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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.	)	

to: Mr. Mark La Rose, La Rose & Bosco
200 N. La Salle Street, #2810
Chicago, IL 60601

Ms. Clarissa Cutler, Attorney at Law
155 N. Michigan, Suite 375
Chicago, IL 60601

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

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that we have today, February 6, 2009, filed with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing, Complainant's Closing Argument and Post Hearing Brief, a copy of which is attached and herewith served upon you.

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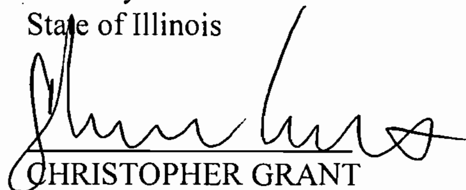
PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN
Attorney General of the
State of Illinois

BY: 

CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
69 W. Washington St., #1800
Chicago, IL 60602
(312) 814-5388

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Complainant,

-vs-

Community Landfill Company, Inc.

Respondent.

COMPLAINANT'S CLOSING ARGUMENT AND POST-HEARING BRIEF

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and hereby presents its Closing Argument and Post-Hearing Brief[1]

[1]The State's Closing Argument and Post Hearing Brief relies on prior rulings in this case, facts established in summary judgment, matters of which the Board is entitled to take notice, and

I. INTRODUCTION

This consolidated matter involves two separate enforcement cases related to the Morris Community Landfill ("Landfill")which were consolidated by the Board on February 17, 2005. The relevant pleadings are the Second Amended Complaint in Case No. 97-193 and the original Complaint in Case No. PCB 04-207. A review of the consolidated actions will be helpful in understanding the issues which remained for hearing.

a. Consolidated Cases

PCB No. 97-193

The Second Amended Complaint was filed against Community Landfill Company ("CLC") on November 24, 1999 as part of State's Motion for Leave to Amend. The Board denied Community Landfill Company's ("CLC's") Motion to Dismiss the Second Amended Complaint on March 16, 2000. On April 5, 2001, the Board granted summary judgment to the State on Count V. On August 23, 2001, the Board granted summary judgment to CLC on Count XII. On October 3, 2002, the Board entered summary judgment for the State on Counts III, IV, VII, VIII, IX, X, XIII, XIV, XVI, XIX (partial), and XXI. The Board dismissed Counts XI, XVIII, and XXII.

Therefore, related to PCB 97-193, the December 2-4, 2009 hearing was for the purpose of eliciting evidence on penalty for all remaining counts, and for a determination of CLC's liability on Counts I, II, VI, XV, XVII, and XX.

PCB No. 04-207

The Complaint in this case was filed on May 21, 2004 against Edward Pruim and Robert

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the record made during the December 2-4, 2008 hearing.

Pruim, the sole owners and shareholders of CLC. The Board denied the Pruims' Motion to Dismiss on November 4, 2004, but dismissed Count XI on agreement of the parties. On April 20, 2006, the Board denied the Pruims' Motion for Summary Judgment, and granted the State's request to voluntarily dismiss Counts XIII, XIV, XV, XVI, and XVIII in PCB 04-207.

Therefore, related to PCB 04-207, the December 2-4, 2009 hearing was for the purpose of eliciting evidence on penalty and liability for the Pruims on Counts I, II, III, IV, V, VI, VII, VIII, IX, X, XII, XVII, and XIX of the Compliant in PCB 04-207.

2. Complainant's Offer of Proof

Complainant has appealed an evidentiary ruling by the Hearing Officer excluding certified records from *United States v. Edward Pruim/Robert Pruim*, 93 CR 682. The documents were entered into evidence as an Offer of Proof in Complainant's case in chief[2] as proposed Exhibit 27. Complainant believes that the excluded information, and the arguments made in its Appeal of Hearing Officer ruling, show that the information is highly relevant on the issue of the personal liability of Edward and Robert Pruim for the alleged violations.

3. Organization of Complainant's Post-Hearing Brief

Complainant has organized this Brief by related violations. The various counts in the two complaints are not sequential (i.e. I, II, III), but rather by violations which are supported by related facts. Thus, all Counts related to overcapacity, excessive dumping, and overheight at the Landfill are argued together in Section IV. However, the requests for finding of violation in

[2]Complainant originally intended to use Exhibit 27, if at all, in its case in rebuttal. As a result of the Hearing Officer ruling on Motion in Limine No. 1, Complainant was unable to question Edward and Robert Pruim on the excluded subject matter. Complainant therefore entered them under offer of proof in its case in chief.

Section XI are handled sequentially to the extent possible. In its request for penalty, Complainant refers to the 33(c) and 42(h) factors, but does not request specific penalty amounts by Count.

II. RELIEF SOUGHT BY COMPLAINANT

Complainant requests that the Board assess a Civil Penalty against Respondents , Edward Pruim, Robert Pruim, and Community Landfill Company jointly and severally, in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00).

III. EDWARD AND ROBERT PRUIM ARE INDIVIDUALLY LIABLE FOR THE VIOLATIONS ALLEGED IN CASE NO. PCB 04-207

The Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.*, does not limit liability for violations to corporations or other business organizations. In fact, the opposite is the case: the Act expressly includes 'individual[s]' in describing 'person[s]' who are subject to the provisions and prohibitions within the Act[3]. The General Assembly also has directed that the terms and provisions of the Act be "...liberally construed so as to effectuate the purposes of this Act...."[4] to "...ensure that adverse effects upon the environment are fully considered and borne by those who cause them."[5] In the two Complaints consolidated into this matter, Complainant alleges similar or identical violations against CLC and against Edward Pruim and Robert Pruim,

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[3] Section 3.315 of the Act, 415 ILCS 5/3.315 (2006) provides as follows:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative or assigns.

[4] 415 ILCS 5/2(c) (2006)

[5] 415 ILCS 5/2(b) (2006)

individually. As "persons" (and, for some violations, as Landfill "operators"), the Pruims are liable for their individual violations.

a. Standard for Personal Liability under the Act

In their Motions for Summary Judgment, the Pruims claimed that they could not be held individually liable for the violations[6]. However, it is clear that they may be held liable for their personal and direct actions which constitute violations of the Act. The mere existence of a separate corporate entity does not automatically provide a defense to the violations alleged against them in Case No. PCB 04-107.

There are three reported Illinois Appellate Court cases which address individual liability under the Act under circumstances where Defendants were claiming protection under a 'corporate shield'. Of these cases, only *People ex rel. Ryan v. Agpro Inc. & David Schulte, Individually and as President of Agpro*, 345 Ill. App. 3d 1011 (2nd Dist. 2004), was decided after a full evidentiary hearing. However, in all three cases, the Appellate Court found that individual liability for violations could be found despite the existence of a separate corporate entity.

In *Agpro*, the Appellate Court affirmed a finding of the liability of David Schulte, the corporate officer Defendant. The Court recognized that individual liability could be found based on an individual's personal involvement or actual participation in the violations. 345 Ill. App. 3d 1011, 1018. However, the Court also held that it was *not required* for an officer to physically commit the violations to be held liable, stating:

> *This "personal involvement" or "active participation" does not, as defendants seem to suggest, mean that the corporate officer has to perform the actual physical act that*

[6]On April 20, 2006, the Board denied the Pruims' Motions for summary judgment, but indicated that they would again consider the issue of individual liability after hearing.

constitutes a violation in order to be held individually liable. 345 Ill. App. 3d, at 1018

Rather the *Agpro* court adopted the rationale that liability could be found where the officer was personally responsible for all of the corporations operations, and had the ultimate authority for disposal activities. *Agpro,* 345 Ill. App.3d 1011, 1019 (following *United States v. Northeastern Pharmaceutical & Chemical Co., 810 F.2d 726 (8th Cir. 1986)).*

Two other Illinois Appellate Court cases address individual liability under the Act: *People ex rel. Burris v. C.J.R. Processing, Inc.*, 269 Ill. App.3d 1013 (3d Dist. 1995), and *People ex rel. Madigan v. Tang*, 346 Ill. App.3d 277 (1st Dist. 2004)[7]. In both cases the Court found that corporate officers *can* be held responsible for their "personal involvement or active participation" in violations of the Act. In *C.J.R.* the Court held that the State had properly alleged "personal involvement or active participation" by simply alleging that the individual defendant 'caused or allowed' the violations. 269 Ill. App. 3d 1013, 1018. In *Tang*, the Court stated that the State must allege facts establishing that the corporate officer had personal involvement or active participation in the acts resulting in liability, not just that he had personal involvement or active participation in the management of the corporation. 346 Ill. App. 3d 277, 289.

Complainant believes that the Board should look to the *C.J.R.* and *Agpro* cases for guidance on this issue, as these cases more accurately apply the Act's stated policy of holding those actually responsible liable for violations[8]. However, Complainant presented overwhelming

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[7] In neither case had an evidentiary hearing been held when the Appellate Court issued their opinions, and both involved motions to dismiss by Defendants.

[8]Complainant also notes that pursuant to Section 41 of the Act, 415 ILCS 5/41 (2006), any appeal of the Board's decision in this matter will be to the Appellate Court, 3d District, where the decision in *C.J.R.* controls.

evidence of personal and direct involvement in the violations by Edward Pruim and Robert Pruim at hearing. The evidence is sufficient to meet the individual liability standard described in all three of the Illinois cases.

b. **The Responsible Corporate Officer Doctrine**

The individual Respondents in this case are the sole officers of Community Landfill Company[9]. The Board should also consider finding personal liability for the alleged violations pursuant to the 'Responsible Corporate Officer' theory of liability.

The Responsible Corporate Officer doctrine imposes individual liability on a corporate officer with the responsibility and authority to ensure compliance when that officer fails to proactively prevent violations of public welfare statutes. *United States v. Park,* 421 U.S. 658, 675, 95 S.Ct. 1903, 1913, 44 L.Ed.2d 489, 502-03 (1975); *United States v. Dotterweich*, 320 U.S. 277, 281-84, 64 S.Ct. 134, 137-38, 88 L.Ed. 48 (1943). The Responsible Corporate Officer doctrine differs from the concept of *direct* liability, because it does *not* require personal involvement of the corporate officer.

The Responsible Corporate Officer Doctrine has been applied to find officer liability in environmental cases in several states. *See Comm'r, Ind. Dep't of Envtl. Mgmt. v. RLG, Inc.*, 755 N.E.2d 556 (Ind. 2001); *BEC Corp. v. Department of Environmental Protection*, 775 A.2d 928 (Conn. 2001); *State of Washington Dep't of Ecology v. Lundgren*, 94 Wash.App. 236, 971 P.2d 948 (Wash.App. 1999) *State of Minnesota v. Modern Recycling, Inc.*, 558 N.W.2d 770 (Minn.App. 1997). Because the Doctrine focuses on the 'ability to control' a facility to prevent

[9]As shown herein, Edward Pruim and Robert Pruim were also the sole owners of CLC during the entire relevant period.

environmental violations, it acts in harmony with the theories of liability described in *C.J.R.* and *Agpro.* The Board may wish to adopt the Responsible Corporate Officer Doctrine to find individual liability in this matter.

c. Edward and Robert Pruim were Personally and Directly Involved with All Phases of Operation of Landfill.

The evidence introduced at hearing proves that individual Respondents Edward and Robert Pruim were heavily involved in the operation of the waste disposal business at the Morris Community Landfill. The evidence also shows that they were personally and directly involved in the acts that lead to many of the violations, including violations of the Act that have already been determined by the Board.

a. Ownership & Control

At all times relevant to this case, Edward Pruim and Robert Pruim were the sole owners of Community Landfill Company[10]. During the period 1993 through 2000, they were also the sole officers of Community Landfill Company[11].

b. Authority over all Landfill Operations

As testified to by James Pelnarsh, Morris-based CLC Site manager for the past 25 years, the main Office for CLC was never at the Landfill itself. It was located at various times in Crestwood or Riverdale, Illinois[12]. CLC's financial affairs, such as writing checks, paying bills and establishing credit for dumping customers was done out of the main office, not at the

[10]Edward Pruim Answer, p. 2; Robert Pruim Answer, p.2; Tr. 12/4/08, p. 35

[11]Tr. 12/4/08, p. 36

[12]Tr. 12/4/08, pp.13-14

Landfill. All, or virtually all, of the Landfill's business was done on credit[13].

Records of dumping volumes and copies of permits were not kept at the Landfill itself but at the main office[14]. Mr. Pelnarsh was not familiar the details of the Landfill's waste disposal permits[15].

Site Manager James Pelnarsh did not have the authority close down the Landfill[16]. He stated that closing the Landfill would have required the approval of "Bob or Ed or the IEPA"[17].

b. Personal Involvement in CLC Finances

At all times relevant to this case, Edward Pruim and Robert Pruim were the only persons authorized to sign checks on behalf of Community Landfill Company[18]. They provided personal guarantees of CLC Landfill dumping royalties to the City of Morris, the Landfill's owner[19]. In addition, they provided personal guarantees for CLC loans, and personal guarantees to Frontier Insurance Company for the Landfill's financial assurance[20]. As the sole officers of CLC, only Robert and Edward Pruim had the authority to increase the amount of financial assurance for the Landfill[21].

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[13]Tr. 12/4/09, p.14

[14]Tr., 12/4/08, pp.14-16

[15]Id.

[16]Tr. 12/4/08, p.25

[17]Id.

[18]Tr. 12/4/08, p.73

[19]Tr., 12/4/08, p.41

[20]Id.

[21]Tr. 12/4/08, p. 73-74

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c. Permitting

Andrews Environmental Engineering Company ("Andrews") was the engineering consultant to CLC during the relevant period, and was authorized to file permit applications on its behalf[22]. Robert Pruim had worked with Andrews since the 1970's[23].

Either Robert Pruim or Edward Pruim signed the Permit applications relevant to this matter on behalf of Community Landfill Company[24]. Permits and permit correspondence were mailed to 4330 West 137th Place in Crestwood, Illinois, not to the Landfill in Morris, Illinois. Morris-based Site Manager James Pelnarsh testified that he was not responsible for permit applications, and did not read permit applications before they were submitted[25].

d. Reporting

Either Edward Pruim or Robert Pruim signed and certified all landfill capacity certifications relevant to this case[26].

e. Related Company Transactions

Edward and Robert Pruim owned Excel Disposal, a waste transfer station with offices in at 4330 West 137th Place in Crestwood, Illinois. This is the same address as the Office listed for Community Landfill Company in numerous permit applications and correspondence[27]. The

[22]Tr. 12/4/08, p.44

[23]Id.

[24]*See*, e.g. Complainant's Exhibits 1(a), 1(d)

[25]Tr. 12/4/08, p. 16

[26]Complainant's Exhibits 14(c) through 14(f)

[27]See: e.g Complainant's Exhibit 1(a), p. 8

office building was owned by Edward Pruim[28]. The main office for Community Landfill Company was never located at the Landfill itself[29].

Excel Disposal was a waste hauling and transfer station business, which, at least in part, disposed of waste at the Morris Community Landfill[30].

At various times, Robert Pruim had involvement with other waste related businesses, including Crest Disposal, Industrial Fuels, Will-Cook Waste, and Waste Systems. These Offices for these companies were the same as that of Community Landfill Company[31].

IV. COUNTS VII-X: CLC AND THE PRUIMS ARE JOINTLY LIABLE FOR OVERHEIGHT VIOLATIONS AT THE LANDFILL (PCB 97-193, Count VII-X; PCB 04-207 Counts VII-X)

a. The Liability of CLC has Already Been Established

On October 3, 2002, the Board granted summary judgment against CLC on Counts VII, VIII, IX and X, and found CLC in violation of Sections 21(o)(9)(Count VII), 21(d)(1) (Counts VIII & X) and 21(a) (Count IX) of the Act.

b. The Evidence Proves the Personal and Direct Involvement of Edward & Robert Pruim in the Violations Alleged in Counts VII-X (Case No. PCB 04-207)

As noted above, only Edward or Robert Pruim had the authority to shut down Landfill operations once Parcel B of the Landfill was filled to capacity. Yet the record indicates that the Pruim's continued to allow waste disposal at Parcel B despite knowing that the Landfill was

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[28]Tr. 12/4/08, p. 37

[29]Tr. 12/4/08, p. 13

[30]Tr. 12/4/08, p. 71; see also, Complainant's Exhibit 26, reference to "XL Loads", which may reasonably be inferred to refer to loads disposed at the Landfill by Excel Disposal during 1994.

[31]Tr. 12/4/08, pp. 36-37

approaching its maximum permitted elevation, and continued to allow dumping after acknowledging to Illinois EPA that it was, in fact, overfilled.

As testified to by Illinois EPA representative Ellen Robinson, landfill operators are required by regulation to submit annual Landfill Capacity Certifications to Illinois EPA[32]. The regulations require statements of existing waste disposal capacity of a landfill at the beginning of the designated year, the amount of waste deposited during that year, and the end of year remaining waste disposal capacity. In our case, the Landfill Capacity Certifications submitted by Edward and Robert Pruim show that they knowingly and intentionally allowed the Landfill to exceed its permitted capacity.

1. The 1995 Landfill Capacity Report Admits Overcapacity

The 1995 Landfill Capacity Report proves that Parcel B of the Landfill was rapidly approaching its permitted capacity in early 1994[33]. Page 4 of Exhibit 14(d) (report page no. 3) shows that on April 1, 1994, only 264,290 cubic yards of capacity remained. However, the next line (V.b) shows that between April 1, 1994, and December 31, 1994, the Respondents caused and allowed 457,008 cubic yards to be deposited, at least 192,718 cubic yards more than the permitted capacity. On the next line it indicates that the Landfill has zero remaining capacity and zero remaining years of disposal. The report is signed by Edward Pruim, under the statement:

> *I hereby affirm that all information contained in this "Solid Waste Landfill Capacity Certification is true and accurate to the best of my knowledge and belief"*

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[32]Tr., 12/3/08, pp 6-7

[33]Complainant's Exhibit 14(d). Note, the Certifications are prepared at the beginning of the following calendar year. Therefore, the "1995 Landfill Capacity Certification" reports activity for the prior year, i.e. dumping activity during 1994.

Beneath Edward Pruim's signature is the signature and professional engineer stamp of James Douglas Andrews, under the statement:

> *I hereby affirm the capacity estimates have been prepared by, or under the supervision of, a professional engineer and that all information contained in this "Solid Waste Landfill Capacity Certification" is true and accurate to the best of my knowledge and belief*[34].

2. City of Morris Landfill Records Prove That the Landfill Reached Capacity in August 1994

Landfill records made and kept by the City of Morris indicate exactly when the Landfill reached and exceeded capacity. As testified to by City Clerk John Enger, Community Landfill Company provided City Engineer Chamlin & Associates with daily dumping volume records, which were then compiled into a report for the City of Morris. *Complainant's Exhibit 29* is a copy of the City of Morris' reports from 1994.

As reported and certified to Illinois EPA by Edward Pruim, as of April 1, 1994 only 264,290 cubic yards of capacity had remained available for waste disposal. The City of Morris Records show that between April 1, 1994 and August 31, 1994, the Respondents caused and allowed 270,588 cubic yards of waste to be deposited into the Landfill[35]. Therefore, the evidence shows that as of August 31, 1994, Parcel B of the Landfill was completely full. However, Edward and Robert Pruim did not close Parcel B to waste disposal, or stop dumping at the Landfill. Exhibit 29 shows that 59,858 cubic yards were dumped in September, 54,974 cubic yards were dumped in October, 44,233 cubic yards in November, and 27,351 cubic yards in December, 1994. Total dumping between September 1, 1994 and the end of the year amounts to

[34] Complainant's Exhibit 14(d), p. 5 (report page no. 4)

[35] Complainant's Exhibit 29. Volumes in cubic yards by month show April: 43,870; May: 50,078; June 47,674; July 63,812; August 65,154

186,416 cubic yards, very close to the 192,718 cubic yard exceedance predicted by the figures in the 1995 Landfill Capacity Certification.

3. The 1996 Landfill Capacity Certification Proves Knowing and Intentional Continued Violations

Despite having reported zero capacity to Illinois EPA in its 1995 report (covering 1994 dumping activity), and despite the dumping records created by the Respondents which clearly indicated almost 200,000 cubic yards of overcapacity, Edward and Robert Pruim did not shut down the Landfill. Instead, they continued to operate in flagrant violation of their permits and the Act.

The 1996 Landfill Capacity Certification proves both the violations and the personal involvement of Edward and Robert Pruim. The January 1, 1996 Landfill Capacity Certification[36] covered dumping activity from January 1, 1995 through December 31, 1995[37]. The Respondents report that during this period, they had disposed of 540,135 cubic yards of waste, and that zero capacity remained[38]. The report is signed and certified by Robert Pruim, his signature also certifying that the information is true and correct, and stamped by registered professional engineer James Douglas Andrews[39].

Thus, the 1995 and 1996 Landfill Capacity Certifications show that both Edward and Robert Pruim knew of the overcapacity dumping at the Landfill, and failed to either stop

[36]Complainant's Exhibit 14(e)

[37]Note that the 1995 report was an April-December reporting period. For 1995 activity, the Agency shifted to a Calendar year period.

[38]Exhibit 14(e), Section V, p. 4

[39]Exhibit 14(e), p. 5

dumping or close the Landfill. The City of Morris dumping records show that this condition existed from at least August, 1994.

4. 1996 and 1997 Permit Submissions Confirm Excess Waste Deposit and Overheight Violations

In 1989, the Respondents submitted their application for vertical expansion of the Landfill[40]. In their application, the Respondents specified the maximum final elevation of the Landfill as 580' above mean sea level ("MSL")[41]. The application was signed by Edward Pruim[42]. Illinois EPA subsequently granted Supplemental Permit No. 1989-005-SP, granting the Respondents' application and incorporating all of the conditions in the application itself[43].

On August 5, 1996, the Respondents submitted their Significant Modification ("Sig-Mod") application to Illinois EPA[44]. The application is signed by Robert Pruim, whose signature also certified the truth and accuracy of the information provided[45]. The application includes a diagram of the conditions existing at the Landfill at the time the application was submitted, prepared by Andrews Engineering[46]. This "existing conditions" survey shows a large area on the top of the Landfill which exceeds 580' in elevation, a clear violation of the permitted

[40]Complainant's Exhibit 1(a)

[41]Id., p. 20. Note that this final elevation included installation of final cover and a vegetative layer. The maximum elevation for waste disposal would therefor have to be less than 580' MSL

[42]Id., p.8. By his signature, Edward Pruim also attested to the accuracy of the submitted information, including information regarding final elevation.

[43]Complainant's Exhibit 2(a), p.1

[44]Complainant's Exhibit 1(e)

[45]Id., p. 3

[46]Id., p. 6. The survey was drawn "8-96".

elevation for the Site[47]

On April 30, 1997, the Respondents submitted an Addendum to the August 5, 1996 SigMod application ("Addendum"), providing additional details regarding the exceedance of the maximum permitted elevation. Significantly, the Addendum provides:

> *Presently the amount of waste identified as overheight based upon the flyover topographic survey contours taken in July, 1996 to the permitted waste height is on the order of 440,000 cubic yards. Waste receipts since the topographic survey date of July total 35,000 cubic yards. Therefore a total of 475,000 cubic yards may require disposal in a permitted landfill is* [sic] *siting approval is not secured*[48].

The Addendum was provided approximately 2 1/2 years after Parcel B of the Landfill reached capacity. The admissions in the Addendum confirm the previously-reported excessive dumping, and also reveal the unwillingness of Edward and Robert Pruim to comply with either their waste disposal permits or the Act. The Addendum also admits that in July 1996, the Respondents' engineers had confirmed 440,000 cubic yards above 580 feet. Despite this revelations, the Landfill continued to accept another 35,000 cubic yards of waste[49].

5. Robert Pruim's Denials are not Credible

Incredibly, despite twice reporting to Illinois EPA that the Landfill had no remaining waste disposal capacity, and despite the subsequent identification of at least 475,00 cubic yards of overheight by licensed professional engineers retained by the Pruims, at hearing Robert Pruim denied that the Landfill was ever overheight. He claimed that Mr. Vince Medonia, a representative of Andrews advised him that it was a "mathematics issue" which would be

[47] Id., p.20

[48] Complainant's Exhibit 1(f), p.17 (marked p.11 at bottom of page). The Addendum was also prepared by Andrews Environmental Engineering.

[49] Id.

corrected later on[50]. He also claimed Mr. Medonia said he would correct the problem "...when they submitted the SIGMOD or something with Part A, combining the two"[51]. He also claimed that Complainant's Exhibit 14(f) supported that position, showing waste disposal capacity of approximately 1.7 MM cubic yards proves the adjustment to the mathematical error[52].

None of these incredible claims should be given any consideration whatsoever. Mr. Pruim is merely blaming someone 'not in the room' for his own admissions of violation. First, the Pruims did not call Vince Medonia as a witness at this hearings, and all of his statements are pure hearsay. Essentially, Robert Pruim asks that you believe that Mr. Medonia convinced him to falsify the 1994 and 1995 Landfill Capacity Certifications, and also arranged for James Douglas Andrews to falsely certify the documents with his engineer stamp.

Second, Robert Pruim completely misrepresents the Landfill's 1997 Landfill Capacity Certification. Prior to 1996, dumping occurred only in Parcel B of the Landfill, which is permitted separately from Parcel A. Pursuant to the 1996 SigMod Permit application, the Respondents opened up additional capacity in Parcel A (which is across Ashley Road from Parcel B), and then filed a Landfill Capacity Certification covering capacity for *both* parcels. Complainant directs the Board to the cover page for the January 1, 1997 Landfill Capacity Certification[53], which plainly states:

> *Please Note that this certification now includes volume from Parcel A, for which Community Landfill Company received a permit transferring operator status from*

[50]Tr. 12/4/08, p. 48.

[51]Tr. 12/4/08, p. 49

[52]Id.

[53]Exhibit 14(f), p.1

the City of Morris to Community Landfill Company.

The previous years Landfill Capacity Certification showed zero remaining capacity [54](as argued herein, it was actually well above capacity). To add in all of the capacity of Parcel A, and argue that this acted as a 'mathematical correction' to previous reports on Parcel B only is a blatant misrepresentation and an insult to the intelligence of the Board.

Finally, the 1997 SigMod Permit Addendum proves that Robert Pruim's claims are a total fabrication. The 'January 1, 1997' Landfill Capacity Certification was sent by Andrews to Illinois EPA on February 7, 1997[55]. The 1997 Addendum was completed *after* the submission of Exhibit 14(f) and submitted to Illinois EPA on April 30, 1997[56]. The report plainly states the amount of overheight in Parcel B of the Landfill, as of that date, to be 475,000 cubic yards of waste.

Parcel B of the Landfill, the parcel relevant to the violations alleged in Counts VII-X, reached capacity no later than August 1994, and should have been shut down. Landfill Site Manager James Pelnarsh testified regarding who had that authority, as follows:

> *Q. Now in the period in the mid '90s in your position at Community Landfill Company did you have authority to cease operations? Could you have shut down the landfill?*
>
> *A. No.*
>
> *Q. That would have required the approval of Bob or Ed Pruim, wouldn't it?*
>
> *A. Bob or Ed or the IEPA.*[57]

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[54]Complainant's Exhibit 14(e)

[55]Complainant's Exhibit 14(f), p.1

[56]Complainant's Exhibit 1(f)

[57]Tr., 12/4/98, p.25

Clearly, as the sole owners and shareholders of Community Landfill Company, only Robert and Edward Pruim had the authority to shut down operations. They signed and certified permit applications limiting the height of the Landfill to 580' MSL[58]. Their signatures on the 1995 and 1996 Landfill Capacity Certifications proves that they were aware that Parcel B was at, or over, capacity. However, they continued to allow waste disposal through at least April 30, 1997, resulting in at least 475,000 cubic yards of overheight/overcapacity within Parcel B of the Landfill[59]. Robert and Edward Pruim were personally and directly involved in the overheight violations at the Landfill, and must be held liable.

c. Edward and Robert Pruim Must be Held Liable

The Evidence Set Forth in Section IV.b.1-5 supports the violations alleged against Edward Pruim and Robert Pruim in Counts VII through X in Case No. PCB 04-207, as follows:

Count VII
DEPOSITING WASTE IN UNPERMITTED PORTIONS OF A LANDFILL

Edward Pruim and Robert Pruim caused and allowed the deposition of waste over 580' MSL, an area not permitted for the disposal of waste, and thereby violated Section 21(o) of the act, 415 ILCS 5/21(o) (2002).

Count VIII
CONDUCTING A WASTE DISPOSAL OPERATION WITHOUT A PERMIT

Edward and Robert Pruim caused and allowed waste to be disposed of above 580' MSL at the Landfill, an area not permitted for waste disposal under Permit No. 1989-005-SP. Edward and Robert Pruim thereby violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2002).

[58]Complainant's Exhibit 1(a)

[59]Exhibit 1(f), p. 17 (marked page 11 at bottom of page).

Count IX
OPEN DUMPING

Edward and Robert Pruim caused and allowed the consolidation of waste from refuse from one or more sources above 580' MSL at the Landfill, an area not permitted for waste disposal, and therefore a disposal site that did not fulfil the requirements of a sanitary landfill. Edward and Robert Pruim thereby violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2002).

Count X
VIOLATION OF STANDARD CONDITION 3

Standard Condition 3 of Permit No. 1989-005-SP provides:

> *There shall be no deviations from the approved plans and specifications unless a written request for modification of the project, along with plans and specifications as required, shall have been submitted to the Agency and a supplemental permit issued*[60].

Permit No. 1989-005-SP approved the Respondent's application which limited the height of Parcel B of the Landfill to 580' MSL. By causing and allowing waste deposition at the Landfill which caused the overall height to exceed 580' MSL, Edward Pruim and Robert Pruim violated Standard Condition 3 of Permit No. 1989-005-SP, and thereby also violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2002).

V. COUNT IV (PCB 97-193 and PCB 04-207): CLC AND THE PRUIMS ARE JOINTLY LIABLE FOR THE FINANCIAL ASSURANCE VIOLATION ALLEGED IN COUNT IV

a. The Liability of CLC has Already Been Established

On October 3, 2002, the Board granted summary judgment against CLC on Count IV for failure to provide financial assurance in the amount of $1,342,500 from July 19, 1993 until June 20, 1996. The Board found that CLC thereby violated 415 ILCS 5/21.1, 415 ILCS 5/21(d)(2)

[60]Complainant's Exhibit 2(a), p.8

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(2002), and 35 Ill. Adm. Code 807.601(a) and 807.603(b)(1).

b. The Evidence Prove the Personal and Direct Involvement of Edward & Robert Pruim in the Violations Alleged in Counts IV (PCB 04-207)

In their answers, both Edward and Robert Pruim admit that CLC's permit required financial assurance to be posted in the amount of $1,342,500.00, admit to failing to arrange financing and increase financial assurance to $1,342,500.00 within 90 days of April 20, 1993, and admit that Edward and Robert Pruim eventually arranged for and provided this amount of financial assurance on June 20, 1996[61]. These admissions establish the violations[62].

The evidence establishes that the Pruims inaction constitutes 'personal and direct involvement' sufficient to establish personal liability for the violations alleged in Count IV of Case No. PCB 04-207.

1. Robert and Edward Pruim are Subject to the Act and Regulations

The Act's definition of 'persons' includes individuals. Sections 21.1(a) and 21(d)(2) of the Act, and 35 Ill. Adm. Code 807.601(a) apply to 'persons'. 35 Ill. Adm. Code 807.603(b)(1) applies to 'the operator', defined in the regulations as "..a person who conducts a waste treatment, waste storage or waste disposal operation"[63]. As owners and managers of CLC who had the sole authority and ability to finance the arrangement of financial assurance for the Landfill, Edward Pruim and Robert Pruim should also be considered 'operators' for the purpose

[61]Edward Pruim Answer, p. 20; Robert Pruim Answer, p.20

[62]Complainant also requests that the Board take notice of its October 4, 2002 ruling against CLC on Count IV of Case No. PCB 97-193. *See also*, testimony of Blake Harris, Tr., 12/2/04, pp. 96-101, and Complainant's Exhibit 2(b), p.2, Complainant's Exhibit 9, Complainant's Exhibit 19.

[63]35 Ill. Adm. Code 807.104

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of 35 Ill. Adm. Code 807.603(b)(1).

2. Only Edward & Robert Pruim could have Caused CLC to Provide Financial Assurance for the Landfill

As previously noted, only Edward and Robert Pruim had the authority to sign checks for CLC during the relevant period[64]. In addition, only the Pruims had the authority to arrange for financial assurance. Robert Pruim admitted this fact at hearing:

Q. *Who besides you and Edward Pruim could have directed CLC to increase its financial assurance? Who besides you and Edward Pruim could have made CLC increase its financial assurance?*

A. *Gotten it or made...I don't understand.*

Q. *You were the sole shareholders..*

A. *Yes.*

Q. *Who besides the two of you could have increased the financial assurance for CLC?*

A. *Nobody*[65].

Edward Pruim testified in accord, as follows:

Q. *Considering that you and Mr. Robert Pruim are the sole officers and owners of CLC, only you could have taken action to increase that financial assurance, correct?*

A. *Yes, as officers of Community Landfill*[66].

Robert and Edward Pruim also provided personal guarantees for Frontier Insurance

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[64]Tr., 12/4/08, p.73

[65]Tr., 12/4/08, p. 66

[66]Tr., 12/4/08, p.73-74

Company bonds used as financial assurance during the relevant period[67]. By personally guaranteeing financial assurance bonds, they clearly had a personal motive in deciding when and how much of their resources to put at risk.

There is no need to go further. Edward and Robert Pruim were the only persons who could have arranged for the appropriate amount of financial assurance at the Landfill. Yet for three years, from 1993 to 1996, they failed to do so. Notably, they did not decide to close the Landfill, and in fact continued waste disposal operations even after notifying Illinois EPA that no further capacity remained. They decided to keep operating in clear violation of the Act and financial assurance regulations. They must not be allowed to escape liability for their personal and direct involvement in the violations alleged in Count IV. By failing to increase financial assurance by July 19, 1993, Edward and Robert Pruim violated 415 ILCS 5/21.1 (2002), 415 ILCS 5/21(d)(2) (2002), and 35 Ill. Adm. Code Sections 807.601(a) and 807.603(b)(1).

VI. COUNT XIX (PCB 97-193) AND COUNT XVII (PCB 04-207): CLC AND THE PRUIMS ARE JOINTLY LIABLE FOR THE ALLEGED FINANCIAL ASSURANCE VIOLATIONS

a. CLC is Liable for Both Violations

In Count XIX of Case No. PCB 97-193, Complainant alleges two failures to increase financial assurance, in violation of Special Condition 13 of Permit No. 1996-240-SP[68], and therefore also in violation of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2002). On October 3, 2002, the Board entered partial summary judgment against CLC on Count XIX of the Complaint in PCB 97-193 on the first financial assurance violation, i.e. the failure to increase

[67]Tr., 12/4/08, p. 41

[68]Complainant's Exhibit 2(c), p. 3

financial assurance to $1,431,360.00 by January 22, 1997[69]. However, the Board found issues of fact regarding the alleged <u>second</u> failure to increase financial assurance, i.e. the failure to increase the financial assurance to $1,439,720.00 upon commencement of operation of the gas extraction system at the Landfill[70]. As noted by the Board, the second increase in financial assurance (i.e. to $1,439,720.00) was accomplished on September 1, 1999[71].

Illinois EPA inspector Tina Kovasznay testified that she visited the Landfill on March 31, 1999[72]. She also testified that, at the time of the inspection, the landfill gas extraction system was operating. She reached this conclusion based on the fact that she heard the associated gas turbines running, and based on the statements of Landfill Site Manager James Pelnarsh, who told Ms. Kovasznay that the extraction system had been operating for a month[73]. This statement is corroborated by the report written by Ms. Kovasznay after the March 31, 1999 inspection. In the narrative portion, Ms. Kovasnay noted:

> *"We began by inspecting Parcel B. According to Mr. Pelnarsh, a gas management system was constructed and has been operating on Parcel B for the last month. This system was operating at the time of the inspection"*[74].

In his affidavit in support of CLC's Motion for Summary Judgment, Mr. Pelnarsh denies that the system was operating and disavowed his admission to Ms. Kovasznay, specifically:

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[69]October 3, 2002 Board Order in PCB 97-193, slip op. at 20-21

[70]Id.

[71]Id.

[72]Tr., 12/2/08, p.21

[73]Tr. 12/2/08, p. 27

[74]Complainant's Exhibit 13(i), p. 7

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> 13. *As part of the system installation, periodically KMS would test portions of the system to determine if the component parts had been properly installed as would be normal for a system of this complexity and magnitude. On March 31, 1999 I believe KMS was simply testing one engine on the system and not operating the system. I do not recall advising IEPA inspector Kovasznay that the system was operating on March 31, 1999*[75].

However, in his testimony at hearing, Mr. Pelnarsh admitted that he did not make reports after Illinois EPA inspectors visited the Site[76]. He also said that his statements were based on his recollection at the time he executed the affidavit (March 1, 2002)[77].

The Board should find that Mr. Pelnarsh's affidavit and testimony are not accurate. Ms. Kovasznay's statements were included in her inspection report, made soon after the March 31, 1999 inspection. Mr. Pelnarsh did not make notes or records after Illinois EPA inspections, and executed the affidavit almost three years later, in the course of contested litigation against his employer. Clearly Ms. Kovasnzay's testimony, supported by her inspection report, should be considered far more credible. The Board should find that the Respondents began operation of the gas extraction system prior to increasing financial assurance to $1,439,720.00, in violation of Condition 13 of Permit No. 1996-240-SP.

b. Edward & Robert Pruim are Liable for the Violations Alleged in Count XVII (Case No. 04-207)

In Count XVII of Case No. PCB 04-207, Complainant alleges that Edward and Robert Pruim are liable for the same violations alleged against CLC in Count XIX of Case No. PCB 97-193. Both Edward and Robert Pruim admit the requirements of Special Condition 13 of Permit

[75]Respondent's Exhibit 9, p.3

[76]Tr., 12/4/08, p. 19

[77]Tr., 12/4/08, p.22

1996-240-SP, and admit that *they* were required to upgrade financial assurance by the dates in question[78].

Complainant repeats its argument for liability for Count IV (Case No. 04-207), which also relates to the failure to upgrade financial assurance for the Landfill. Clearly, only Edward and Robert Pruim had the authority and capacity to increase the amount of financial assurance in accordance with the requirements of the Landfill's waste disposal permit. By failing to increase the financial assurance to $1,431,360.00 by January 22, 1997, and by failing to increase the financial assurance to $1,439,720.00 prior to commencing operation of the gas extraction system, Edward Pruim and Robert Pruim violated Special Condition 13 of Permit 1996-240-SP and thereby also violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2002).

VII. CLC, EDWARD PRUIM, AND ROBERT PRUIM ARE JOINTLY LIABLE FOR FAILURE TO FILE A TIMELY SIGNIFICANT MODIFICATION PERMIT APPLICATION (PCB 97-193, Count V; PCB 04-207, Count V)

a. The Liability of CLC has Already Been Established in Case No. PCB 97-193

On April 5, 2001, the Board granted summary judgment to Complainant on Count V for failing to file its Significant Modification ("SigMod") Permit application by June 15, 1993. in Case No. PCB 97-193. On July 26, 2001 the Board explained that in its April 5, 2001 Order it found CLC liable for violations of Section 21(d)(2) of the Act and 35 Ill. Adm. Code 814.104, and further noted that the violations lasted from June 15, 1993 until August 5, 1996[79].

b. Edward Pruim and Robert Pruim are Responsible for CLC's Violations and Liable for the Violations Alleged in Count V (Case No. PCB 04-207)

In their Answers, both Edward Pruim and Robert Pruim admit that CLC did not file

[78]Edward Pruim Answer, pp. 63-64; Robert Pruim Answer, pp. 63-64

[79]July 26, 2001 Board Order in PCB 97-193, slip op. at 4

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its SigMod permit until August 5, 1996[80]. The Board has found that this failure resulted in a violation of the Act and pertinent regulations. The Board should also find Edward Pruim and Robert Pruim liable for these violations, as alleged in Count V of Case No. PCB 04-207.

Edward Pruim and Robert Pruim were the sole owners and officers of CLC during the relevant period, and therefore the only persons with authority to cause the company to take action. They also were responsible for, and did, arranged for and sign Landfill's previous permit applications[81]. Landfill Site Manager James Pelnarsh did not have any responsibility for permit applications[82]. Edward Pruim admitted that he was involved in filing the significant modification permit 'as an officer of the company'[83].

Clearly, Edward Pruim and Robert Pruim had personal knowledge of the filing deadline. As Edward Pruim testified at hearing:

> *Q. Mr. Pruim, I want to ask you some questions about the late filed SIGMOD application. That permit application for the purpose of continuing to operate the landfill, correct, after a certain date in the 1990's?*
>
> *A. Yeah. And I believed that would be to expand into...our lease brought us back into Parcel A, which we never had. That was also included in the permit application.*
>
> *Q. I understand, but as of 1993 you were required to either file a SIGMOD application or to shut the landfill down, correct?*
>
> *A. Yes, we were.*

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[80]Edward Pruim Answer p.24, Robert Pruim Answer p.24

[81]*See:* Complainant's Exhibit 1(a), p.8 [1989 development permit application signed by Edward Pruim]; Complainant's Exhibit 1(e), p.3 [1996 SigMod Permit application signed by Robert Pruim].

[82]Tr., 12/4/08, p. 16

[83]Tr., 12/4/08, p.85

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> *Q. And you decided to continue operations and to file the SIGMOD application, correct?*
>
> *A. Yes*[84].

Robert Pruim testified that, as of 1993, they did not have control of Parcel A[85]. However, he clearly was also aware of the 1993 filing requirement, testifying:

> *A. Well we approached the City of Morris and we explained our situation that we had a deadline to apply and they said they would review it, which they did and it took some time*[86].

It is apparent that the knowing failure to file the required significant modification permit was a *business decision* by Edward and Robert Pruim. They wanted to expand their operations to include Parcel A of the Landfill, to which they had no access. As they testified, the delay was attributable to negotiations with the Landfill owner, the City of Morris.

However, the Pruims' business decision flew in the face of the Board regulations. Their explanation of the delay ignores one important fact: They continued to operate Parcel B of the Landfill throughout this period. In 1994 and 1995 alone they caused and allowed the disposal of almost one million cubic yards of waste in Parcel B[87]. Edward and Robert Pruim did not request a variance from the Board prior to the 1993 deadline. They did not close down the Landfill while waiting for negotiations with the City of Morris to be completed, nor did they cause the filing of a SigMod permit application for Parcel B alone. They just continued to operate as thought the

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[84]Tr., 12/4/08, p.101

[85]Tr., 12/4/08, p. 87

[86]Tr., 12/4/08, p.87

[87]Complainant's Exhibit 14(d), p. 4; Complainant's Exhibit 14(e) p. 4. These Landfill Capacity Certifications show that CLC accepted 997,143 cubic yards of waste during 1994 and 1995.

permit deadline did not exist.

As found by the Board, the Landfill's late SigMod application was in violation of the Act and regulations. The Board should also find that Edward and Robert Pruim had personal and direct involvement in these violations, and thereby violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2002), and 35 Ill. Adm. Code 814.104, as alleged in Count V (Case No. PCB 04-207).

VIII. CLC AND THE PRUIMS ARE JOINTLY LIABLE FOR FAILURE TO PROVIDE A REVISED COSTS ESTIMATE BY DECEMBER 26, 1994 (PCB 97-193, Count XXI; PCB 04-207, Count XIX)

a. The Liability of CLC has Already Been Established in Case No. PCB 97-193

On October 3, 2002, the Board found that, by failing to file a revised cost estimate by December 26, 1994, and thereby violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2000), and 35 Ill. Adm. Code 807.623(a).

b. Edward Pruim and Robert Pruim are Responsible for CLC's Violations and Liable for the Violations Alleged in Count XIX (Case No. PCB 04-207)

Edward Pruim and Robert Pruim admit that the Landfill's Permit required the filing of a revised cost estimate by December 26, 1994, but deny knowledge sufficient to form a belief as to whether they failed to cause CLC to provide such a cost estimate[88]. Complainant requests that the Board adopt the findings in its Order granting summary judgment to Complainant on Count XIX (PCB 97-193).

There can be no doubt that Edward and Robert Pruim failed to cause the filing of the revised cost estimate. As argued above, only they had the authority to cause the filing of this document, just as only they had the authority to decide whether to continue waste disposal

[88]Edward Pruim Answer, p. 71; Robert Pruim Answer, p. 71

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operation or whether to close the landfill. Landfill Site Manager James Pelnarsh did not have copies of permits at the Landfill and was not aware of the conditions of the permits[89].

Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2002), provides;

No person shall:

* * *

d. Conduct any waste-storage, waste-treatment, or waste disposal operation:

* * *

2) in violation of any regulations or standards adopted by the Board under this Act;

The Pruims are 'persons' under the Act. They made all of the significant decisions related to operation of Landfill, including decisions on whether or not to continue operations, whether and when to file permits, whether and when to comply with the pertinent landfill regulations. They, in addition to CLC, conducted a waste disposal operation. By failing to direct filing of the annual cost estimate, Edward Pruim and Robert Pruim, in addition to CLC violated 35 Ill. Adm. Code 807.623(a), and thereby also violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2002), as alleged in Count XIX of Case No. PCB 04-207.

IX. CLC AND THE PRUIMS ARE JOINTLY LIABLE FOR 'DAILY OPERATION VIOLATIONS' AT THE LANDFILL (PCB 97-193, Counts I, II, III, VI, ,XIII) (PCB 04-207, Counts I, II, III, VI, XII)

Counts I, II, III, VI, and XIII in case No. PCB 04-207 and Counts I, II, III, VI, and XII in PCB 04-207 allege conditions at the Landfill related to maintenance, supervision, and daily operation issues. As sole owners and operators of Community Landfill Company, Edward Pruim and Robert Pruim had the responsibility to ensure that daily landfill operations did not result in violations of the Act. Moreover, since <u>they alone</u> arranged for and signed Permit

[89]Tr., 12/4/08, p. 16

Applications and because issued permits (with the conditions required for daily operations) were kept at the 'main office' in Crestwood and/or Riverdale, Illinois, only Edward Pruim and Robert Pruim had complete knowledge of all the operational requirements for the Landfill[90].

Complainant believes that the Board should adopt and apply a "Responsible Corporate Officer" theory of liability for these daily operational violations. As noted herein (See: Section III.b), the Responsible Corporate Officer Doctrine has been applied to find officer liability in environmental cases in a number of other states. Complainant believes that the Indiana Supreme Court's decision in *Commissioner, Department of Environmental Management v. RLG, Inc. et al.*[91] is particularly on point. In that case, the company had a single owner and officer, who acted as 'responsible official' in dealings with Indiana environmental regulators. In finding personal liability, the Indiana Supreme Court examined factors such as 1) whether an owner was in a position of responsibility, 2) whether the acts leading to the violations were within the owners 'sphere of responsibility', and 3) whether the owner failed to prevent the violations and take proper corrective actions after[92].

In our case, Edward and Robert Pruim are the sole owners and officers of CLC. They assumed responsibility for obtaining permits and submitting reports, and kept permit files at their offices, not at the Landfill. In the Permit applications, they named themselves as the persons to

[90]See: testimony of CLC Site Manager James Pelnarsh, Tr., 12/4/08, p. 16. Mr. Pelnarsh was not familiar with permit details. Permits and permit records were not kept at the Landfill, but rather at the main office.

[91]755 N.E.2d 556 (Ind. 2001)

[92]755 N.E.2d 556, 562

contact.[93] They alone controlled finances, and thereby had the capacity to correct violations. The Board should adopt and apply the Responsible Corporate Officer Doctrine in this case and find personal liability for the daily operating violations.

Count I (PCB 97-193 and Count I PCB (04-207):
FAILURE TO ADEQUATELY MANAGE REFUSE AND LITTER

Hearing was held on liability and remedy in both cases, on alleged violation of Sections 21(d)(2) and 21(o) of the Act, and 35 Ill. Adm. Code 807.306. The alleged violations were based on Illinois EPA inspections made between 1994 and 1999. Complainant's evidence consisted of the following:

1) Warren Weritz, inspector for the Landfill from 1993 to 1999, testified to his April 7, 1994 inspection, and the inspection report generated thereafter, which included his observations that litter was present in water in perimeter ditches at the Site, and an admission by Site Manager James Pelnarsh that litter was not being collected at the end of each operating day[94].

2) Mr. Weritz testified to his March 22, 1995 inspection, and the inspection report generated thereafter, which included his observations of refuse and litter in water within perimeter drainage ditches and a retention pond at the Landfill, and to pictures taken by himself of the refuse in standing water at the Landfill[95].

3) Mr. Weritz testified to his May 22, 1995 inspection, and the inspection report generated thereafter, which included his observations of refuse in waster in the North Perimeter Ditch at the Site[96].

4) Mr. Weritz testified to his July 28, 1998 inspection, and the inspection report generated after the inspection. He testified that he found uncovered waste from previous landfill operation in Parcel A of the landfill, specifically old waste being

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[93]See Complainant's Exhibit 1(a) , p.7 (Operator Contact Name: Edward Pruim); Complainant's Exhibit 1(e) (Operator Contact Name: Robert Pruim)

[94]Tr., 12/3/08, p. 65; Complainant's Exhibit No. 13(b)

[95]Tr., 12/3/08 p. 66; Complainant's Exhibit 13(e), pp. 5, 13

[96] Tr., 12/3/08, p.70; Complainant's Exhibit 13(f), p. 4

excavated and moved[97].

5) Ms. Tina Kovasznay testified regarding her March 31, 1999 inspection and the inspection report generated after the inspection. She testified that she observed blowing litter on the Southeast side of the Landfill, and was advised by Site Manager James Pelnarsh that his helper was not at work, which she took to mean that there was no one to collect the litter at the end of the operating day[98].

In his affidavit in support of CLC's Motion for Summary Judgment, Mr. Pelnarsh denies that he told Warren Weritz that litter was not being collected, specifically:

> 5. *At no time did I ever advise Warren Weritz that we were not picking up litter, or that our litter was not being collected at the end of each operating day as required*[99].

However, in his testimony at hearing, Mr. Pelnarsh admitted that he did not make reports after Illinois EPA inspectors visited the Site[100]. He also admitted that his statement was based on his recollection at the time he executed the affidavit (March 1, 2002)[101]. This would have been almost *eight years* after the admission memorialized in Mr. Weritz's inspection report for April 7, 1994. The Board should find that Mr. Pelnarsh's affidavit and testimony are not accurate. Clearly Mr. Weritz's testimony, supported by his inspection report, should be considered far more credible.

Section 21(o) of the Act, 415 ILCS 5/21(o)(1) (2002), prohibits 'persons' from conducting sanitary landfill operations in a manner which results in refuse being present in

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[97]Tr. 12/3/08, p. 78-80; Complainant's Exhibit 13(j)

[98]Tr., 12/2/08, p. 35; Complainant's Exhibit 13 (l)

[99]Respondents' Exhibit 9, p.1

[100]Tr., 12/4/08, p. 19

[101]Tr., 12/4/08, p.20

standing or flowing water. Section 21(o)(5), 415 ILCS 5/21(o)(5) (2002), and 35 Ill. Adm. Code 807.306, prohibit causing or allowing refuse or litter from a previous operating day to remain uncovered. Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2002), prohibits conducting a waste disposal operation in violation of regulations.

Based on the evidence, the Board should find in favor of Complainant against CLC on Count I (PCB 97-193) for violation of Sections 21(o)(1) and 21(o)(5) and 21(d)(2) of the Act, 415 ILCS 5/21(o)(1) (2002), 5/21(o)(5) (2002), and 415 ILCS 5/21(d)(2) (2002), and 35 Ill. Adm. Code 807.306, and also find in favor of Complainant and against Edward Pruim and Robert Pruim on Count I (PCB 04-207) for violation of 21(o)(1) and 21(o)(5) and 21(d)(2) of the Act, 415 ILCS 5/21(o)(1) (2002), 5/21(o)(5) (2002), and 415 ILCS 5/21(d)(2) (2002), and 35 Ill. Adm. Code 807.306.

Count II (PCB 97-193) and Count II (PCB 04-207)
FAILURE TO PREVENT OR CONTROL LEACHATE FLOW

Hearing was held on liability and remedy on alleged violation of Sections 21(d)(2) and 21(o) of the Act, 415 ILCS 5/21(d)(2) and 5/21(o) (2002), and 35 Ill. Adm. Code 807.314(e). The alleged violations were based on Illinois EPA inspections made in 1994 and 1995. Complainant's evidence consisted of the following:

1) Warren Weritz, testified regarding his April 7, 1994 inspection, and the inspection report generated thereafter. On April 7, 1994 he found five leachate seeps along the northwest perimeter of the Landfill[102]. According to Mr. Weritz, leachate is liquid which has come into contact with garbage at a landfill[103].

2) Mr. Weritz testified regarding an inspection made on March 22, 1995, and the inspection report generated thereafter. On this date he say numerous leachate

[102] Tr. 12/3/08, p.66; Complainant's Exhibit 13(b), p.5

[103] Tr., 12/3/08, p.68

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seeps along the northwest perimeter of the Landfill. The seeps were flowing directly to a perimeter ditch, which contained leachate. Mr Weritz identified the liquid as leachate because it was flowing out of the sidewall of the landfill, had a reddish stain, and had a foul odor[104].

3) Mr. Weritz testified regarding an inspection made on May 22, 1995 and the inspection report generated thereafter. On this date he observed numerous leachate seeps and the perimeter ditches 'running red with a lot of leachate'[105]. Again, he identified the liquid as leachate by its color, appearance, and foul odor. The inspection report and Mr. Weritz testimony indicate that the leachate in the perimeter ditch flowed to an on-site retention pond.

In their arguments in summary judgment, Respondents make much of the fact that no samples of the leachate were taken and analyzed by Illinois EPA inspectors, but do not propose exactly *what* tests should be performed. They claim that the 'red color' was due to iron deposits, but never tested the liquid for iron content themselves[106]. At hearing the Respondents did not supply any evidence whatsoever, either through expert opinion or otherwise, to back up their claim that the color and foul odor was attributable to iron.

Clearly, Mr. Weritz's observations of the red, foul smelling liquid seeping from the side of the landfill, the pictures of the leachate 'blowout' from the May 22, 1995 inspection report[107], and the presence of the liquid in perimeter ditches and the retention pond are persuasive: between 1994 and 1995, the Respondents failed to stop leachate from flowing out of the sides of the Landfill and entering waters of the State[108]. In this case, the leachate entered surface waters

[104]Id. Complainant's Exhibit 13(e), pictures 5-7

[105]Tr., 12/3/08, p.72

[106]Testimony of James Pelnarsh, Tr., 12/4/08, pp. 21-22

[107]Complainant's Exhibit 13(f), pp. 12-14

[108]Pursuant to 415 ILCS 5/3.550 (2002), "waters' include surface water in the perimeter ditches and the retention pond at the Landfill.

in the perimeter ditch and retention pond.

Section 21(o)(2) of the Act, 415 ILCS 5/21(o)(2) (2002), prohibits 'persons' from conducting sanitary landfill operations in a manner which results in leachate entering 'waters of the State". Section 807.314(e) of the Board regulations, 35 Ill. Adm. Code 807.314(e) prohibits operation of a sanitary landfill without adequate measures to control leachate. Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2), prohibits conducting a waste disposal operation in violation of regulations.

The Board should find in favor of Complainant against CLC on Count II (PCB 97-193) for violation of Sections 21(o)(2) and 21(d)(2) of the Act, 415 ILCS 5/21(o)(2) (2002), and 415 ILCS 5/21(d)(2) (2002), and 35 Ill. Adm. Code 807.314(e), and also find in favor of Complainant and against Edward Pruim and Robert Pruim on Count II (PCB 04-207) for violation of 21(o)(2) and 21(d)(2) of the Act, 415 ILCS 5/21(o)(2) (2002), and 415 ILCS 5/21(d)(2) (2002), and 35 Ill. Adm. Code 807.314(e).

Count VI (PCB 97-193) and Count VI (PCB 04-207)
WATER POLLUTION

Hearing was held on liability and remedy on alleged violation of Sections 12(a), 21(d)(2) of the Act, 415 ILCS 5/12(a), and 5/21(d)(2) (20002) and 35 Ill. Adm. Code 807.313. The alleged violations are based on Warren Weritz's May 22, 1995 inspection. Because the facts related to Count II are also the facts establishing the violations in Count VI in both cases, Complainant incorporates its arguments on liability for Count II above.

The evidence clearly indicates that leachate entered perimeter ditches and the retention pond at the Landfill. Mr. Weritz found leachate seeps on the sides of the Landfill, dark staining

indicating leachate flow, and foul smelling, colored liquid in the adjacent perimeter ditches and in the retention pond. Leachate is a contaminant[109]. The Landfill is a permitted municipal solid waste and special waste disposal facility. Liquid coming in contact with this type of mixed waste may be presumed to be 'likely to create a nuisance', all that is necessary for the leachate to cause water pollution[110]. Clearly, it did create an odor nuisance on May 22, 1995.

Respondents entered no evidence on this issue. Michael McDermont, who had provided an affidavit in support of CLC's Motion for Summary Judgment and who had been named as a hearing witness, neither appeared nor testified. As noted above, the Respondents did not test the leachate to prove the off-color and odor were due to iron. There can be only one conclusion: Mr. Weritz, an experienced landfill inspector, correctly identified leachate entering waters of the State of Illinois.

Section 12(a) of the Act, 415 ILCS 5/12(a) (2002) prohibits causing, threatening, or allowing water pollution. 35 Ill. Adm. Code 807.313 prohibits operating a sanitary landfill in such manner as to cause, threaten and allow waster pollution. Section 21(d)(2) of the Act , 415 ILCS 5/21(d)(2) (2002), prohibits conducting a waste disposal operation in violation of the regulations.

The Board should find in favor of Complainant against CLC on Count VI (PCB 97-193) for violation of Sections 12(a) and 21(d)(2) of the Act, 415 ILCS 5/12(a) (2002) and 415 ILCS 5/21(d)(2) (2002), and 35 Ill. Adm. Code 807.313, and also find in favor of Complainant and against Edward Pruim and Robert Pruim on Count VI (PCB 04-207) for violation of Sections

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[109]"Contaminant"is broadly defined as 'any solid liquid or gaseous matter, any odor, or any form of energy from whatever source'. 415 ILCS 5/3.170 (2002).

[110]415 ILCS 5/3.545 (2002).

12(a) and 21(d)(2) of the Act, 415 ILCS 5/12(a) (2002) and 5/21(d)(2) (2002), and 35 Ill. Adm. Code 807.314(e).

Count III (PCB 97-193 and PCB 04-207)
FAILURE TO PROPERLY DISPOSE OF LANDSCAPE WASTE

On October 3, 2002, the Board granted summary judgment against CLC on Count III. Therefore, hearing was for the purpose of penalty against CLC and for liability and penalty against Edward Pruim and Robert Pruim on Count III in Case No. PCB 04-207.

Section 22.22(c) of the Act, 415 ILCS 5/22.22(c) (2002), prohibits 'owners and operators of a sanitary landfill' from accepting and disposing of mixed landscape/municipal waste. Because of their overall authority and involvement in Landfill management, Edward Pruim and Robert Pruim should be considered 'operators' of the Landfill.

Complainant requests that the Board apply the principles of the Responsible Corporate Officer Doctrine and find and also find in favor of Complainant and against Edward Pruim and Robert Pruim on Count III (PCB 04-207) for violation of Section 22.22(c) of the Act, 415 ILCS 5/22.22(c) (2002).

Count XIII (PCB 97-193) and Count XII (PCB 04-207)
IMPROPER DISPOSAL OF USED TIRES

On October 3, 2002, the Board granted summary judgment in favor of Complainant and against CLC on Count XIII. Therefore, hearing was for the purpose of penalty against CLC and for liability and penalty against Edward Pruim and Robert Pruim on the related violations alleged against them in Count XII in Case No. PCB 04-207.

Section 55 (b-1) of the Act, 415 ILCS 5/55(b-1) (2002), prohibits 'persons' from accepting and disposing of used tires mixed with other waste. Because of their overall authority

and involvement in Landfill management, Edward Pruim and Robert Pruim should be considered responsible for the acceptance of used tires mixed with other waste at the Landfill.

Complainant requests that the Board apply the principles of the Responsible Corporate Officer Doctrine and find and in favor of Complainant and against Edward Pruim and Robert Pruim on Count XII (PCB 04-207) for violation of Section 55 (b-1) of the Act, 415 ILCS 5/55(b-1) (2002).

X. ADDITIONAL VIOLATIONS ALLEGED ONLY AGAINST CLC

Count XV (PCB 97-193)
VIOLATION OF PERMIT CONDITION

Hearing on Count XV (PCB 97-193) was on both liability and penalty. In its order denying summary judgment on this Count, the Board noted that the principal dispute was when the gas management system began operation[111]. This question was also a factor in Count XIX (Case No. PCB 97-193) / Count XVII (Case No. PCB 04-207) relating to the alleged failure to upgrade financial assurance prior to operation of the gas extraction system, and Complainant incorporates its argument on those counts herein.

As argued before, the Board should find that Mr. Pelnarsh's affidavit and testimony that the gas system was not operating to be inaccurate. As previously noted, Ms. Kovasznay's statements were included in her inspection report, made soon after the March 31, 1999 inspection[112]. Mr. Pelnarsh did not make notes or records after Illinois EPA inspections, and executed the affidavit almost three years later. Clearly Ms. Kovasnzay's testimony, supported by her inspection report, should be considered far more credible. The Board should find that the

[111]October 4, 2002 Board Order in PCB 97-193, slip op. at 16

[112]Complainant's Exhibit 13(I), p 7

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Respondents began operation of the gas extraction system prior to March 31, 1999.

Count XV alleges violations for failure to comply with the requirements of Permit No. 1996-240-SP[113]. This Permit was applied for by Community Landfill Company, as operator, and the City of Morris, as owner, on July 26, 1996[114]. It was issued to the City of Morris and CLC on October 24, 1996. Regardless of who CLC claims was 'responsible' for the gas collection system, CLC was responsible for compliance with Special Condition 1 (involving the submission of reports prior to operation).

The Board should find that CLC did not submit the required information prior to operation of the gas control facility, and thereby violated Special Condition 1 of Permit 1996-240-SP, and thereby also violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2002).

Count XVII (PCB 97-193)
VIOLATION OF PERMIT CONDITION

Count XVII (PCB 97-193) was at hearing on both liability and penalty. Complainant has alleged violation of Special Condition 11 of Permit No. 1996-240-SP, and therefore violation of 415 ILCS 5/21(d)(1) (2000).

Special Condition 11 requires that all gas condensate and leachate removed from the Landfill be disposed of at a publicly owned treatment works or other treatment facility[115]. The State alleges that on March 31, 1999 and July 20, 1999, CLC was using leachate pumped from the Landfill to increase the moisture content of new waste disposal cells, in violation of Condition 11.

[113]Complainant's Exhibit 2(c)

[114]Complainant's Exhibit 1(d), p.2

[115]Complainant's Exhibit 2(c), p. 2

Illinois EPA inspector Tina Kovasznay testified that on March 31, 1999, she inspected the Landfill and met with Site Manger James Pelnarsh. She testified that:

> *...I was told by Mr. Pelnarsh that they were collecting the leachate and then putting it into the new cells to increase the moisture contents of the clay*[116].

Ms. Kovasznay's testimony is supported by her inspection report for the March 31, 1999 inspection, which notes:

> *According to Mr. Pelnarsh, leachate is collected and then placed into the clay used as liners for the new cells. Mr. Pelnarsh stated that this practice is conducted to increase the moisture content of the clay used for liners*[117].

Ms. Kovasznay also testified that CLC was still using leachate pumped from the Landfill for this purpose on July 20, 1999. She testified as follows:

> *I didn't specifically observe it, but from Mr. Pelnarsh's statements he said that they were still disposing of the leachate into the clay of the cells to reduce [sic] the moisture content at a rate of approximately 3000 gallons a week*[118].

Again, her testimony is corroborated by the inspection report made after the July 20, 1999 inspection, which states, in pertinent part:

> *Although Mr. Pelnarsh was informed many times that he is not allowed to use leachate to increase the moisture content of the clay used for liners of new cells, CL continues to dispose of leachate in this manner at a rate of at least 3,000 gallons a week....*[119]

As in the case of the date of operation of the gas collection system, Mr. Pelnarsh denies

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[116]Tr., 12/2/08, p.26

[117]Complainant's Exhibit 13(l), p.7

[118]Tr., 12/2/08, p.37. Complainant believes that either Ms. Kovasznay misspoke, or the court reporter incorrectly transcribed her testimony. The inspection reports and her testimony regarding the prior inspection indicates that CLC was using leachate to *increase* moisture content. Obviously adding liquid will not reduce moisture content.

[119]Complainant's Exhibit 13(n), p.7

making these statement. However, he has admitted that he did not make contemporaneous reports after Illinois EPA inspections, and that the denials contained in his affidavit were based on his recollection at the time he executed it, i.e. March 1, 2002 [120]. In contrast, Ms. Kovasznay recorded her conversation with Mr. Pelnarsh in the inspection reports created soon after each inspection[121]. The Board should find that Mr. Pelnarsh's denials, made several years later in the course of contested litigation against his employer related to summary judgement in this matter, are just not credible.

The Board should find that, during March 31, 1999 and July, 1999, CLC violated Special Condition No. 11 of Permit 1996-240-SP, and thereby also violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2002).

Count XX (PCB 97-193)
VIOLATION OF PERMIT CONDITION

Count XX was at hearing for both liability and penalty against CLC only. However, no evidence was entered at hearing on Count XX, and many of its allegations are duplicative of the violations alleged in Count XVII above (Case No. 97-193). Complainant therefore requests that Count XX (Case No. 97-193) be dismissed.

Count XIV (Case no. 97-193)
VIOLATION OF PERMIT CONDITION

On October 3, 2002, the Board granted Summary Judgment for Complainant, finding violations of Permit No. 1989-005-SP (Standard Operating Condition No. 13) and 415 ILCS

[120]Tr., 12/4/08, p. 19

[121]Exhibit 13(l) shows that the report was received by Illinois EPA in its finished form on April 30, 1999, about 30 days after the inspection.

5/21(d)(1) (2002) for failure to use fencing to prevent blowing litter on March 31, 1999[122]. At hearing the permit was entered into evidence[123] and inspector Tina Kovasznay described the March 31, 1999 inspection[124].

Count XVI (Case no. 97-193)
VIOLATION OF PERMIT CONDITION

On October 3. 2002, the Board granted Summary Judgment for Complainant, finding violations of Special Condition 9 of Permit No. 1996-240-SP, and 415 ILCS 21/(d)(1) (2002). At hearing, inspection reports for March 31, 1999 and July 20, 1999 were entered into evidence.

XI. COMPLAINANT'S REQUEST FOR FINDING OF VIOLATION

Complainant request that the Board find the following violations of the Act and Board regulations in the consolidated matters:

a. People of the State of Illinois v. Edward Pruim & Robert Pruim, PCB 04-207

(Liability joint and several against both Edward Pruim & Robert Pruim)

Count I: Violation of Sections 21(o)(1), 21(o)(5) and 21(d)(2) of the Act, 415 ILCS 5/21(o)(1), 5/21(o)(5) and 5/21(d)(2) (2002), and 35 Ill. Adm. Code 807.306;

Count II: Violation of Sections 21(o)(2) and 21(d)(2) of the Act, 415 ILCS 5/21(o)(2) and 5/21(d)(2) (2002), and 35 Ill. Adm. Code 807.314(e);

Count III: Violation of Section 22.2(c) of the Act, 415 ILCS 5/22.2(c) (2002);

Count IV: Violation of Sections 21.1 and 21(d)(2) of the Act, 415 ILCS 5/21.1 and 5/21(d)(2), and 35 Ill. Adm. Code Sections 807.601(a) and 807.603(b)(1);

Count V: Violation of Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2002), and 35 Ill. Adm. Code 814.104;

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[122]October 3, 2002 Board Order in PCB 97-193, slip op. p.15

[123]Complainant's Exhibit 2(a)

[124]The inspection report was entered as Complainant's Exhibit 13(l)

Count VI: Violation of Sections 12(a) and 21(d)(2) of the Act, 415 ILCS 5/12(a) (2002) and 5/21(d)(2) (2002), and 35 Ill. Adm. Code 807.314(e).

Count VII: Violation of Section 21(o) of the Act, 415 ILCS 5/21(o) (2002);

Count VIII: Violation of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2002);

Count IX: Violation of Section 21(a) of the Act, 415 ILCS 5/21(a) (2002);

Count X: Violation of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2002);

Count XII Violation of Section 55 (b-1) of the Act, 415 ILCS 5/55 (b-1) (2002)

Count XVII: Violation of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2002).

Count XIX: Violation of Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2), and 35 Ill. Adm. Code 807.623(a).

b. People of the State of Illinois v. Community Landfill Company, PCB 97-193

(in addition to the violations already found by the Board in summary judgment)

Count I: Violation of Sections 21(o)(1), 21(o)(5) and 21(d)(2) of the Act, 415 ILCS 5/21(o)(1), 5/21(o)(5) and 5/21(d)(2) (2002), and 35 Ill. Adm. Code 807.306;

Count II: Violation of Sections 21(o)(2) and 21(d)(2) of the Act, 415 ILCS 5/21(o)(2) and 5/21(d)(2) (2002), and 35 Ill. Adm. Code 807.314(e);

Count VI: Violation of Sections 12(a) and 21(d)(2) of the Act, 415 ILCS 5/12(a) (2002) and 5/21(d)(2) (2002), and 35 Ill. Adm. Code 807.314(e);

Count XV: Violation of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2002);

Count XVII: violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2002);

Count XIX: Violation of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2002);

XII: REQUESTED REMEDY

Complainant requests that the Board assess a civil penalty of Two Hundred Fifty Thousand Dollars ($250,000.00) against Respondents Community Landfill Company, Edward

Pruim, and Robert Pruim, jointly and severally for the violations in cases PCB 97-193 and PCB 04-207. Because the Complainant has an action pending before the Board for final decision which itself seeks a substantial penalty against CLC[125], Complainant only seeks a penalty for the violations common to both PCB 97-193 and PCB 04-207[126].

a. An Analysis of 33(c) factors Suggests the Need for a Civil Penalty

33(c)(i): *The character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;*

The evidence shows a substantial degree of injury to the general welfare. The Respondents operated a sanitary landfill in flagrant disregard for the welfare of the surrounding community, failed to control litter, failed to properly control leachate, violated numerous permit conditions, and failed to provide financial assurance for long-term post-closure care. As result, Complainant has been compelled to pursue other relief before the board to ensure that the Landfill is safely closed and maintained post-closure[127]

33(c)(ii): *The social and economic value of the pollution source;*

A well-operated sanitary landfill has a clear social and economic value during the period it is accepting waste. However, a poorly run operation does not have the same degree of social and economic value. Moreover, the Landfill in question no longer has a valid operating permit and therefore does not offer any social or economic value.

33(c)(iii): *The suitability or unsuitability of the pollution source to the area in which*

[125]PCB 03-191

[126]Neither Edward Pruim nor Robert Pruim are Respondents in PCB 03-191.

[127]PCB 03-191

it is located, including the question of priority of location in the area involved;

At the present time, and until Closure of the Landfill is undertaken, the Landfill is not suitable to the area where it is located.

33(c)(iv): *The technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source;*

Operating a Landfill in accordance with Illinois EPA-issued permit, the Act, and Board regulations is technically practicable and economically reasonable.

33(c)(v): *Any subsequent compliance.*

The Landfill is not now in compliance with the Act and Board regulations. The Board is currently deliberating relief requested by the State in PCB 03-191, which, if granted, will eventually bring the Landfill into compliance.

Summary of 33(c) Factors

Based on an evaluation of the Section 33(c) factors, Complainant believes that a significant civil penalty is appropriate and necessary to accomplish the purposes of the Act and Board landfill regulations.

b. Analysis of 42(h) Factors

Statutory Maximum Penalty

Pursuant to Section 42 of the Act, 415 ILCS 5/42 (2006), all of the alleged violations allow for assessment of a penalty of $50,000.00 per violation and $10,000.00 per day of violation. However, the Statutory Maximum Penalty is much higher than the amount sought by

Complainant[128].

42(h)(1): Duration and Gravity of the Violation

Duration: Taken as a whole, violations were ongoing throughout the relevant period, i.e. from 1993 through 1999. Most of the daily operating violations are only provable on the dates of inspection. For Count I (both cases) for example, inspectors noted blowing and uncontrolled litter and refuse on five visits. However, for Count V (both cases), the Board found violation from June 15, 1993 through August 6, 1996, a period of 1,178 days.

As shown by the evidence supporting Counts VII-X (both cases), Parcel B of the Landfill reached capacity on August 31, 1994. As of April 30, 1997, Parcel B of the Landfill was 475,000 cubic yards overheight[129], so without question the violations continued through at least that period, a span of 973 days. However, there is no evidence that the overheight violations were ever corrected. A 2000 survey indicated that the Parcel B remained over its permitted capacity[130]. As testified to by Illinois EPA Permit Engineer Christine Roque, the Landfill has never notified the Agency of any waste relocation, or submitted an application to update or modify the contours of the Landfill[131], so in all likelihood, the violations alleged in Counts VII-X (both cases) still continue to this day. The extended duration of the violations should be considered an aggravating factor in this case.

Gravity: The sheer number of violations in these cases places a very high degree of

[128]For example, on July 26, 2001 the Board found CLC in violation of Count V for 1,178 days. The Act allows for maximum penalties of $11,830,000.00 for this violation alone.

[129]See: Complainant's Exhibit 1(f), p. 20

[130]See: Respondent's Exhibit 11

[131]Tr., 12/2/08, p.71

gravity on the violations. Frankly, it is hard to find any area of landfill regulation that was not ignored and/or violated by CLC, Edward Pruim and Robert Pruim during this period. There are failures to obtain permits, violations of permits once obtained, ignoring permitted capacity limitations, litter violations, leachate violations, repeated financial assurance violations, etc. The people who caused, allowed, and ignored these violations are now trying to hide behind a shell company, and escape the consequences of their own actions and inaction. The Board's decision in this case must prevent this from happening.

42(h)(2): *The presence or absence of due diligence on the part of the respondent in attempting to comply with the requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act.* [415 ILCS 5/42(h)(2)]

A full review of the evidence in the consolidated cases shows that none of the Respondents demonstrated diligence in trying to comply with the Act and pertinent regulations. Quite the opposite: The only people with the ability and authority to comply with the Act, i.e. Edward Pruim and Robert Pruim, have ignored the requirements of the law. As shown by the evidence in this case (including their own testimony), Edward Pruim and Robert Pruim knew of the 1993 deadline for filing the SigMod Permit. They responded by acting in their own best interests...not filing the Permit application but instead seeing what kind of deal they could negotiate with the City of Morris, while continuing to dump almost 1 million cubic yards of garbage into a noncompliant Landfill. Not diligent.

As sole operating officers of the Company, they knew they had to upgrade financial assurance in 1993. They did so...three years late. Not diligent.

As officers of the Company who tracked annual waste disposal at the Landfill versus

remaining capacity, and who submitted annual capacity reports to Illinois EPA, Edward Pruim and Robert Pruim knew when they had to shut down the landfill, but didn't. Not diligent.

Based on the facts in this case, the actions of Community Landfill Company, Edward Pruim, and Robert Pruim show a complete want of diligence. This conclusion should act as an aggravating factor in the Board's assessment of penalty in this case.

42(h)(3): *Any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance.*

Edward Pruim, Robert Pruim, and Community Landfill Company saved a lot of money by violating the Act-possibly more than $1,000,000.00 as of the date of hearing.

At hearing, Complainant presented three witnesses on this issue: Christine Roque to testify to savings from the late filed SigMod application and failure to relocate waste; Blake Harris to testify to savings from failing to file required financial assurance; and Gary Styzens to put it all together from an accounting standpoint.

Ms. Roque is the Illinois EPA Permit Engineer with responsibility for the Morris Community Landfill. She is the person who reviews permit applications for testing requirements and compliance with the regulations. Ms. Roque testified that upon filing the Sigmod Permit application (delayed three years by the Respondents inaction) additional testing costs would have been incurred. Based on cost information later provided to Illinois EPA by the Respondents, by filing their Permit application well after the due date, they avoided testing costs in the amount of $44, 526.00 as of April 26, 1995[132]. Her calculations even gave credit to their variance petition, despite the fact that the Board and Appellate Court found that the Respondent's

[132]See: Complainant's Exhibit 18, p.2

late filing was not retroactive[133].

Ms. Roque also testified to the Respondents' failure to relocate the overheight waste at the Landfill to correct the violations in Counts VII-X (both cases). On April 30, 1997, the Respondents notified Illinois EPA that the cost of relocating the overheight waste was $950,000.00[134]. As previously noted, the Respondents never notified the Agency of any waste relocation, or submitted an application to update or modify the contours of the Landfill[135], and have avoided the cost of the waste relocation.

Blake Harris testified to the savings realized by the Respondents from failure to provide the required amount of financial assurance. Using the cost of the bonds eventually provided by the Respondents on June 20, 1996 (2% of face value, a cost confirmed at hearing by Edward Pruim[136]), Mr. Harris calculated that the Respondents had saved $47,871.33 as of June 20, 1996 by failing to provide the amount of financial assurance required by their 1993 Permit[137].

Illinois EPA Auditor Gary Styzens put it all together and brought the savings forward to the present. He applied a varying Bank Prime Rate of interest to calculate the present value of

[133]The SigMod permit was actually not filed until 1996. Complainant used the date of variance filing solely to be conservative in its economic benefit estimate. The Board and Appellate Court found that the late filing was not to be applied retroactively.

[134]Complainant's Exhibit 1(f), p.20 (p.11 on bottom of sheet)

[135]Tr., 12/2/08, p.71

[136]Tr., 12/4/08, pp. 84-85

[137]Complainant's Exhibit 19. Note that during this period, the Respondent's had varying amounts of financial assurance on hand. Mr. Harris' testimony took into consideration the changes in financial assurance during the period. Because the required amount was always $1,342,500.00, the testimony and estimate are based on 2% of the difference between that amount and the amount actually posted at the time.

the avoided costs, while giving credit to the Respondents for tax benefits for environmental expenditures[138]. The method he used was based on USEPA guidance documents, and is intended to remove the economic benefit of noncompliance[139].

Mr. Styzens estimated that the present value of the avoided expenditures, using the Bank Prime Rate, and crediting all tax benefits to the Respondents, to be $1,486,079.00. Of this amount, $73,950.00 was attributable to avoided testing costs from failure to provide a timely SigMod application (using the 1995 variance date), $72,336.00 was attributable to avoided financial assurance costs, and $1,339,793 was attributable to avoided costs for relocation of the overheight[140].

Complainant is not seeking recovery of all of the economic benefit in this case. First of all, the Board is currently deliberating the appropriate remedy in *People v. Community Landfill Company & City of Morris*, PCB 03-191. In that case, the State has asked the Board to order full closure of Parcel B, which will accomplish either relocation or permitting of any remaining overheight. At that point the avoided cost for overheight will be recovered. However, the avoided costs associated with the late SigMod permit submission, the unfunded financial assurance, and the interest on delayed relocation should be recovered. Complainant believes that its penalty request of $250,000.00 (joint and several) will recover at least the majority of these avoided costs, and therefore recover most of the economic benefit from the Respondents' noncompliance.

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[138]Complainant's Exhibit 17, p.8

[139]Tr., 12/2/08, p. 144

[140]Complainant's Exhibit 19, p.1

42(h)(5): *The amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;*

Complainant believes a civil penalty of $250,000.00, joint and several against Edward Pruim, Robert Pruim, and Community Landfill Company, will serve to deter future violations. However, a penalty entered against Community Landfill Company alone will have no deterrent value whatsoever.

From testimony at this hearing and the hearing in PCB 03-191, Complainant has come to the conclusion that CLC has few if any remaining assets. Certainly the amount of money remaining in CLC's name is at the sole discretion of Edward Pruim and Robert Pruim, the owners of CLC. Complainant believes that a penalty entered solely against CLC will be uncollectible, and have no deterrent value on the Pruims or any other person.

42(h)(5): *the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;*

On February 16, 2006 , the Board granted partial summary judgment against CLC in case PCB 03-191 for financial assurance violations at the Landfill. The Board has not yet issued its Final Order in that case.

In 1989, Community Landfill Company received an Administrative Citation in the case AC 89-6. The Administrative Citation related to uncovered waste from a previous operating day. A penalty of $500.00 was assessed.

42(h)(6): *Whether the respondent voluntarily self disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency;*

Respondents did not voluntarily self-disclose the violations.

42(h)(7): *Whether the respondent has agreed to undertake a 'supplemental environmental project'....*

No supplemental environmental project has been proposed by Respondents

XIII ATTORNEY FEES AND COSTS

Complainant does not request the assessment of attorney fees and costs.

XIV CONCLUSION

Based on the evidence and the arguments herein, Complainant requests that the Board find the violations of the Act and Board regulations as requested in Section XI (a) and XI (b), assess a civil penalty of Two Hundred Fifty Thousand Dollars ($250,000.00), jointly and severally, against Respondents EDWARD PRUIM, ROBERT PRUIM, and COMMUNITY LANDFILL COMPANY for the multiple violations of the Act and Board regulations alleged in Cases PCB 97-193 and PCB 04-207, and order such other relief as it deems appropriate

RESPECTFULLY SUBMITTED

PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN,
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

ROSEMARIE CAZEAU, Chief
Environmental Bureau North

BY: ______________________

CHRISTOPHER GRANT
JENNIFER VAN WIE
Environmental Bureau

42(h)(7): *Whether the respondent has agreed to undertake a 'supplemental environmental project'....*

No supplemental environmental project has been proposed by Respondents

XIII ATTORNEY FEES AND COSTS

Complainant does not request the assessment of attorney fees and costs.

XIV CONCLUSION

Based on the evidence and the arguments herein, Complainant requests that the Board find the violations of the Act and Board regulations as requested in Section XI (a) and XI (b), assess a civil penalty of Two Hundred Fifty Thousand Dollars ($250,000.00), jointly and severally, against Respondents EDWARD PRUIM, ROBERT PRUIM, and COMMUNITY LANDFILL COMPANY for the multiple violations of the Act and Board regulations alleged in Cases PCB 97-193 and PCB 04-207, and order such other relief as it deems appropriate.

RESPECTFULLY SUBMITTED

PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN,
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

ROSEMARIE CAZEAU, Chief
Environmental Bureau North

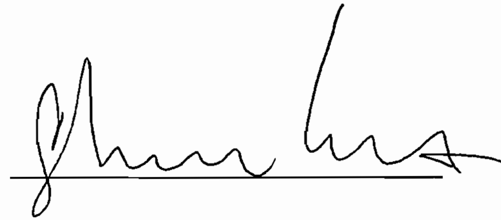
Electronic Filing - Received, Clerk's Office, February 6, 2009

BY:

CHRISTOPHER GRANT
JENNIFER VAN WIE
Environmental Bureau
Assistant Attorneys General
69 W. Washington Street, #1800
Chicago, IL 60602
(312)814-5388
(312)814-0609

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 6th day of February, 2009, the foregoing Complainant's Closing Argument and Post Hearing Brief, and Notice of Electronic Filing, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.



CHRISTOPHER GRANT