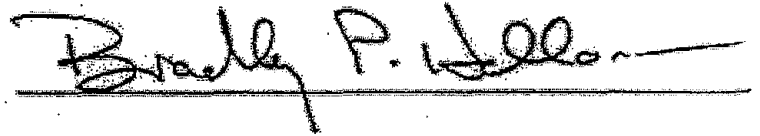
HEARING OFFICER ORDER

On September 13, 2005, all parties participated in a telephonic status conference with the hearing officer. The parties represented that discovery is proceeding but that additional time is needed to complete depositions. To that end, all discovery must be completed on or before October 12, 2005. The parties were advised to suggest possible hearing dates at the next status conference.

The parties or their legal representatives are directed to participate in a telephonic status conference with the hearing officer on November 3, 2005, at 11:00 a.m. 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 matters and their readiness for hearing.

IT IS SO ORDERED.



A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line. The signature is cursive and includes a long horizontal stroke at the end.

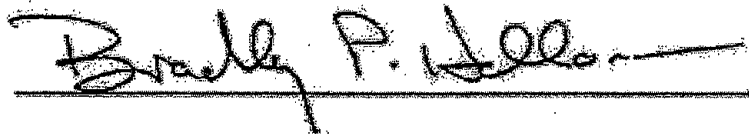
Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on September 13, 2005, 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 September 13, 2005:

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
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601
(312) 814-8917

Electronic Filing - Received, Clerk's Office, September 8, 2008

PCB 2004-207
Clarissa C. Grayson
LaRose & Bosco, Ltd.
200 North LaSalle Street
Suite 2810
Chicago, IL 60601

PCB 2004-207
Christopher J. Grant
Office of the Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, IL 60601

PCB 2004-207
Jennifer A. Tomas
Office of the Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, IL 60601

PCB 2004-207
Robert Pruijn
Community Landfill Company
c/o Morris Community Landfill
1501 Ashley Road
Morris, IL 60450

PCB 2004-207
Edward Pruijn
Community Landfill Company
c/o Morris Community Landfill
1501 Ashley Road
Morris, IL 60450

DATE: August 26, 2008

TO: Alec Messina, Chief Legal Counsel
Illinois Environmental Protection Agency

FROM: Gary Styzens, CIA/MBA, Financial Analyst,
Illinois Environmental Protection Agency

SUBJECT: Community Landfill/Pruim - Economic Benefit Analysis

As you requested, I have finalized an estimate of economic benefit; associated with avoided expenditures for the Community Landfill/Pruim case. This particular case involves three (3) types/categories of avoided costs and the total economic benefit estimated for all three cost categories combined is \$1,486,079 with the following breakout:

Avoidance in removal of Excess/Overheight Waste:	\$1,339,793
Avoidance of Post-Closure Costs - Significant Mod Application:	\$ 73,950
Avoidance of Financial Assurance Upgrade Costs	\$ 72,336
	<u>\$1,486,079</u>

I understand that you requested an estimate of economic benefit on behalf of the Illinois Attorney General's Office and you will provide them with a copy of my memo/report. My analysis and supporting facts are presented in Section III of this memo. If you have any questions or need additional information please let me know.

I. INTRODUCTION

I am employed by the Illinois Environmental Protection Agency ("Illinois EPA") as a financial analyst. As part of my duties, I develop reasonable estimates of economic benefit of noncompliance in enforcement cases referred to me by the Illinois EPA's Chief Legal Counsel on behalf of the Illinois Office of the Attorney General.

Issues to be Addressed by this Report

This report presents the analysis that I have completed based upon financial documentation of avoided expenditures associated with costs for the permitting, inspection, maintenance, repair, and operation of Community Landfill and/or measures necessary to ensure compliance with federal and state law.

EXHIBIT D

Delayed Costs: By delaying compliance costs, the violator can earn a return on these funds that should have been committed to the capital investment or one-time expenditure required for pollution control and compliance with applicable environmental regulations. The violator's economic benefit is the difference between investing in pollution control and investing in other projects (investing in improved marketing, product improvements, hiring additional sales staff etc.) or placing the funds in other investment accounts. For the Community Landfill case, costs have been classified as avoided since there has been no documentation identifying and supporting expenditures necessary to eliminate violations and achieve compliance with applicable regulations.

Avoided Costs: Costs can be avoided altogether instead of being delayed. Avoided costs can include continuing annual, recurring costs or one time period costs that the violator would have incurred had it complied with environmental regulations on time (maintenance, utilities, inspections, monitoring, permitting fees, financial assurance etc.). The violator's economic benefit for avoided compliance costs is the sum of the total avoided annual costs plus the return that could be expected on these funds that were used for other projects/investments rather than for pollution control compliance.

Statement of Qualifications

A copy of my current resume is attached as Attachment A.

II. BACKGROUND INFORMATION

One of Illinois EPA's most important responsibilities is to ensure that regulated entities comply with applicable environmental laws. A cornerstone of the civil penalty program is recapturing the economic benefit that a violator may have gained from activities that are not in compliance with applicable rules and regulations. Recapture helps level the economic playing field by preventing violators from obtaining an unfair financial advantage over their competitors who made the necessary expenditures for environmental compliance.¹

There are usually two components to the civil penalties: gravity and economic benefit. The gravity component reflects the seriousness of the violation. The economic benefit component focuses on the violator's economic gain from noncompliance that may occur in three basic ways.

1. Delay necessary pollution control expenditures,
2. Avoid necessary pollution control expenditures,
3. Gain a competitive advantage during the period of noncompliance.²

¹ The Federal Register Vol.64, No.117/Friday, June 18, 1999 provides an overview of economic benefit analysis.

² Due to the high level of avoided operating and maintenance costs and the acceptance of waste above grade in violation of the permit allowances; there is a high risk that a competitive advantage occurred during the noncompliance period.

In presenting economic benefit analysis in a hearing with the Illinois' Pollution Control Board or before the Civil Courts, the USEPA guidance provides that an expert should provide an independent financial analysis of the economic benefit the violator obtained as a result of its violations. The independent financial assessment reflects the expert's own analytical approach as applied to the particular facts of a case.

The expert approach used by the State of Illinois was developed for use in a 2001/2002 case against Panhandle Pipeline. The financial analysis using Excel spreadsheets was developed by Gary Styzens, CIA, MBA with technical assistance from Dr. John Nosari, CPA, CIA a professor at University of Illinois-Springfield.

In this case, I conducted an independent financial analysis of the economic benefit Community Landfill obtained as a result of their noncompliance with environmental regulations. My analysis, that includes the use of Excel spreadsheets, incorporates many of the basic financial concepts incorporated into a general financial education and associated financial textbooks used in college curriculums³ including:

- Time value of money concepts including future value.
- Cost of Capital concepts using a company specific Weighted Average Cost of Capital (WACC)³ or Prime Lending Rate as a benchmark for WACC.
- Tax concepts.
- Opportunity costs.

The above approach has been well tested in the Panhandle case with Panhandle's expert witness accepting the general approach; except for some general challenges with the weighted average cost of capital approach used by Dr. Nosari.

Professional Standards

The professional accounting and auditing standards used to develop reasonable estimates of economic benefit and for performing the financial analysis of economic benefit include the following items:

- The Institute of Internal Auditors auditing standards
- The General Accountability Office (GAO) Government Auditing Standards (Yellow Book)
- American Institute of Certified Public Accountants (AICPA) Statements on Auditing Standards (SAS)
- Office of Management and Budget (OMB) Circulars

III. ANALYSIS

As requested, I have estimated an economic benefit associated with avoided expenditures for Community Landfill is \$1,486,079; with the following breakout:

³ I did not have sufficient company specific financial data to calculate a company specific WACC. Consequently, used the Federal Reserve Prime Lending Rate as a conservative benchmark cost of capital/time value of money rate.

- **Avoidance In Removal of Excess/Overheight Waste: Economic Benefit - \$1,339,793 - Non-compliance period is operation from submittal of an addendum to application by owners/operators for modification to permit received by IEPA on April 30, 1997 through the time period of this analysis July 31, 2008.**
- **Avoidance of Post-Closure Costs - Significant Mod Application: Economic Benefit = \$73,950 - Non-compliance period is from submittal of the Owner/Operator filed variance on April 26, 1995 through the time period of this analysis July 31, 2008.**
- **Avoidance of Financial Assurance Upgrade Costs: Economic Benefit = \$72,336 - Non-compliance period is from when the Agency received the performance bond on June 20, 1996 through the time period of this analysis July 31, 2008.**

As mentioned earlier, the Total Economic Benefit from combining the avoided costs occurring with the above three classification of avoided costs is \$1,486,079. Attachment B provides an overview/explanation on the details of my Economic Benefit calculations along with four (4) pages of Excel based spreadsheets (attached).

ATTACHMENT A

Resume of Gary Styzens

GARY STYZENS, MBA
11871 Pinehollow Lane
Petersburg, Illinois 62675
(217) 632-3607

CERTIFIED INTERNAL AUDITOR

CAREER SUMMARY

2006 to present State of Illinois, Environmental Protection Agency (IEPA), Springfield, IL

Economic Benefit Analyst and Manager (1/06 - present) functions as a financial analyst to:

- Plan, research, and develop estimates of economic benefit for penalty cases including support in settlement negotiations and provide assistance and consultation for any economic benefit estimates to the Chief Legal Counsel and the Attorney General's Office for potential litigation activities.
- ~~Serve as an expert financial analyst, performs management studies of the adequacy of internal administrative and fiscal controls; provides assessment of the adequacy of major systems including revenues and receivable and expenditures; performs fiscal monitoring and reporting of agency revenues, obligations and expenditures; evaluates, develops, and implements management reports on cash flow analysis and expenditure controls.~~
- Perform ability to pay analysis as it relates to penalties developed by the IEPA and Attorney General.

2003 to 2005 State of Illinois, Illinois Office of Internal Audits (IOIA), Springfield, IL

Internal Audit Division Manager (10/03 – 12/05) functions as manager of IOIA's internal audit program for the Division of Economic Development, Environmental Regulation, and Law Enforcement that includes 10 staff auditors and includes the following agencies/departments: Agriculture, Environmental Protection, Natural Resources, Commerce and Economic Opportunity, State Police, Law Enforcement Training & Standards Board, Corrections, Prisoner Review Board, and Violence Prevention Agency. Duties included:

- Implement a risk based audit plan that identifies individual audits to be conducted in the Division during the year.
- Manage the Division's internal auditing program to assure compliance with the "Fiscal Control and Internal Auditing Act", the Institute of Internal Auditor's auditing standards, and IOIA's policies and procedures.
- State of Illinois' Economic Benefit expert providing analysis to the IEPA, Trust Fund Commission, and Attorney General.

2001 to 2003

State of Illinois, Environmental Protection Agency (IEPA), Springfield, IL

Senior Public Service Administrator (1/01 – 9/03)**Chief Internal Auditor** function as manager of IEPA's internal audit function that includes four staff auditors. Duties include:

- Prepare a risk based audit plan identifying the individual audits to be conducted during the year, and an annual report detailing the results of the prior year's plan.
- Manage the agency internal auditing program to assure compliance with the "Fiscal Control and Internal Auditing Act" and the Institute of Internal Auditors' auditing standards.
- Direct audits of the Agency's systems of accounting and administrative controls; obligation, expenditure, receipt and use of public funds by the Agency and, grants received or made by the Agency.
- Review the design of new electronic data processing systems. Directs special audits of the operations, procedures, programs and activities of the Agency as requested by the Director or Deputy Director of the Agency.
- Perform audits of Economic Benefit and Ability to Pay associated with penalty cases being managed by the Division of Legal Counsel and the Illinois Attorney General including expert testimony.

Significant Job Related Accomplishments:

- Provided financial related expert testimony for the Division of Legal Counsel before the Pollution Control Board on a key enforcement case that defended IEPA's approach to determine a reasonable penalty for violations of the EPA Act. The Pollution Control Board issued a record civil penalty approaching \$1 million.
- Worked with Agency management to improve the effectiveness of management's system of administrative and accounting controls to ensure that IEPA is in compliance with state/federal rules and regulations, Agency programs are operating efficiently and, program goals and objectives are being achieved.

The result of improved internal controls is evidenced by a reduction of external audit findings made by the Auditor General over the last ten years from approximately 40 down to three in the FY2001/02 audit.

- At the request of the Deputy Director, worked as a project leader to develop and implement an Agency-wide property control process including elimination of duplicate inventory systems, and development of a property control process including procedures, forms, staffing, and a bar code scanning system. For the first time in 10 years the Auditor General audit had no material property control findings.

1991 to 2000

State of Illinois, Environmental Protection Agency, Springfield, IL

Public Service Administrator (6/91 – 1/01)**Internal Audit Section Supervisor** functioned as lead auditor by performing non-routine audits of complex programs. Assisted in the management of the agency internal auditing program to assure compliance with the Fiscal Control and Internal Auditing Act"; participated in the development of the annual audit plan and the annual

evaluation of audit accomplishments; assisted in the coordination of the annual evaluation and certification of internal controls; verified and documented corrective action taken to resolve audit findings; and supervised three audit staff.

Performed and coordinated all facets of internal audits for management, internal control, and information system audits. Worked closely with the Chief Auditor to report critical audit issues to senior management and responded to management's inquiries and special audit requests. Worked closely with the Attorney General's Office and IEPA Chief Legal Counsel to assist in penalty negotiations involving violators of the EPA Act. Performed detailed financial statement analysis to determine the violator's reasonable penalty amount and to determine the violator's financial ability to pay a penalty without causing excessive financial hardship. 1985 to 1991 State of Illinois, Department of Public Aid, Springfield, IL

Internal Auditor III (7/89 - 6/91)

Management Audit Unit Supervisor controlled, performed, and directed management and program audits as requested by management. Program audits included: Homeless Shelter, Day Care, Refugee, and Welfare To Work. Reviewed high dollar contracts to ensure that costs/budgets were reasonable for the services being provided.

Supervised and directed 4 junior auditors to ensure audits were accurately reported, conducted within budgeted hours, and emphasize significant issues. Drafted and reviewed audit programs, audit reports or report segments drafted by junior auditors relative to completeness and accuracy.

Internal Auditor II (9/87 - 7/89)

Advanced Level Senior Auditor regularly conducted internal audits of non-routine and complex natures including financial, internal control, operational, and compliance audits. Functioned independently, as a team leader, and as auditor in charge of junior auditors.

Internal Auditor I (4/85 - 9/87)

Junior Auditor conducted internal audits of simple and complex programs independently and as team member under general supervision. Prepared audit reports for review and completed specific phases of complex audits.

EDUCATIONAL SUMMARY:

Certified Internal Auditor, 1988

State of Illinois, Department of Professional Registration

M.B.A., Business Administration, 1983

Southern Illinois University, Carbondale, IL (GPA 3.30/4.00)

B.S., Forestry/Environmental Sciences, 1980

Southern Illinois University, Carbondale, IL (GPA 3.50/4.00)

Attachment B

AVOIDED

**Economic Benefit Associated with Avoided Expenditures
(Schedule Initial Compliance Investment Page 1- Overheight Removal)**

This section provides a sample/overview of the Excel spreadsheet calculations on Economic Benefit

Column B: This represents the non-compliance period and is provided to us by the IEPA/AG attorneys. During this period the company was not in compliance with environmental regulations.

Column C First Row of schedule Initial Compliance Investment for Overheight Removal (Page 1) is the starting point for calculating the economic benefit for avoided expenditures and shows the before tax costs for removing excess/overheight waste associated with the permitted landfill named Community. This figure was obtained from the non-compliant entity.

Columns D First Row shows the tax implications/reduction associated with the avoided environmental compliance expenditures using the estimated corporate tax rate in Illinois of approximately 33%. Environmental compliance expenses are tax exempt.

Column E is calculating the after tax interest earnings throughout the noncompliance period on avoided expenses using the Bank Prime Loan Rate as an estimate of the cost of capital/time value of money rates. As you move down the non-compliance period the different annual Bank Prime Loan Rates in **Column F** are applied in each year's calculations. The interest calculations are brought down the noncompliance period with interest charging on both the avoided principal and the interest compounded throughout the period.

Column E Last Row is the total Economic Benefit (interest and principal) associated with the avoided expenditures.

Column F is the Federal Reserve Bank Prime Loan Rate and this median interest rate for each year of noncompliance is used to estimate the level of investment income the Corporation received by investing monies in the Corporation rather than in pollution control measures to comply with environmental/permit requirements. Schedule PRIME page four (4) provides the prime rate information.

Column G shows the interest earnings resulting from investment of monies in the Corporation and the interest is added back to column E to obtain the final, total; Economic Benefit (principal and interest) in **Column E, Last Row.**

ATTACHMENT C

Documents Consulted

LIST OF DOCUMENTS CONSULTED

1. BEN Manual
2. Federal Register Vol.64, No.117/Friday, June 18, 1999
3. Economic Benefit related professional literature/article:
 - USEPA Office of Enforcement and Compliance Assistance article titled: "Leveling the Playing Field: Eliminating the Economic Benefit of Violating Environmental Laws"
 - USEPA, office of Enforcement and Compliance Monitoring "IDENTIFYING AND CALCULATING ECONOMIC BENEFIT THAT GOES BEYOND AVOIDED AND/OR DELAYED COSTS"
4. Chemical Engineering Magazine-Plant Cost Index for inflation factors
5. Federal Reserve Website-Prime Lending Rates
6. Four (4) pages of attachments in Excel for computing Economic Benefit
7. ~~Information on avoided expenditures associated with three categories of avoided costs pertaining to non-compliance for Community Landfill.~~

**COMMUNITY LANDFILL/PRUIM
Economic Benefit for AVOIDED
Financial Assurance Upgrade Costs**

A	B	C	D	E	F	G
	YEAR NON-COMPLIANCE PERIOD	AVOIDED FINANCIAL ASSURANCE UPGRADE COSTS ESTIMATED DOLLARS	MARGINAL TAX RATE 33%	CAPITAL INVESTMENT LESS TAXES	BANK PRIME LOAN RATE	NET BENEFIT INTEREST ONLY
10	20-Jun-96	\$47,877	\$15,798	\$32,074	0.0825	\$1,406
11	1997			\$33,480	0.0850	\$2,846
12	1998			\$36,326	0.0850	\$3,088
13	1999			\$39,413	0.0788	\$3,106
14	2000			\$42,519	0.0950	\$4,039
15	2001			\$46,558	0.0687	\$3,199
16	2002			\$49,757	0.0475	\$3,363
17	2003			\$52,120	0.0413	\$2,142
18	2004			\$54,262	0.0413	\$2,241
19	2005			\$56,504	0.0613	\$3,464
20	2006			\$59,967	0.0814	\$4,881
21	2007			\$64,849	0.0825	\$5,350
22	31-Jul-08			\$72,199	0.0524	\$2,137
23			TOTAL	\$72,336		
24		Total Economic Benefit Due to Financial Assurance Upgrade Delays - Principal and Interest:				\$40,262

COLUMN B: Non-compliance period provided by Bureau of Land technical staff and Attorney General and relates to insufficient financial assurance during the period July 1993 through the date the Agency received a performance band on June 20, 1996.

COLUMN F:
Source: Federal Reserve Bank Prime Loan Rate - Annual Median Rate
<http://www.federalreserve.gov/releases/h15/default.htm>
See PRIME RATE SCHEDULE WORKSHEET

COLUMN C: \$47,877 Avoided figure obtained from Bureau of Land and Attorney General staff.

COLUMN D: Corporate tax break given up from at 33% due to environmental related costs being designated as tax exempt. The 33% rate is an estimated rate provided by NEPA consultant Dr. John Kosar, PhD, CIA, CPA and represents a reasonable estimate of corporate tax rates in Illinois.

COLUMN E: Shows the principal and interest accumulating in a Corporate investment account due to avoided expenditures on additional financial assurance costs. E10: \$36,326-\$33,480 plus \$2,846.

E26: The economic benefit of \$72,336 includes the avoided principal expenditures in E-10 (\$32,074) and accumulated interest earnings of \$40,262 in G24 that accrued throughout the non-compliance period from June 20, 1996 through the current period; July 31 2008.

G10: Partial year figured at 194 days and daily rate for 1996 rate .0825 or .002260 and is taken from Prime Rate Schedule Worksheet.

G22: Partial year figured at 212 days and daily rate for 2008 rate .0524 or .001436 and is taken from Prime Rate Schedule Worksheet

Total interest earned on avoided expenditures/investment

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.	)	PCB No. 04-207
	)	(Enforcement – Land)
EDWARD PRUIM and ROBERT PRUIM,)	
)	
Respondents.)	
_____)	
PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.	)	PCB No. 97-193
	)	(Enforcement – Land)
COMMUNITY LANDFILL COMPANY,	)	(consolidated)
INC.,)	
)	
Respondent.)	

AFFIDAVIT OF CLARISSA Y. CUTLER

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

1. I am an attorney and am of counsel with LaRose & Bosco, Ltd. who represent Community Landfill Company, Inc. (“CLC”) and Edward Pruim and Robert Pruim in the above referenced consolidated matters currently pending in the Illinois Pollution Control Board.
2. The factual basis for Respondent’s Motion to Cancel Hearing is set forth herein and in Respondent’s Motion along with the attached documentation.
3. Respondents deposed the Complainant’s named expert, John Nosari, on September



10, 2003, five (5) years ago. (See Exh. B to Respondent's Motion). At that time, Assistant Attorney General Christopher Grant stated that Mr. Nosari would prepare a report and acknowledged Complainant's continuing obligation to supplement interrogatories. (See Exh. B to Respondent's Motion, pp. 25-26). By order of Hearing Officer Bradley Halloran, discovery closed in these matters on October 12, 2005, nearly three (3) years ago. (See Exh. C to Respondent's Motion).

4. On June 12, 2008, this matter was scheduled for hearing on October 20-23, 2008. (See Exh. A to Respondent's Motion).

5. To date, Mr. Nosari has not tendered a report.

6. Instead, on August 4, 2008, Assistant Attorney General Christopher Grant indicated in writing that "in the interest of saving money on consultants" it intended to ask "to substitute Illinois EPA employee Gary Styzens for John Nosari" , explaining that "Gary and John developed the opinion together, and either can testify to its conclusions." He further indicated his intention to provide an expert report "in the near future as soon as it becomes available." (See Exh. F to Respondent's Motion).

7. It was not until August 27, 2008 that Complainant actually provided a report which in fact is authored solely by Gary Styzens, and does not mention John Nosari as having either written the report or developed the opinion. (See Exh. D).

8. The history of this matter's proceedings is as follows. On May 1, 1997, Complainant filed its first complaint in the 1997 matter naming CLC as the sole respondent which 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 with CLC again as the sole

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.

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.

On December 5, 2003, Complainant filed a motion before the Board wherein it requested leave to file its Third Amended Complaint naming Edward Pruijm and Robert Pruijm, the principals of CLC, as additional respondents. That motion was unanimously denied by the Board on March 18,

2004. 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.

On September 10, 2004, Edward Pruim and Robert Pruim filed motions to dismiss which were denied by the Board on November 4, 2004. Edward Pruim and Robert Pruim answered the complaint on January 4, 2005. Because the underlying allegations in the 1997 and 2004 cases are essentially identical, the Board consolidated the matters on February 17, 2005.

On January 13, 2006, Edward Pruim and Robert Pruim filed motions for summary judgment which were denied by the Board on April 20, 2006. On May 30, 2006, Edward Pruim and Robert Pruim filed a motion for reconsideration which was denied by the Board on June 15, 2006. On June 27, 2006, the matter was scheduled for hearing on December 11-15, 2006.

On September 22, 2006, Respondents moved the hearing officer to cancel the Dec. 11-15, 2006 hearing due to Edward Pruim's having undergone emergency quintuple bypass surgery that was complicated by the presence of an aortic aneurism and blood clot on his lung. Respondents' motion was granted on October 17, 2006, with the hearing officer having found good cause and that the motion was not brought as the result of any lack of diligence.

On October 25, 2007, the matter was scheduled for hearing on April 7-10, 2008. On February 21, 2008, Respondents moved the hearing officer to cancel the April 7-10, 2008 hearing due to counsel having suffered a broken elbow on January 17, 2008. Respondents' motion was granted on March 5, 2008, with the hearing officer having found sufficient cause to do so and did not

find that it was brought as the result of any lack of diligence.

9. Only two previous cancellation requests have been granted in this proceeding. In granting these requests, the hearing officer found good or sufficient cause to grant the respondents' motions and did not find that they were brought as the result of any lack of diligence. This is only the third request for cancellation that has been made and is not brought as the result of a lack of diligence, but because of Complainant's failure to adhere to discovery schedules and extremely late disclosures of witnesses and reports for the hearing currently scheduled for October 20-23, 2008. Respondents seek what is in essence a short continuance of the hearing date until mid-late January, 2009 in order that they may have time to adequately prepare given Complainant's failure to comply with discovery deadlines.

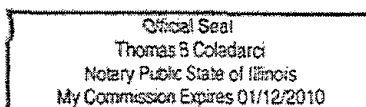
10. The information contained in this Affidavit is based on my personal knowledge. If called upon to do so, I would competently testify to same.

Further, Affiant sayeth naught.


Clarissa Y. Cutler

SUBSCRIBED AND SWORN TO
before me this 8 day of
September, 2008


NOTARY PUBLIC





OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 4, 2008

Ms. Clarissa Cutler
Attorney at Law
155 North Michigan Avenue
Suite 375
Chicago, Illinois 60601

re: Supplemental Discovery Responses, People v. Community Landfill Company,
Edward Pruum, Robert Pruum, PCB 97-193/PCB 04-207 (Consolidated)

Dear Clarissa:

This letter is meant to supplement our Responses to CLC's Second Set of Interrogatories, and to advise you that we will be providing an expert report on our Economic Benefit of Noncompliance estimate in the near future. In addition, in the interest of saving money on consultants, we will be asking to substitute Illinois EPA employee Gary Styzens for John Nosari. Gary and John developed the opinion together, and either can testify to its conclusions.

The updated BEN estimate is based on three avoided expenditures, specifically:

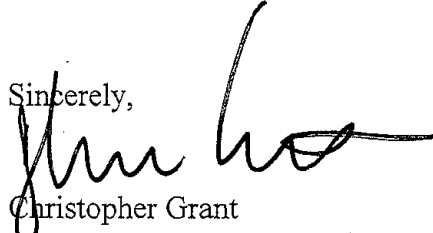
- 1) Failure to relocate excess/overheight waste: \$950,000.00 plus interest from April 30, 1997. CLC notified Illinois EPA of this cost through an addendum to their sigmod permit application on this date.
- 2) BEN from failure to upgrade financial assurance on several occasions between 1993 and 1996: \$47,871.33 plus interest from June 20, 1996. The report explaining these cost avoidances was originally prepared by John Taylor, and has been provided in discovery (a second copy will be attached to the expert report). We had previously named Dave Walters as witness for this report, but may substitute Brian White, who now has Mr. Walter's position. In addition, Blake Harris may provide testimony in this area.

EXHIBIT F

- 3) Estimate of avoided costs related to CLC's late-filed Sig-Mod permit application: \$44,526.00 plus interest from April 26, 1995. This information was provided by Cris Roque, and was previously provided to CLC.

We will provide the written opinion as soon as it becomes available. The Nosari/Styzens opinion will merely bring these avoided expenditures forward to the present using the bank prime lending rate. As previously agreed, we agree to allow additional deposition of the testifying witness on the updated opinion.

Sincerely,



Christopher Grant
Assistant Attorney General
Environmental Bureau
69 W. Washington, #1800
Chicago, Illinois 60602
(312) 814-5388

cc: Peter Orlinsky
Jennifer Van Wie
Paula Wheeler

Mr. Mark LaRose
LaRose & Bocso
200 N. La Salle Street, Suite 2810
Chicago, Illinois 60601

CERTIFICATE OF SERVICE

I, Clarissa Y. Cutler (f/k/a Grayson), an attorney, hereby certify that I caused to be served a copy of the foregoing **RESPONDENTS' COMMUNITY LANDFILL COMPANY, INC., ROBERT PRUIM AND EDWARD PRUIM'S MOTION *IN LIMINE* TO BAR COMPLAINANT'S EXPERT WITNESSES AND REPORT AND ANY OTHER PREVIOUSLY UNDISCLOSED WITNESSES OR, ALTERNATIVELY, TO CANCEL HEARING SET FOR OCTOBER 20-23, 2008 FOR CAUSE AND TO REOPEN DISCOVERY**, by electronic filing, emailing, and 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 8TH day of **SEPTEMBER, 2008**, addressed as follows:

By U.S. Mail and email

Christopher Grant
Jennifer Van Wie
Environmental Bureau
Assistant Attorney General
69 W. Washington, 18th Floor
Chicago, Illinois 60602
cgrant@atg.state.il.us
jvanwie@atg.state.il.us

By U.S. Mail and email

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
hallorab@ipcb.state.il.us

/s/ Clarissa Y. Cutler
One of Respondents' Attorneys

Mark A. LaRose
LaRose & Bosco, Ltd.
200 N. LaSalle Street, Suite 2810
Chicago IL 60601
(312) 642-4414
Atty. No. 37346

Clarissa Y. Cutler (f/k/a Grayson)
Attorney at Law (formerly with LaRose & Bosco, Ltd.)
155 North Michigan Avenue, Suite 375
Chicago IL 60601
(312) 729-5067
Atty No. 44745