

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney)
General of the State of Illinois,)
)
Complainant,)
-vs-)

EDWARD PRUIM, an individual, and)
ROBERT PRUIM, an individual,)
)
Respondents.)

PCB No. 04-207
PCB No. 97-193
(consolidated-enforcement)

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney)
General of the State of Illinois,)
)
Complainant,)
-vs-)

Community Landfill Company, Inc.)
)
Respondent.)

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on September 10, 2008, Complainant filed its Response to Motion to Bar Witnesses and Expert Testimony by electronic filing, a copy of which is attached and herewith served upon you.

Respectfully Submitted

BY:



CHRISTOPHER GRANT
JENNIFER VAN WIE
Assistant Attorneys General
Environmental Bureau
69 W. Washington St., 18th Flr.
Chicago, Illinois 60602

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**COMPLAINANT'S RESPONSE TO MOTION TO BAR
WITNESSES AND EXPERT TESTIMONY**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA
MADIGAN, Attorney General of the State of Illinois, and hereby responds to Respondents'
EDWARD PRUIM , ROBERT PRUIM, AND COMMUNITY LANDFILL COMPANY'S
Motion in Limine to Bar Complainant's Expert Witnesses, as follows:

I. This Matter Must Proceed to Hearing as Scheduled

This matter has been ripe for hearing for some time. As alleged, the violations began in 1993. The original complaint was filed in 1997, and, at Respondents' request, two hearing dates have already been stricken. In their Motion, Respondents suggest that hearing once again be cancelled to extend discovery. However, they do not suggest a new hearing date, and Complainant is concerned that Respondent's request will result in continued delay in resolution of this case.

Regardless of the decision of the Board on Respondent's Motion to Bar, Complainant believes that this hearing must proceed as scheduled, and is prepared to go forward with or without the tendered expert testimony. However, as argued herein, there is no need to limit the information available to the Board by excluding relevant evidence, and Respondent's Motion to Bar should be denied.

II. Respondents Were Notified of the Subject Matter of the Opinion Testimony More Than 60 Days Prior to Hearing

As will be made clear at hearing, all the base information used in developing the State's proposed expert testimony was provided by the Respondents. This includes information on the cost of relocating the overheight waste (from Respondent's April 30, 2007 Permit Application), information on the costs of avoided testing and treatment costs (provided by Respondents' consultants), and information regarding benefit from insufficient financial assurance (from the surety bonds submitted to Illinois EPA). In its expert report, the State has merely carried these avoided expenditures forward using the prime interest rate, and adjusted the numbers downward to reflect a possible tax benefit. (Opinion attached as Exhibit A).

As of August 4, 2008, counsel for Complainant had not yet received the final calculation. For that reason, the undersigned sent a letter to counsel for Respondent explaining the basis for the opinion. Complainant received no response to this letter, either in the form of a request for more information or by Notice of Deposition. Complainant provided the written opinion on August 28, 2008.

As noted by Respondents, Supreme Court Rule 218 calls for opinions to be provided no more than 60 days before trial. Complainant's final opinion was provided 54 days prior. However, as is clear from Section 101.616 of the Board Procedural Rules, 35 Ill. Adm. Code 101.616, the Supreme Court rules are directory, and not mandatory. Moreover Section 101.616, the Board's corollary Rule, provides that in the absence of an order to the contrary, discovery is to be completed 10 days prior to hearing, not 60 days.

Complainant is not engaging in new discovery, but rather is honoring its commitment to provide its expert opinion, first made in 2003. Although it proposes to substitute Gary Styzens as testifying witness, his opinion was developed in concert with previously-disclosed expert Dr. John Nosari (See: Exhibit A, p. 3). Use of a State employee witness for testimony will only reduce the overall costs of litigation. Mr. Styzens is readily available for deposition if the Respondents so choose.

III. All of Complainants Witnesses Were Timely Disclosed

In addition to Gary Styzens and Dr. Nosari, Respondents seek to bar the testimony of Brian White and Blake Harris, and thus keep additional relevant information from the Board. However, all proposed witnesses have been properly disclosed in conformance with Board procedure.

The Hearing Officer required that all witnesses be disclosed by August 20, 2008. Mr. Harris and Mr. White were named at that time (both had also testified at hearing in PCB 03-191). The Board has determined that this method of disclosure fully complies with Board procedure.

The Respondent will recall that in People v. Community Landfill Co. and City of Morris, PCB 03-191, Complainant also objected to CLC's and the City of Morris' first disclosure of witness Edward Pruum by listing him on their October 2, 2006 witness list (hearing was scheduled for October 24, 2006). Complainant also complained that neither Respondent had named Edward Pruum as witness in interrogatory responses, and that he therefore should be excluded from testifying. The Board rejected our contention, stating:

*CLC identified Mr. Pruum as a witness on October 2, 2006, consistent with the deadline set by the hearing officer for the filing of CLC's witness list.
PCB 03-191 (October 19, 2006, slip op. at 3).*

Clearly, Board procedure provides for naming of witnesses in the Hearing Officer's final pre-hearing order. Having used this provision to name a new witness 22 days before hearing, CLC cannot claim unfairness by Complainant's naming of Mr. White and Mr. Harris 61 days prior to hearing in this case.

Moreover, the Respondents are familiar with the subject matter of the proffered testimony, i.e. financial assurance provided by the Respondents. Both testified at hearing in PCB 03-191, which dealt solely with financial assurance, and were cross-examined by opposing counsel. Board rules allow for deposition up to 10 days prior to hearing. Complainant will not object to deposition of these witnesses. However, Complainant will vigorously object to a cancellation of hearing in this matter for this purpose.

Finally, the Board has granted summary judgement against CLC to Complainant on all

Counts where the challenged testimony will be used. Having found CLC in violation, the Board should be entitled to hear all relevant evidence relating to the proper remedy.

WHEREFORE, Complaint respectfully requests that the Hearing Officer:

- 1) Require that hearing of this matter continue as scheduled on October 20-23, 2006;
- 2) Deny Respondent's request to exclude the expert testimony promulgated by

Complainant;

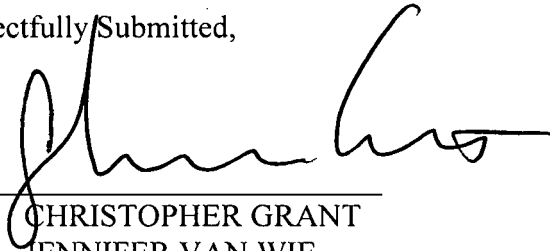
- 3) Deny Respondents' request to exclude Brian White and Blake Harris as witnesses;

and

- 4) Grant such other relief as the Hearing Officer deems appropriate.

Respectfully Submitted,

BY:



CHRISTOPHER GRANT
JENNIFER VAN WIE
Assistant Attorneys General
Environmental Bureau
69 W. Washington St., 18th Flr.
Chicago, Illinois 60602
(312) 814-5388
(312) 814-0609

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>

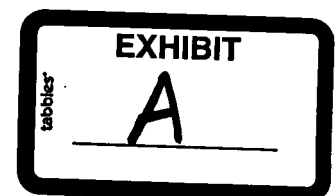
I understand that you requested an estimate of economic benefit on behalf of the Illinois Attorney General's Office and you will provide them with a copy of my memo/report. My analysis and supporting facts are presented in Section III of this memo. If you have any questions or need additional information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



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 curriculums' 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)

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 1996 ESTIMATED/DOLLARS	MARGINAL TAX RATE 33%	CAPITAL/ INVESTMENT LESS TAXES	BANK PRIME LOAN RATE	NET BENEFIT INTEREST ONLY
10	20-Jun-96	\$47,871	\$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	\$2,363
17	2003			\$52,120	0.0411	\$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			\$70,199	0.0524	\$2,137
23			TOTAL	\$72,336		
24		Total Economic Benefit Due to Financial Assurance Upgrade Delays - Principal and Interest:		\$72,336		\$40,262

Total interest earned on avoided expenditures/investment

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 bond on June 20, 1996.

COLUMN C: \$47,871 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 IEPA consultant Dr. John Nosari, PhD, CIA, CPA and represents a reasonable estimate of corporate tax rates in Illinois.

COLUMN F

Source: Federal Reserve Bank Prime
Loan Rate: - Annual Median Rate
http://www.federalreserve.gov/releases/h15/data/Monthly/H15_PRIME_NA.txt
See PRIME RATE SCHEDULE WORKSHEET

COLUMN E: Shows the principal and interest accumulating in a Corporate investment account due to avoided expenditures on additional financial assurance costs. E12: \$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 noncompliance 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 .0002260 and is taken from Prime Rate Schedule Worksheet.

G22: Partial year figured at 212 days and daily rate for 2008 rate .0524 or .0001436 and is taken from Prime Rate Schedule Worksheet

COMMUNITY LANDFILL/PRUIM
Economic Benefit for AVOIDED
 Late File of Significant Modification Application - Post-Closure Care Costs

A	B	C	D	E	F	G
	YEAR NON-COMPLIANCE PERIOD	AVOIDED POST CLOSURE COSTS SIGNIFICANT MODIFICATION APPLICATION 1995 ESTIMATED/DOLLARS	MARGINAL TAX RATE 33%	CAPITAL/ INVESTMENT LESS TAXES	BANK PRIME LOAN RATE	NET BENEFIT INTEREST
10	26-Apr-95	\$44,526	\$14,694	\$29,832	0.0878	\$1,786
11	1996			\$31,618	0.0825	\$2,609
12	1997			\$34,227	0.0850	\$2,909
13	1998			\$37,136	0.0850	\$3,157
14	1999			\$40,293	0.0788	\$3,175
15	2000			\$43,468	0.0950	\$4,129
16	2001			\$47,597	0.0687	\$3,270
17	2002			\$50,867	0.0475	\$2,416
18	2003			\$53,283	0.0411	\$2,190
19	2004			\$55,473	0.0413	\$2,291
20	2005			\$57,764	0.0613	\$3,541
21	2006			\$61,305	0.0814	\$4,990
22	2007			\$66,296	0.0825	\$5,469
23	31-Jul-08			\$71,765	0.0524	\$2,185
24			TOTAL	\$73,950		
25		Total Economic Benefit Due to Post Closure Costs/Significant Mod. Application Delays - Principal and Interest:		\$73,950		\$44,118

Total interest earned on avoided expenditures/investment

COLUMN B: Non-compliance period provided by Bureau of Land technical staff and Attorney General and relates to new monitoring requirements stemming from regulation changes in 1992. Owner/Operator filed variance on April 26, 1995 instead of back in June, 1993 per Land staff.

COLUMN C: \$44,526 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 IEPA consultant Dr. John Nosari, 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 post closure monitoring costs. E12: \$34,227=\$31,618 plus \$2,609

E25: The economic benefit of \$73,950 includes the avoided principal expenditures in E-10 (\$29,832) and accumulated interest earnings of \$44,118 in G25 that accrued throughout the noncompliance period from April 26, 1995 through the current period; July 31, 2008.

G10: Partial year figured at 249 days and daily rate for 1995 rate .0878 or .0002405 and is taken from Prime Rate Schedule Worksheet.

COLUMN F

Source: Federal Reserve Bank Prime Loan Rate - Annual Median Rate
http://www.federalreserve.gov/releases/h15/data/Monthly/H15_PRIME_NA.txt
 See PRIME RATE SCHEDULE WORKSHEET

G23: Partial year figured at 212 days and daily rate for 2008 rate .0524 or .0001436 and is taken from Prime Rate Schedule Worksheet.

COMMUNITY LANDFILL/PRUIM

Economic Benefit for AVOIDED

Initial Compliance Investment (Non-Depreciable) Overheight Removal

A	B	C	D	E	F	G
YEAR NON-COMPLIANCE PERIOD	AVOIDED INITIAL COMPLIANCE OVERHEIGHT INVESTMENT/EXPENDITURES 1997 ESTIMATED/DOLLARS	MARGINAL TAX RATE 33%	CAPITAL/ INVESTMENT LESS TAXES	BANK PRIME LOAN RATE	NET BENEFIT INTEREST	
12	30-Apr-97	\$950,000	\$313,500	\$636,500	0.0850	\$36,319
13	1998			\$672,819	0.0850	57,190
14	1999			\$730,009	0.0788	57,525
15	2000			\$787,533	0.0950	74,816
16	2001			\$862,349	0.0687	59,243
17	2002			\$921,592	0.0475	43,776
18	2003			\$965,368	0.0411	39,677
19	2004			\$1,005,045	0.0413	41,508
20	2005			\$1,046,553	0.0613	64,154
21	2006			\$1,110,707	0.0814	90,412
22	2007			\$1,201,118	0.0825	99,092
23	31-Jul-08			\$1,300,210	0.0524	39,583
24			TOTAL	\$1,339,793		
25		Total Economic Benefit Due to Noncompliance for Excess/Overheight waste: Principal and interest		\$1,339,793		\$703,293

Total interest earned on avoided expenditures/investment

COLUMN C: \$950,000 figure in C12 provided by Community Landfill/operators as the cost to move/truck the excess/overheight waste to another permitted landfill facility within the general area of the current/noncompliant landfill landfill. This figure was on document titled "Addendum to the application for significant modification to permit" dated April 30, 1997. The 4/30/1997 date is also used in Column B. to start the non-compliance period.

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 IEPA consultant Dr. John Nosari, PhD, CIA, CPA and represents a reasonable estimate of corporate tax rates in Illinois.

COLUMN E
Source: Federal Reserve Bank Prime
Loan Rate - Annual Median Rate

http://www.federalreserve.gov/releases/h15/data/Monthly/H15_PRIME_NA.txt

E25: The economic benefit of \$1,339,793 includes principal because it is assumed that no principal will be applied by the owners/operators to achieve compliance. Consequently, both interest and principal is assumed to be avoided. Money that is eventually spent to achieve compliance, at a later date, could be used to reduce the principle portion of the economic benefit (the \$636,500 portion). The \$703,293 interest portion should not be reduced.

COLUMN E: Shows the principal and interest accumulating in a Corporate investment account due to avoided expenditures on compliance. E14:
\$730,009=\$672,819 plus \$57,190.

E26: The economic benefit of \$1,339,793 includes the avoided principal expenditures in E-12 (\$636,500) and accumulated interest earnings of \$709,293 in E25 that accrued throughout the noncompliance period from April 30, 1997 through the current period; July 31, 2008.

G12: Partial year figured at 245 days and daily rate for 1997 rate .0850 or .0002329 and is taken from Prime Rate Schedule Worksheet.

G25: Partial year figured at 212 days and daily rate for 2008 rate .0524 or .0001436 and is taken from Prime Rate Schedule Worksheet.

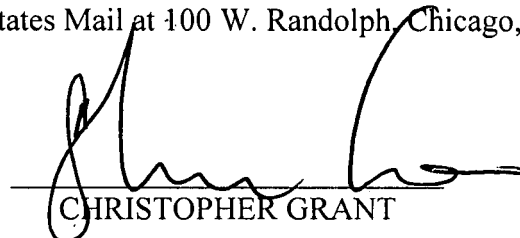
Federal Reserve Board of Governors
 Bank Prime Loan Rate
 Annual Median Rates

Schedule: PRIME
 PAGE FOUR (4)

	A	B	C	D	E	F	G	H	I
1	SOURCE:								
2	http://www.federalreserve.gov/releases/h15/data/Monthly/H15_PRIME_NA.txt								
3									
4									
5									
6									
7		1995	1996	1997	1998	1999	2000		
8	Jan	8.50	8.50	8.25	8.50	7.75	8.50		
9	Feb	9.00	8.25	8.25	8.50	7.75	8.73		
10	Mar	9.00	8.25	8.30	8.50	7.75	8.83		
11	Apr	9.00	8.25	8.50	8.50	7.75	9.00		
12	May	9.00	8.25	8.50	8.50	7.75	9.24		
13	Jun	9.00	8.25	8.50	8.50	7.75	9.50		
14	Jul	8.80	8.25	8.50	8.50	8.00	9.50		
15	Aug	8.75	8.25	8.50	8.50	8.06	9.50		
16	Sep	8.75	8.25	8.50	8.49	8.25	9.50		
17	Oct	8.75	8.25	8.50	8.12	8.25	9.50		
18	Nov	8.75	8.25	8.50	7.89	8.37	9.50		
19	Dec	8.65	8.25	8.50	7.75	8.50	9.50		
20									
21	Median	8.78	8.25	8.50	8.50	7.88	9.50		
22	Daily Rate	0.02405	0.0226	0.02329	0.02329	0.02159	0.02603		
23									
24									
25		2001	2002	2003	2004	2005	2006	2007	2008
26	Jan	9.05	4.75	4.25	4.00	5.25	7.26	8.25	6.98
27	Feb	8.50	4.75	4.25	4.00	5.49	7.50	8.25	6.00
28	Mar	8.32	4.75	4.25	4.00	5.58	7.53	8.25	5.66
29	Apr	7.80	4.75	4.25	4.00	5.75	7.75	8.25	5.24
30	May	7.24	4.75	4.25	4.00	5.98	7.93	8.25	5.00
31	Jun	6.98	4.75	4.22	4.01	6.01	8.02	8.25	5.00
32	Jul	6.75	4.75	4.00	4.25	6.25	8.25	8.25	5.00
33	Aug	6.67	4.75	4.00	4.43	6.44	8.25	8.25	
34	Sep	6.28	4.75	4.00	4.58	6.59	8.25	8.03	
35	Oct	5.53	4.75	4.00	4.75	6.75	8.25	7.74	
36	Nov	5.10	4.35	4.00	4.93	7.00	8.25	7.50	
37	Dec	4.84	4.25	4.00	5.15	7.15	8.25	7.33	
38									
39	Median	6.87	4.75	4.11	4.13	6.13	8.14	8.25	5.24
40	Daily Rate	0.01882	0.01301	0.01126	0.01132	0.01679	0.0223	0.0226	0.01436
41									

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused the foregoing Response to Respondents' Motion to Bar Witnesses and Expert Testimony to be served on those listed below by email and placing same with the United States Mail at 100 W. Randolph, Chicago, Illinois, on September 10, 2008.



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