BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

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PLEASE TAKE NOTICE that on **MAY 4, 2009**, the undersigned caused to be electronically filed with Mr. John Therriault, of the Illinois Pollution Control Board, 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60601, the **RESPONDENTS COMMUNITY LANDFILL COMPANY, INC., ROBERT PRUIM AND EDWARD PRUIM'S POST-HEARING BRIEF,** a copy of which is attached and hereby served upon you.

/s/ Clarissa Y. Cutler
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RESPONDENTS COMMUNITY LANDFILL CO., INC., ROBERT PRUIM AND EDWARD PRUIM'S POST-HEARING BRIEF

Respondents COMMUNITY LANDFILL CO., INC., ROBERT PRUIM and EDWARD PRUIM, by Mark A. LaRose and Clarissa Y. Cutler, hereby submit their Post-Hearing Brief and in support thereof state as follows:

I. INTRODUCTION

The complaints in this consolidated matter alleged more than 20 specific allegations against Community Landfill Co., Inc. (CLC) (PCB No. 97-193), with some substantially identical allegations against Edward and Robert Pruim (the Pruims), the officers and directors of CLC, seeking to hold them personally liable (PCB No. 04-207). Attached as Exhibit A to this brief is a listing of the specific counts in each case, with the outstanding issues related to each count.

The evidence at hearing was insufficient to establish personal liability of the Pruims for any and all counts at issue. In order to attach personal liability, the evidence must establish by a preponderance that the Pruims were directly and personally involved in the acts giving rise to the alleged violations, not just that they were directly and personally involved in managing the corporation. The evidence in this case falls woefully short of establishing such personal liability. While Edward and Robert Pruim managed some corporate issues from an office 60 miles from the landfill, they were not involved in the day-to-day operations of the landfill, and had absolutely no involvement – personal or otherwise -- in the acts giving rise to alleged violations. The Board should rule in favor of Edward and Robert Pruim on all counts of the complaint in PCB No. 04-207.

Through pretrial procedures, summary judgment was granted in favor of CLC on Counts XI, XII, XVIII and XXII in PCB No. 97-193. (See Exh. A). Therefore, those counts are no longer at issue. Also through pretrial procedures, Counts XI, XIII, XIV, XV, XVI, and XVIII in PCB 04-207 were dismissed against Robert and Edward Pruim. Therefore, these counts are only at issue against CLC in PCB No. 97-193. (See Exh. A).

Summary judgment was denied by the Board on October 3, 2002, in regard to the following counts and the liability of CLC, and penalty, if any, is still at issue: Count I (Failure to Adequately Manage Refuse and Litter); Count II (Failure to Prevent or Control Leachate Flow); Count VI (Water Pollution); Count XV (Failure to Provide Information on the Gas Management System Prior to its Operation); Count XVII (Failure to have Leachate from the Gas Recovery System Disposed of at a POTW); and Count XIX (part) (Failure to Increase Financial Assurance Prior to Operation of the Gas System). (See Exh. A). On these counts, the evidence is

insufficient to establish any violation. In the alternative, any penalty for these violations should be nominal.

On several counts in Case PCB No. 97-193, summary judgment was granted for the State and only penalty is at issue: Count III (Failure to Properly Dispose of Landscape Waste); Count IV (Failure to Provide and Maintain Financial Assurance Pursuant to April 20, 1993 Permit); Count V (Failure to Timely File the Required Application for a Significant Modification); Counts VII-X (Overheight Violations); Count XIII (Improper Disposal of Waste Tires); Count XIV (Failure to Use Movable Fencing when Fill is at a Higher Elevation than the Natural Ground Line); Count XVI (Failure to Take Corrective Action Regarding Erosion, Ponding, Cracks Greater than 1", etc.); Count XIX (part) (Failure to Provide and Maintain Financial Assurance Pursuant to October 24, 1996 Permit – to increase it by January 22, 1997; and Count XXI (Failure to Provide Revised Cost Estimate by December 26, 1994) (Exh. A).

On these counts, the penalties imposed by the Board should be reasonable, with a basis toward compliance and not punishment and with a rational relation to the lack of any actual environmental harm caused. CLC proposes that the Board impose an aggregate penalty against it of no more than $25,000.00.

II. RELIEF SOUGHT

This section provides the Board with a count-by-count overview of the relief sought by the Respondents:

A. Claims Against Edward and Robert Pruim Individually in PCB No. 04-207

Count No.	Claim	Relief Sought by Respondents
I	Failure to adequately manage refuse and litter	Finding for Respondent of no liability

II	Failure to prevent or control leachate flow	Finding for Respondent of no liability
III	Failure to properly dispose of landscape waste	Finding for Respondent of no liability
IV	Failure to provide and maintain adequate financial assurance	Finding for Respondent of no liability
V	Failure to file required significant modification	Finding for Respondent of no liability
VI	Water pollution	Finding for Respondent of no liability
VII	Depositing waste in an unpermitted portion of a landfill	Finding for Respondent of no liability
VIII	Conducting waste disposal operation without a permit	Finding for Respondent of no liability
IX	Open Dumping	Finding for Respondent of no liability
X	Violation of Special Condition 3 – overheight	Finding for Respondent of no liability
XII	Improper disposal of used tires	Finding for Respondent of no liability
XVII	Failure to provide and maintain financial assurance pursuant to October 24, 1996 permit	Finding for Respondent of no liability
XIX	Failure to provide revised cost estimate by December 26, 1994	Finding for Respondent of no liability

B. Claims Against CLC in PCB No. 97-193

1. Counts in which Liability is at Issue:

Count No.	**Claim**	**Relief Sought**
I	Failure to adequately manage refuse and litter	Finding for Respondent of no liability

II	Failure to prevent or control leachate flow	Finding for Respondent of no liability
VI	Water pollution	Finding for Respondent of no liability
XV	Failure to provide information on the gas management system prior to its operation	Finding for Respondent of no liability
XVII	Failure to have leachate from the gas recovery system disposed of at a POTW	Finding for Respondent of no liability
XIX (part)	Failure to increase financial assurance prior to operation of the gas system	Finding for Respondent of no liability
XX	Failure to get an operating permit and IEPA approval based on engineer's certification before placing waste in unapproved area	Finding for Respondent of no liability (the State has requested this count be dismissed. See State's brief, p. 42)

2. Counts in which only Penalty is at Issue:

Count No.	**Claim**	**Relief Sought**
III	Failure to properly dispose of landscape waste	Nominal penalty for Respondent
IV	Failure to provide and maintain adequate financial assurance	Nominal penalty for Respondent
V	Failure to file required significant modification	Nominal penalty for Respondent
VII	Depositing waste in an unpermitted portion of a landfill	Reasonable penalty for Respondent
VIII	Conducting waste disposal operation without a permit	Reasonable penalty for Respondent
IX	Open Dumping	Reasonable penalty for Respondent

X	Violation of Special Condition 3 – overheight	Reasonable penalty for Respondent
XIII	Improper disposal of used tires	Nominal penalty for Respondent
XIV	Failure to use movable fencing when fill is at a higher elevation than the natural ground line	Nominal penalty for Respondent
XVI	Failure to take corrective action regarding erosion, ponding, cracks greater than 1", etc.	Nominal penalty for Respondent
XIX (part)	Failure to provide and maintain financial assurance pursuant to October 24, 1996 permit (to increase financial assurance by January 22, 1997)	Nominal penalty for Respondent
XXI	Failure to provide revised cost estimate by December 26, 1994	Nominal penalty for Respondent

III. THE STATE HAS FAILED TO MEET ITS BURDEN FOR THE BOARD TO FIND PERSONAL LIABILITY AGAINST THE PRINICPALS OF CLC

The State seeks to impose personal liability against the principals of Community Landfill Co., Inc., Robert Pruim and Edward Pruim. However, the State has failed to provide sufficient evidence for a finding of personal liability under either an analysis of Illinois caselaw or through the responsible corporate officer doctrine.

A. Legal Standards for Personal Liability

In order for the Board to find the principals of CLC personally liable for any allegation, the State must show at hearing that the principals had personal involvement or active participation in the acts resulting in liability, not just that they were personally involved or actively participated in the management of CLC. People v. Tang, 346 Ill.App. 3d 277, 289, 8-5 N.E.2d 243, 253-54 (1st Dist. 2004). It is not enough to prove that either corporate officer was

personally involved in or actively participated in the corporation's management. People v. Petco Petroleum, 363 Ill.App.3d 613, 623, 841 N.E.2d 1065, 1073 (4th Dist. 2006). In order to state a claim against an individual under the Act, the State must show the defendant's direct and personal involvement in the alleged wrongful acts. Tang, 346 Ill.App.3d at 289.

The two cases decided in Illinois courts after full evidentiary hearings illustrate that the State has failed to meet the standards required for the Board to find the principals of CLC personally liable.[1] In State v. Petco Petroleum Corporation, 363 Ill.App.3d 613, 841 N.E. 2d 1065 (4th Dist. 2006) the Court did not find the corporate officer to be personally liable. In People v. Agpro, Inc., 345 Ill.App.3d 1011, 803 N.E.2d 1007 (2nd Dist. 2004), the court did find personal liability. An analysis of the courts' findings of fact based on the State's evidence offered in those cases confirms the Respondents' position herein that the Board should hold that the officers of CLC are not personally liable.

In Petco, the Appellate Court affirmed the trial court's holding that the president was **not** personally liable. Petco, 363 Ill.App.3d 613, 623-25. In its unsuccessful attempt to persuade the Court to make a finding of personally liability, the State proffered evidence that the president acted as follows:

1) exercised overall control over the company, including making significant financial decisions;

2) was involved in many aspects of the oil production operation, including:

   a) reviewing bids for certain equipment;
   b) allocating money for special projects, such as upgrading an alarm system, and
   c) signing checks to compensate landowners whose property was damaged by Petco's spills;

3) received reports on operational matters and occasionally visited the fields;

[1] The State ignores People v. Petco Petroleum, 363 Ill.App.3d 613, 841 N.E.2d 1065 (4th Dist. 2006) and does not include any analysis of it in the post-hearing brief.

4) knew about many of the spills and leaks;

5) told one of his foremen not to report spills;

6) played an active part in defending Petco against hundreds of administrative charges; and

7) failed to implement a policy of spending money on maintenance that would prevent leaks.

People v. Petco, 363 Ill.App.3d 613, 624.

In response to the State's position, Petco contended that the trial court correctly found the defendant was not personally liable and cited to the following evidence as support:

1) the president did not exercise day-to-day control of Petco's operations, instead he exercised nothing more than general corporate authority;

2) the president delegated a "vast amount" of decision-making to Petco's superintendents and field foremen and gave them authority to:

   a) make most hiring and firing decisions,
   b) purchase all items used during the normal course of Petco operations, and
   c) shut down wells and conduct spill-response activities;

3) Petco employees were not required to report spill events to the president and rarely did so;

4) on those occasions where the president made decisions on Petco's behalf, such as whether to drill new wells, he did so only after consulting with Petco's employees and contractors and relied on their expertise;

5) the president had no personal involvement or active participation in the 168 spill events;

6) the president explained that

   a) he told one of his foremen not to report spills after he became upset about the Department's treatment of Petco, and
   b) within a short time the president reversed his position and told Petco employees to report all spills and cooperate with the Department; and

7) there was no evidence that the president misrepresented anything to the Department or knowingly engaged in conduct that resulted in spills.

People v. Petco, 363 Ill.App.3d 613, 624.

In comparing the actions and non-actions of the president in Petco with those of the Pruims, the Board can see that the evidence presented by the State does not rise to a level necessary to a finding of personal liability. Indeed, the evidence presented by the State in this case is far less than that offered in Petco. All the State was able to present in its case-in-chief, including calling the Pruims as adverse witnesses, is that the officers and shareholders Robert and Edward Pruim:

1) were the sole officers and shareholders of CLC;

2) maintained corporate offices in Crestwood, Illinois, a town some 60 miles away from the landfill;

3) signed checks for CLC and approved credit;

4) issued personal guarantees of royalties to the City of Morris as well as to Frontier Insurance Company on bond issues;

5) arranged for financial assurance for closure and post closure of the landfill;

6) signed permit applications for landfill development, modification or expansion;

7) signed annual landfill capacity certifications;

8) owned or were involved in separate companies that were involved in waste-related activities and that some of these companies shared a common Crestwood mailing address with CLC.

That is the total extent of the evidence the State presents in an attempt to establish personal liability of Edward and Robert Pruim for the myriad of allegations contained in the complaint. These actions are simply insufficient to establish personal liability. Even these actions, however, were taken not individually but in the Pruims' capacity as corporate officers. Like the evidence in

Petco, none of these actions were sufficient to establish personal liability for any of the matters alleged in the complaint and at issue at the hearing.

On the contrary, the Respondents' evidence at the hearing in this case established:

1) Not one of the State's witnesses had any evidence that Edward or Robert Pruim had personal involvement or active participation in any of the alleged violations. (Tina Kovasznay, Dec. 2, 2008[2], pp. 44, 48, 51, 59, 79-80; Warren Weritz, Dec. 3, 2008, pp. 85, 90-91, 92, 93, 94, 101-102; Christine Roque, Dec. 2, 2008, pp. 79-80; Ellen Robinson, Dec. 3, 2008, p. 39; Gary Styzens, Dec. 2, 2008, pp. 197-98)

2) The Pruims both denied that they had personal involvement or direct participation in any of the allegations at issue. (Robert Pruim, Dec. 4, 2008, pp. 54-63; Edward Pruim, Dec. 4, 2008, pp. 93-100)

3) The day-to-day operation of the landfill was conducted by site operator Jim Pelnarsh. (Jim Pelnarsh, Dec. 4, 2008, p. 28; Robert Pruim, Dec. 4, 2008, pp. 39, 52-53)

4) Pelnarsh made the decision on where, when and how to place waste on Parcels A and B. (Jim Pelnarsh, Dec. 4, 2008, p. 27)

5) The government inspectors never dealt with Edward or Robert Pruim – their on-site contact was Jim Pelnarsh. (Tina Kovasznay, Dec. 2, 2008, pp. 22, 42, and 43; Warren Weritz, Dec. 3, 2008, pp. 61, 78, 83-84; Mark Retzlaff, PCB 01-170, Vol. I, Oct. 15, 2001, pp. 66-69)

6) The Pruims had no involvement in the day-to-day operations of CLC – that was Jim Pelnarsh. (Robert Pruim, Dec. 4, 2008; pp. 39, 52-53; Jim Pelnarsh, Dec. 4, 2008, pp. 27-28)

7) To the extent they signed permit applications and landfill capacity reports, it was as corporate officers and merely a normal part of their corporate officer responsibility. (Edward Pruim, Dec. 4, 2008, pp. 74, 76, 86)

8) To the extent they arranged for financial assurance, it was as corporate officers and merely a normal part of their corporate officer responsibility. (Robert Pruim, Dec. 4, 2008, pp. 60-61; Edward Pruim, Dec. 4, 2008, pp. 73-74, 83)

9) There was no directive from Robert or Edward Pruim to Jim Pelnarsh to place waste above permitted capacity. (Jim Pelnarsh, Dec. 4, 2008, p. 26; Robert Pruim, Dec. 4, 2008, p. 62; Edward Pruim, Dec. 4, 2008, p. 82)

[2] Cites to Dec. 2, 2008, Dec. 3, 2008, and Dec. 4, 2008 are the dates of the hearing and refer to the transcript of the hearing.

Based on the lack of any evidence of direct and personal involvement of Edward and Robert Pruim in the allegations at issue, coupled with the affirmative evidence that they were not personally involved, the Board should find for Edward and Robert Pruim and against the State on each and every count of the complaint.

In contrast with People v. Petco, the Appellate Court in People v. Agpro, Inc., upheld the trial court's finding of personal liability against that company's president in regard to water pollution. 345 Ill.App.3d 1011, 1028, 803 N.E.2d 1007, 1019 (2nd Dist. 2004). In doing so, the court found that the trial court had not erred in holding that the president of the company caused or allowed the contamination of the site and had control over the pollution or was in control of the area where the pollution occurred, and did not take precautions to prevent the pollution. Id. In affirming the trial court, the appellate court cited **specific evidence** that Agpro's president had:

1) personally run Agpro's operations at the site;

2) spent a great deal of time at the site;

3) directly supervised his employees;

4) personally applied fertilizer and pesticides to farm fields by operating a "floater"; and

5) admitted in a conversation with an IEPA inspector that *he* intentionally rinsed out the "floaters" on the gravel at the Agpro site.

People v. Agpro, 345 Ill.App.3d 1011, 1028-29, 803 N.E.2d 1007, 1019 (2nd Dist. 2004). The Court stated that this was exactly the type of personal involvement or active participation required to hold a corporate officer individually liable under the Act.

A comparison of the evidence presented by the trial court and affirmed by the appellate court in People v. Agpro with that which the State proffered in the present matter shows that the State has failed in making its case for personal liability against the principals of CLC. In contrast to the president of the company in Agpro, Robert and Edward Pruim, as cited on page 10, supra:

1) Did not personally run site operations;

2) Did not spend any significant time at the site;

3) Did not supervise on-site activities or employees;

4) Had no personal involvement in waste placement decisions or activities;

5) Had no personal involvement in any of the specification allegations;

6) Did not do any actual on-site work; and

7) Denied all personal liability rather than admitting it.

In its Post-Hearing Brief, the State acknowledges that under Illinois law, it must allege facts that establish the corporate officer had personal involvement or active participation in the acts resulting in liability, not just that the officer had personal involvement or active participation in the management of the corporation. People ex rel Madigan v. Tang, 346 Ill.App.3d 277, 289, 805 N.E. 2d 243, 253-54 (1st Dist. 2004). In Tang, the court held that it was insufficient for the State to simply allege that because an individual was an officer (Chairman and CEO) and shareholder of the corporation, he was accountable for the corporation's actions. 346 Ill.App. 3d at 289. In finding the allegations against the defendant in Tang to be insufficient, the court noted that the allegations were significantly deficient as compared to the allegations in People ex rel. Burris v. C.J.R. Processing, Inc., 647 N.E. 2d. 1035, 1038, 269 Ill.App.3d 1013, 1018 (3rd Dist. 1995), where the corporate officer defendant himself actually operated the facility in question. Tang, 346 Ill.App. 3d at 289.

B. The Responsible Corporate Officer Doctrine Does Not Apply to Establish Personal Liability of Shareholders and Officers of CLC

The Board should ignore the State's half-hearted attempt to apply the responsible corporate officer doctrine. The State does not cite any case law from Illinois, and the cases cited from other jurisdictions are non-precedential and distinguishable. Furthermore, the State boldly asserts without any citations to any supporting case law that "[t]he responsible corporate officer doctrine differs from the concept of *direct* liability because it does *not* require personal involvement of the corporate officer." (State's Brief at 7). An analysis of the cases cited by the State does not clearly support this proposition.

The Court of Appeals of Minnesota did not decide the applicability of the responsible corporate officer doctrine. State of Minnesota v. Modern Recycling, 558 NW 2d 770, 772 (Ct. of Apps. of Minn., 1977). It determined that the district court erred in addressing the issue of the officer's personal liability under the doctrine and reversed the judgment against him personally on procedural grounds, without having made any findings of fact. Id. at 772-73.

The State also cites State of Washington, Department of Ecology v. Lundgren, 94 Wash. App. 236, 971 P.2d 948 (Ct. of Apps. of Wash., 1999) in support of its position. However, the court in Lundgren found that the officer "exercised actual hands-on control of the facility's activities." 94 Wash. App. 236, 245, 971 P.2d 948, 953. Additionally, the State fails to note that Lundgren relies heavily on another case, U.S. v. Gulf Park Water Co., Inc., 972 F.Supp. 1056 (S.D. Miss. 1997). Gulf Park found liability where the officers had "actual hands-on control of the facility's activities, were responsible for on-site management, corresponded with regulatory bodies, and were directly involved in the decisions concerning environmental matters." Gulf Park, 972 F.Supp. at 1064.

In Commissioner, Indiana, Dept. of Environmental Management, 755 N.E.2d 556 (S.Ct. Ind. 2001), again, the Court relied heavily on the officer's admission that he was the responsible party, as well as his direction of and involvement in operating the landfill. 755 N.E.2d 556, 561. Finally, in BEC Corp. v. Dept. of Environmental Protection, 256 Conn. 602, 775 A.2d 928 (Sup. Ct. of Conn. 2001), while the Court found liability against the defendant purportedly based on the responsible corporate officer doctrine, the Court also emphasized and relied upon the facts that the corporate officer that exercised control over the site directly participated in decisions as to the use, repair and maintenance of the facility, and was present at the site no fewer than five days per week. 775 A.2d at 626.

The State has not presented a clearly articulated difference between the active participation standard currently applied by Illinois Courts and the responsible corporate officer doctrine it suggests that Board follow without providing any reasons as to why. Therefore, the Board should not follow the State's vague suggestion.

IV. THERE IS NO PERSONAL LIABILITY OF THE PRUIMS FOR THE OVERHEIGHT VIOLATIONS AND NOMINAL PENALTY, IF ANY, SHOULD BE ASSESSED AGAINST CLC

A. No Liability for Robert and Edward Pruim for the Alleged Overheight Violations.

1. Review of the Alleged Overheight Violations.

Overheight violations, alleged in both cases PCB 97-193 and PCB 04-207 are identical. Count VII alleges that CLC and the Pruims deposited waste in unpermitted portions of the landfill and that as of 1999 portions of Parcel B exceeded the permitted elevation of 580 above sea level; Count VIII, based on the same overheight violations, alleges that the Pruims and CLC conducted waste disposal operations without a permit; Count IX is based on the same allegations and alleges open dumping; and, Count X is based on the same allegations and alleges that both

the shareholders and the corporation failed to obtain permits to fill Parcel B above 580 above sea level.

The Board has found against CLC as a corporation on the issue of liability and deferred for hearing the issue of penalty. The issues of both liability and penalty for these counts are still contested against Edward and Robert Pruim. The evidence in this case is insufficient to establish the personal liability of Edward or Robert Pruim. There is absolutely no evidence that the Pruims had any personal knowledge of or involvement in any acts resulting in the alleged overheight of Parcel B. Therefore, the Board should enter judgment in their favor and against the State on the issue of liability. On the issue of penalty, because there was no harm to the environment, any penalty issued by the Board against the corporation for the overheight violation should be nominal.

2. The Standard for Personal Liability

As set forth in Section III.A., above, the standard for personal liability requires actions on behalf of the individual defendant that rise above the level of mere management of the corporation. The individual actor, in order to be liable for violations of the act, must have had personal and direct involvement in the specific actions giving rise to the allegations. It is not enough for someone to just fulfill their corporate responsibility as president or vice president to sign documents that were submitted to the State. In this case, in order to be found personally liable, Edward and/or Robert Pruim must have been personally involved in or directly participated in the acts that allegedly caused Parcel B of the landfill to exceed its permitted height of 580 feet above sea level. For example, if there was competent evidence that the Pruims knowingly ordered the landfill operator to place waste 580 feet above sea level, that is the type of evidence necessary to establish personal liability. In this case, the only competent evidence is to

the contrary – the Pruims did not know of, let alone order, waste to be placed above 580 feet. The law that supports this position is set forth in Section III.A., above and will not be rehashed here. An application of the facts of this case to the legal standard for personal liability confirms that neither Robert nor Edward Pruim are personally liable for any allegations with respect to the overheight of Parcel B in Morris Community Landfill.

3. Based on the Totality of the Evidence, the State has Failed to Meet its Burden to Establish Personal Liability of Edward and Robert Pruim for the Overheight Violations.

None of the State's witnesses could testify that Edward or Robert Pruim had direct or personal involvement in allegedly filling Parcel B above 580 feet above sea level. (Tina Kovasznay, Dec. 2, 2008, pp. 44, 48, 51, 59, 79-80; Warren Weritz, Dec. 3, 2008, pp. 85, 90-91, 92, 93, 94, 101-102; Christine Roque, Dec. 2, 2008, pp. 79-80; Ellen Robinson, Dec. 3, 2008, p. 39; Gary Styzens, Dec. 2, 2008, pp. 197-98) The sole basis of the State's personal liability case against Edward and Robert Pruim are two annual landfill certification reports, one signed by Edward Pruim and one signed by Robert Pruim. (See Complainant's Trial Exhibits 14(d) and 14(e)). Exhibit 14(d) is a January 1995 annual landfill capacity certification for Parcel B of Morris Community Landfill. The document indicates that there was no remaining capacity in Parcel B as of January 1, 1995 and the document is signed by Edward Pruim as secretary of CLC, Robert Feeney as the Mayor of Morris, and Doug Andrews, environmental engineer. Exhibit 14(e) is a January 1996 landfill capacity certification which indicates that as of January 1996, zero remaining capacity in the landfill existed, yet 540,135 cubic yards of waste had been deposited in the landfill during the 1995 calendar year. On the basis of these reports, the State theorizes, alleges and claims that Edward and Robert Pruim had direct and personal involvement in filling the landfill above the 580 foot level.

However, the real evidence in this case establishes the contrary. Edward Pruim stated that he had absolutely no knowledge of any alleged overheight of Parcel B of the landfill until they received notice from the State. (Edward Pruim, December 4, 2008, p. 82). Both Robert and Edward Pruim testified that while they signed the landfill certification reports, they signed them as corporate officers and not in their individual capacity. (Robert Pruim, Dec. 4, 2008, p. 47, Edward Pruim, Dec. 4, 2008, p. 76). Robert Pruim specifically testified that at the time he signed the landfill certification reports, he contested that there was zero remaining capacity in Parcel B. (Robert Pruim, Dec. 4, 2008, p. 48). He stated that the landfill certification reports were prepared by Andrews Engineering, and that he disputed engineer Vince Madonia's statement that there was no remaining capacity in Parcel B. (Robert Pruim, Dec. 4, 2008, p. 48). He testified that Madonia advised him that there was a discrepancy in amount of remaining capacity in the landfill due to compaction ratios and other factors, and that the discrepancy would be adjusted in future annual capacity reports. (Robert Pruim, Dec. 4, 2008, p. 48).

Robert Pruim, Edward Pruim and Jim Pelnarsh all state that they do not believe that Parcel B of the landfill is filled above its permitted capacity, even today. (Robert Pruim, Dec. 4, 2008, pp. 47-48; Edward Pruim, Dec. 4, 2008, p. 78; Jim Pelnarsh, Dec. 4, 2008, pp. 24 and 26). The Pruims and Jim Pelnarsh all testified that there is substantial additional permitted capacity where the office and garage building is and off to the east side of Parcel B (just over the hill) of the landfill. (Robert Pruim, Dec. 4, 2008, pp. 48; Edward Pruim, Dec. 4, 2008, p. 78-79; Jim Pelnarsh, Dec. 4, 2008, pp. 30-31). Also, as testified to by Robert Pruim, in the 1997 landfill capacity certification, which covered remaining capacity for both Parcels A and B, the capacity adjustment Mr. Pruim discussed with engineer Madonia was made. (See Complainant's Trial Exhibit 14(f); Robert Pruim, Dec. 4, 2008, pp. 49-50). As identified in Exhibit 14(f), as of

February 1997, there was more than 1.7 million cubic yards of remaining landfill capacity in both Parcels A and B. Edward Pruim estimates that the remaining capacity in Parcel B today would be in the range of 100,000 – 200,000 cubic yards. (Edward Pruim, Dec. 4, 2008, p. 79).

The State's post-hearing brief criticizes Robert Pruim's denials as not credible. (See Post-Hearing Brief at pp. 16-18). To the contrary, Hearing Officer Halloran, who has presided over this case for many years, found there to be no issue regarding credibility of witnesses. (Hearing Officer Halloran, Dec. 4, 2008, p. 128). Moreover, the State's criticisms of Robert Pruim are more fluff than substance. The State presents absolutely no evidence to rebut Robert Pruim's contention that he disputed the landfill capacity reports at the time that they were signed, that Vince Madonia advised him that there were mathematical errors that would be corrected, and that indeed on the 1997 landfill capacity certification adjustments were made to show that more than 1.7 million cubic yards of air space remained at the landfill. (Comp. Exh. 14(f)). The Board must also consider that there has never been any actual proof submitted that Parcel B of the landfill is overheight or that there is not any remaining capacity at Parcel B. Both Robert and Edward Pruim testified that no one has ever provided them with any empirical proof that any waste was placed above its permitted height. (Robert Pruim, Dec. 4, 2008, p. 68; Edward Pruim, Dec. 4, 2008, p. 80-81). Indeed, Jim Pelnarsh, Edward Pruim and Robert Pruim testified as to specific areas on Parcel B where substantial permitted waste volume still exists. (Robert Pruim, Dec. 4, 2008, pp. 48; Edward Pruim, Dec. 4, 2008, p. 78-79; Jim Pelnarsh, Dec. 4, 2008, pp. 30-31).

It is interesting to note that the government hired Rapier Surveyors to determine whether or not the landfill was filled above its permitted elevation capacity. Because the Rapier Survey report only found that there was 66,589 cubic yards of material filled above the permitted

elevation height of the landfill, the State elected not to use the Rapier Survey and corresponding report as evidence at the hearing. It was CLC that brought this report to the Board's attention and submitted it as an exhibit. (Resp. Exh. 11). To date, there has been absolutely no empirical proof of any kind that Parcel B of the landfill was actually filled above 580 feet above sea level or otherwise filled above its permitted capacity. Capacity reports upon which the State rests the entirety of its case do not talk about permitted elevations or any amount of waste filled above the permitted elevation. The landfill certification reports, signed by Robert and Edward Pruim, are not sufficient to establish personal liability of Robert and Edward Pruim for Counts VII through X regarding the overheight.

On the flip side, evidence presented by Community Landfill Corporation and the Pruims is uncontested that the Pruims did not have direct and personal involvement in the alleged overheight violations. The evidence at the hearing in this case established:

1) Not one of the State's witnesses had any evidence that Edward or Robert Pruim had personal involvement or active participation in any of the alleged violations. (Tina Kovasznay, Dec. 2, 2008, pp. 44, 48, 51, 59, 79-80; Warren Weritz, Dec. 3, 2008, pp. 85, 90-91, 92, 93, 94, 101-102; Christine Roque, Dec. 2, 2008, pp. 79-80; Ellen Robinson, Dec. 3, 2008, p. 39; Gary Styzens, Dec. 2, 2008, pp. 197-98)

2) The Pruims both denied that they had personal involvement or direct participation in any of the allegations at issue. (Robert Pruim, Dec. 4, 2008, pp. 54-63; Edward Pruim, Dec. 4, 2008, pp. 93-100)

3) The day-to-day operation of the landfill was conducted by site operator Jim Pelnarsh. (Jim Pelnarsh, Dec. 4, 2008, p. 28; Robert Pruim, Dec. 4, 2008, pp. 39, 52-53)

4) Pelnarsh made the decision on where, when and how to place waste on Parcels A and B. (Jim Pelnarsh, Dec. 4, 2008, p. 27)

5) The government inspectors never dealt with Edward or Robert Pruim – their on-site contact was Jim Pelnarsh. (Tina Kovasznay, Dec. 2, 2008, pp. 22, 42, and 43; Warren Weritz, Dec. 3, 2008, pp. 61, 78, 83-84; Mark Retzlaff, PCB 01-170, Vol. I, Oct. 15, 2001, pp. 66-69)

6) The Pruims had no involvement in the day-to-day operations of CLC – that was Jim Pelnarsh. (Robert Pruim, Dec. 4, 2008; pp. 39, 52-53; Jim Pelnarsh, Dec. 4, 2008, pp. 27-28)

7) To the extent they signed permit applications and landfill capacity reports it was as corporate officers and merely a normal part of their corporate officer responsibility. (Edward Pruim, Dec. 4, 2008, pp. 74, 76, 86)

8) To the extent they arranged for financial assurance it was as corporate officers and merely a normal part of their corporate officer responsibility. (Robert Pruim, Dec. 4, 2008, pp. 60-61; Edward Pruim, Dec. 4, 2008, pp. 73-74, 83)

9) There was no directive from Robert or Edward Pruim to Jim Pelnarsh to place waste above permitted capacity. (Jim Pelnarsh, Dec. 4, 2008, p. 26; Robert Pruim, Dec. 4, 2008, p. 62; Edward Pruim, Dec. 4, 2008, p. 82)

Couple this evidence with the fact that the Pruims were not even aware that the landfill was allegedly overheight, let alone had direct and personal involvement in the decision to overfill the landfill. Simply stated the State's evidence falls far short of the standard necessary to establish personal liability. The Board should enter a finding in favor of Edward and Robert Pruim and against the State on the issue of liability for the alleged overheight violations (Counts VII through X of both complaints.)

B. There Should be No Penalty for Robert and Edward Pruim for the Alleged Overheight Violations.

Even assuming, arguendo, that the Board finds liability in favor of Robert and Edward Pruim, there should be no penalty assessed against them personally. Any benefit that allegedly was gained by the overheight violations is gained by the corporation and not the Pruims individually. Furthermore, once the matter was brought to their attention, even though they did not believe that the landfill was either overheight or overfilled, they ordered Jim Pelnarsh to move substantial amounts of the waste at the top of Parcel B over to Parcel A at great expense. (Edward Pruim, Dec. 4, 2008, p. 81-82; Jim Pelnarsh, Dec. 4, 2008, pp. 31-32). Furthermore, the State failed to present any evidence of any environmental harm that has been occasioned by the

alleged overheight in Parcel B. In fact, if Parcel B's overheight was ever proposed to be moved over to Parcel A, substantially more potential environmental harm would occur due to moving the waste than just leaving it in place.

V. The Board Should Not Find Liability Against CLC for Part of Count XIX (Enf. 97-193) or Liability Against the Pruims for Count XVII (Enf. 04-207)

Count XIX of the State's Complaint against CLC (Enf. 97-193) alleges that CLC is liable for failing to increase financial assurance pursuant to Condition #13 of Permit 1996-240-SP (October 24, 1996). Count XVII of the State's complaint against CLC (Enf. 04-207) alleges liability against the Pruims for the same violation.

There are two parts to the State's allegations: The first part addresses an alleged failure to increase financial assurance form $1,342,500 to $1,431,600 by January 22, 1997. The Board ruled in favor of the State against CLC on liability. At issue here for that part is liability against the Pruims and a penalty against both CLC and the Pruims, if liability is found, which the Pruims maintain it should not be. The second part is whether CLC and the Pruims failed to increase financial assurance from $1,431,600 to $1,439,720 prior to operation of the gas collection system. At issue is both liability and penalty against CLC and the Pruims if liability is found, which again, the Respondents maintain it should not be.

A. A Minimal Penalty Should be Assessed Against CLC and the Pruims Should Not Be Found Liable for Failure to Increase Financial Assurance from $1,342,500 to $1,431,600 by January 22, 1997.

The Board has already found liability against CLC for this part of Count XIX. A minimal penalty should be assessed against CLC for failing to increase financial assurance from $1,342,500 to $1,431,600 by January 22, 1997. The time period was short and the amount was small.

It should not find liability against the Pruims for violations alleged in Count XVII of PCB 04-207. The evidence has shown that while respondents Robert and Edward Pruim were responsible for maintaining financial assurance for the landfill, they did so only in their capacity as officers of the corporation and not on behalf of themselves individually. (Robert Pruim, Dec. 4, 2008, pp. 60-61; Edward Pruim, Dec. 4, 2008, pp. 73-74). Furthermore, neither of them had any direct or personal involvement in the allegations that they failed to provide financial assurance. (Robert Pruim, Dec. 4, 2008, p. 60; Edward Pruim, Dec. 4, 2008, p. 99). This part of Count VII of PCB 04-207 should be dismissed against the Pruims individually.

B. The State Has Failed to Prove that the Gas Collection System was in Operation Prior to a Required Increase in Financial Assurance.

On October 3, 2002, the Board denied the State's motion for summary judgment as to an alleged failure to raise the financial assurance prior to operation of the gas management system, finding a genuine issue of material fact as to when it began to operate. (See Board Order dated October 3, 2002, pp. 20-21). Because the State has failed to prove when the system began to operate, the Board should not find liability against either CLC or the Pruims on this issue. Consequently, no penalty should be assessed.

The sole evidence presented by the State in support of this part of Count XIX (against CLC in Enf. 97-193) and Count XVII (against the Pruims in 04-207) is that on March 31, 1999 Inspector Tina Kovasznay "observed" the gas collection system in operation. (Tina Kovasznay, Dec. 2, 2008, p. 26). However, site manager Jim Pelnarsh testified that KMS was simply testing the engine and that he did not recall telling the inspector that the system was running. (Jim Pelnarsh, Dec. 4, 2008, p. 23). He also made the same statement in his affidavit submitted in CLC's response to the State's Motion for Summary Judgment on March 1, 2002. (See Respondent's Trial Exhibit 9, Affidavit of James Pelnarsh, at para. 13). Jim Pelnarsh testified

that the statements in his affidavit are still true today, in spite of the State's attempt to discredit him. (Jim Pelnarsh, Dec. 4, 2008, pp. 32-33). Inspector Kovasznay testified that she has no other evidence of the gas system running other than merely hearing the engines. (Tina Kovasznay, Dec. 2, 2008, pp. 47-48).

Nothing has changed since the Board denied the State's Motion for Summary Judgment on October 3, 2002. Hearing Officer Halloran found no issues with the credibility of any of the witnesses. (Dec. 4, 2008, p. 128). The State has offered nothing new to support its allegations. The State has again failed to prove its case against CLC in regard to this part of Count XIX in PCB 97-193. Since liability should not be found against CLC for this part of Count XIX in PCB 97-103 relating to the operation of the gas collection system, the Pruims should not be found liable for this part of Count XVII in PCB 04-207 also relating to the operation of the gas collection system.

Regardless of any liability found against CLC (for which none should be), the Pruims should in no way be held liable since they had nothing to do with the operation of the gas collection system. The testimony established the following:

- No one except landfill site manager Jim Pelnarsh ever accompanied Tina Kovasznay on an inspection, including Robert or Edward Pruim. (Tina Kovasznay, Dec. 2, 2008, pp. 42-43).

- Tina Kovasznay has no evidence that Robert or Edward Pruim had any personal or direct involvement with the operation of the landfill, specifically with the alleged violation of running the gas system. (Tina Kovasznay, Dec. 2, 2008, pp. 44 and 48).

- Jim Pelnarsh was the operator of the landfill and made the day to day decisions with respect to the operation of the landfill since 1983. (Jim Pelnarsh, Dec. 4, 2008, p. 28).

- KMS put in the gas collection system and Robert Pruim expected that KMS was going to be increasing the financial assurance. (Robert Pruim, Dec. 4, 2008, pp. 50-52).

- Robert Pruim had no direct or personal involvement in the allegations that he failed to provide financial assurance. (Robert Pruim, Dec. 4, 2008, p. 60).

•Edward Pruim agreed that he understood that KMS was responsible for financial assurance. (Edward Pruim, Dec. 4, 2008, pp. 98-99).

•Edward Pruim had no direct or personal involvement in the allegations that he failed to provide financial assurance. (Edward Pruim, Dec. 4, 2008, p. 99).

The State has failed to make its case against the Pruims individually in PCB 04-207for any alleged failure to obtain financial assurance prior to the operation of the gas collection system. This part of Count XVII should be dismissed against the Pruims.

VI. The Board Should Rule that Neither CLC Nor the Pruims are Liable for Daily Operation Violations at the Landfill as Alleged in PCB 97-193 Against CLC (Counts I, II and VI) and in PCB 04-207 Against the Pruims (Counts I, II, III, VI and XII).

Additionally, Although Liability Has Been Found Against CLC for Counts III and XIII (PCB 97-193), the Board Should Not Find any Liability Against the Pruims for Counts III and XII (PCB 04-207).

On October 3, 2002, the Board denied the State's Motion for Summary Judgment Against CLC in regard to Counts I, II and VI in 97-193. The State's evidence presented at hearing is woefully inadequate to support a finding of liability against either CLC or the Pruims, as set forth in detail below.

A. Count I Against CLC (Enf. 97-193)

The State has failed to prove that refuse and litter were inadequately managed. The State introduced five (5) inspection reports in its attempt to prove inadequate management of refuse and litter. Warren Weritz testified as follows in regard to his inspections on these dates:

1. **April 7, 1994**

•He did not return at the end of the day or observe conditions at the end of the day. (Warren Weritz, Dec. 3, 2008, pp. 87, 98)

•His pictures show bags of litter which are an attempt to control litter (Warren Weritz, Dec. 3, 2008, pp. 87-89)

•He has no idea whether the uncovered litter he saw on April 7, 1994 was there at the end of the day because he never returned. (Warren Weritz, Dec. 3, 2008, pp. 89, 98)

2. **March 22, 1995**

•He did not return at the end of the day or observe conditions at the end of the day. (Warren Weritz, Dec. 3, 2008, pp. 91, 98)

•He has no independent evidence that the uncovered litter he saw on March 22, 1995 was not covered by the end of the day. (Warren Weritz, Dec. 3, 2008, p. 92)

3. **May 22, 1995**

•He did not return at the end of the day or observe the site conditions at the end of the day. (Warren Weritz, Dec. 3, 2008, pp. 92, 98)

•He has no independent evidence that the uncovered litter he saw on May 22, 1995 was not covered at the end of the day. (Warren Weritz, Dec. 3, 2008, pp. 92-93)

4. **July 28, 1998**

•He did not return at the end of the day or observe the site conditions at the end of the day. (Warren Weritz, Dec. 3, 2008, pp. 93, 98)

•He has no independent evidence that the uncovered litter he saw during the July 28, 1998 inspection was not covered by the end of the day. (Warren Weritz, Dec. 3, 2008, pp. 93-94)

Tina Kovasznay testified as follows in regard to her inspection on the following date:

5. **March 31, 1999**

•She did not observe the site conditions at the end of the day. (Tina Kovasznay, Dec. 2, 2008, p. 44)

Conversely, Jim Pelnarsh testified at hearing that he did not advise Warren Weritz that they were not picking up litter at the end of the day. (Jim Pelnarsh, Dec. 4, 2008, p. 19). He stated in his affidavit that it has been the practice of CLC to collect blowing litter by the end of each operating day and that they employed persons whose primary job was to pick up litter on days when the weather conditions create blowing litter. (Affidavit of James Pelnarsh, Respondent's Exh. 9, paragraph 4). Clearly, the State has failed to establish that CLC should be found liable for a failure to adequately manage litter and refuse since it has not – and never could – prove that any litter was left uncovered at the end of the day.

B. Counts II and VI Against CLC (97-193)

The State has not proven a failure to prevent or control leachate or proven water pollution. The State has not established the existence of water pollution. The definition of water pollution is:

> such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life. (415 ILCS 5/3.545)

The State introduced three (3) inspection reports in its attempt to prove a failure to prevent or control leachate. Warren Weritz testified specifically that on April 7, 1994, he had no independent evidence that the leachate seeps he saw on that date were not fixed by the end of the day. (Warren Weritz, Dec. 3, 2008, p. 90). He also testified that it happened that the seeps that he had seen on one occasion would be corrected the next time he came back. (Warren Weritz, Dec. 3, 2008, p. 99). Further, Mr. Weritz testified generally at the inspections on April 7, 1994, March 22, 1995 and May 22, 1995 as follows:

•He never obtained samples of any material he said was leaving the site. (Warren Weritz, Dec. 3, 2008, pp. 95-96)

•He didn't take any samples or make any test of the material that he allegedly saw in the water. (Warren Weritz, Dec. 3, 2008, p. 101)

•He performed no testing on the alleged leachate he saw on the retention pond other than his observation. (Warren Weritz, Dec. 3, 2008, pp. 96-97)

•He never actually saw "reddish, oily liquid" actually leave the landfill site. (Warren Weritz, Dec. 3, 2008, p. 97)

•He has never seen naturally occurring runoff from iron ore deposits and has no idea whether they would be red in color. (Warren Weritz, Dec. 3, 2008, pp. 97-98)

•Beyond his observation, he has no evidence that there were any contaminants in the water. (Warren Weritz, Dec. 3, 2008, p. 97)

•He did not take any measures to determine whether the material he saw in the ditch would be harmful or detrimental or injurious to the public health and safety, or to the domestic, commercial, industrial, agricultural, recreational or legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life. (Dec. 3, 2008, p. 98)

Conversely, site manager Jim Pelnarsh testified as follows:

•He did not agree with Weritz that leachate was present because leachate is black and this liquid was brownish water from strip mines and other excavations. The landfill across the street and all the strip mines in the area had brown water. (Jim Pelnarsh, Dec. 4, 2008, pp. 20-21).

•The excavations where he saw the water had a slight odor of rotten egg. (Jim Pelnarsh, Dec. 4, 2008, p. 21).

In addition, in his affidavit, Jim Pelnarsh stated as follows:

•He was familiar with the north perimeter ditch at the landfill, having performed maintenance work including excavating it to make sure it was clean and free of sediment. At various times he observed a brownish/reddish staining to the water in this ditch as well as other areas around the City of Morris. The stain comes from natural deposits of iron ore present in the soil and not from anything emanating from or caused by the landfill. (Affidavit of Jim Pelnarsh, Respondent's Exh. 9, paragraph 8).

•Not only did he disagree with Mr. Weritz that the reddish/brown stain was leachate, he specifically advised Mr. Weritz that it was rusty or orange colored

water from iron ore deposits. (Affidavit of Jim Pelnarsh, Respondent's Exh. 9, paragraph 8).

Clearly, the State has failed to establish that CLC should be found liable for a failure to prevent or control leachate or the existence of water pollution. The State has not established that the material allegedly observed actually was leachate or that any alleged leachate seeps were not fixed by the end of the day. Significantly, the State failed to introduce any evidence to support the allegations of water pollution as it is defined in the Act. (415) ILCS 5/3.545). In addition to not proving the presence of leachate, no testimony was heard that a nuisance was or was likely created, nor that the waters of the State were rendered harmful or detrimental or injurious to the public health, safety or welfare, or to any other uses such as commercial or agricultural, or to any other life forms, including aquatic or other. All of this is needed for a finding of water pollution. In short, the State has utterly failed to prove its case. Therefore, the Board should rule that there is no liability for CLC in regard to Counts II and VI (Enf. 97-193).

C. Counts III and XIII Against CLC (PCB 97-193)

The Board has already found liability against CLC for failure to properly dispose of landscape waste and improper disposal of used tires. However, Warren Weritz testified that he has no evidence that the landscape waste and tires he observed were still there at the end of the day. (Warren Weritz, Dec. 3, 2008, p. 94). Any penalty assessed against CLC should be minimal for these one-time violations.

D. No Liability Against Edward and Robert Pruim for Counts I, II, III, VI and XII (PCB 04-207)

The State seeks a finding of liability against Robert and Edward Pruim for Counts I, II, III, VI and XII in PCB 04-207 based on the responsible corporate officer doctrine. However, as set forth in Section III.B., above, this doctrine is not applicable to establish personal liability of

the Pruims. In support of its theory, the State cites Commissioner, Dept. of Environmental Management v. RLG, Inc., 755 N.E.2d 556 (Ind. 2001). In that case, the Court found that it was the officer's direction of and involvement in operating the landfill" and his "actual role" in the corporation's activities to be critical. RLG, Inc. at 562. The Court also found that it was the officer's acts that facilitated the violation. Id.

None of these elements are present here. In testimony regarding the daily operation violations, individuals testified as follows:

Tina Kovasznay testified:

•Site manager Jim Pelnarsh was the person she dealt with and who accompanied her on inspections; no one else did. (Tina Kovasznay, Dec. 2, 2008, pp. 22, 42)

•She was never accompanied by either Robert or Edward Pruim. (Tina Kovasznay, Dec. 2, 2008, p. 43)

Warren Weritz testified:

•Site manager Jim Pelnarsh accompanied him on almost every inspection (except for one). (Warren Weritz, Dec. 3, 2008, p. 83)

•He was never accompanied by Edward Pruim or Robert Pruim and never saw either of them at the landfill. (Warren Weritz, Dec. 3, 2008, p. 84)

Jim Pelnarsh testified:

•He made the day-to-day decisions with regard to the operation of the landfill and had since 1983. (Jim Pelnarsh, Dec. 4, 2008, p. 28)

•He did not have to talk to Robert or Edward Pruim to decide where to place any waste. (Jim Pelnarsh, Dec. 4, 2008, p. 27)

Robert Pruim testified:

•He did not manage the day-to-day operations of the landfill. (Robert Pruim, Dec. 4, 2008, pp. 52-53)

•He had no direct or personal involvement in any of the allegations related to the daily operation violations in Counts I, II, III, VI and XII in PCB 04-207. (Robert Pruim, Dec. 4, pp. 54-56, 58)

Edward Pruim testified:

•Jim Pelnarsh, site manager, certified by the State of Illinois, made the day-to-day decisions with regard to the management of the landfill from 1983 to the present. (Edward Pruim, Dec. 4, 2008, p. 94)

•He had no direct or personal involvement in any of the allegations related to the daily operation violations in Counts I, II, III, VI and XII in PCB 04-207. (Edward Pruim, Dec. 4, pp. 93-94, 96, and 98)

Neither Robert nor Edward Pruim should be found liable for any alleged violations in Counts I, II, III, VI and XIII since they had nothing to do with the daily management of the landfill.

VII. ADDITIONAL VIOLATIONS ALLEGED ONLY AGAINST CLC

A. Count XV (PCB 97-193) Violation of Permit Condition #1 (1996-240-SP)

Hearing on Count XV against CLC only was on both liability and penalty. As was the case with Count XIX against CLC in PCB 97-193 and Count XVII against the Pruims in PCB 04-207, the issue before the Board is when did the gas management system begin to run. The Board denied summary judgment on this issue, finding a genuine issue of material fact. (See Board Order, Oct. 4, 2002, PCB 97-193, p. 16).

As stated in Section VI-B above, the State has failed to prove its case. All the State has presented is inspector Tina Kovasznay's testimony (and inspection report) stating that on March 31, 1999 she "observed" the gas collection system running because she "heard" engines running. (Tina Kovasznay, Dec. 2, 2008, pp. 26-27 and 47). That's it. That is the State's only evidence.

In contrast, site manager Jim Pelnarsh testified that KMS was simply testing the engine and that he did not recall telling inspector Kovasznay that the system was operating. (Jim Pelnarsh, Dec. 3, 2008, p. 23). Significantly, Ms. Kovasznay admitted in her testimony that she does not know much about the mechanics of the gas system and that she has no other evidence of

the gas system running other than hearing the engines. (Tina Kovasznay, Dec. 2, 2008, pp. 47-48).

Clearly, the State has not proven its case that the gas collection system was in operation in violation of Permit Condition #1 (1996-240-SP). There is no question that Mr. Pelnarsh's testimony is credible, as was found by Hearing Officer Halloran, in spite of the State's attempt to raise it as an issue. (Dec. 4, 2008, p. 128; State's Brief, p. 39). The Board should find CLC is not liable for the violation alleged in Count XV (PCB 97-193).

B. Count XVII (PCB 97-193)
Violation of Permit Condition #11 (1996-240-SP)

Hearing on Count XVII against CLC only was on both liability and penalty. At issue is whether CLC was using leachate pumped from the landfill to increase the moisture content of new waste disposal cells on March 31, 1999 and July 20, 1999.

The State has failed to prove its case. All it has in support are statements by inspector Tina Kovasznay that site manager Jim Pelnarsh allegedly told her that leachate was being placed into the clay used for liners. (Tina Kovasznay, Dec. 2, 2008, pp. 26 and 37). That's it. That is the State's only evidence.

In contrast, Mr. Pelnarsh testified in his affidavit dated March 1, 2002, that he did not inform Ms. Kovasznay that he was placing leachate in Parcel A; rather, he advised her that he was pumping stormwater from a retention pond on the north side of Parcel A to add to moisture content. (See Respondent's Trial Exhibit 9, Affidavit of James Pelnarsh, at para. 11). Mr. Pelnarsh testified at the hearing that he believed that the information he swore to in his affidavit in March 2002 was still true. (Jim Pelnarsh, Dec. 4, 2008, p. 33).

Clearly, the State has not proven its case that CLC was using leachate pumped from the landfill on March 31, 1999 and July 20, 1999. There is no question that Mr. Pelnarsh's

testimony is credible, as was found by Hearing Officer Halloran, in spite of the State's attempt to raise it as an issue. (Dec. 4, 2008, p. 128, State's Brief, p. 39). The Board should find that CLC is not liable for the violations alleged in Count XVII (PCB 97-193).

C. Count XX (PCB 97-193)
Violation of Permit Condition #17 (1996-240-SP)

The State has requested that Count XX (PCB 97-193) be dismissed against CLC since it entered no evidence at hearing on this count.

D. Count XIV (PCB 97-193)
Violation of Permit Condition #13 (1989-005-SP)

On October 3, 2002, the Board granted summary judgment in favor of the State against CLC on Count XV (PCB 97-193) for a failure to use movable fencing on March 31, 1999 and July 20, 1999. (See Board Order, Oct. 4, 2002, PCB 97-193, p. 15). This is a very minor violation. If the Board deems a penalty appropriate, it should be for a nominal amount.

E. Count XVI (PCB 97-193)
Violation of Permit Condition #9 (1996-240-SP)

On October 3, 2002, the Board granted summary judgment in favor of the State against CLC on Count XV (PCB 97-193) for a failure to take corrective action on March 31, 1999 and July 20, 1999. (See Board Order, Oct. 4, 2002, PCB 97-193, p. 15). This is a very minor violation. If the Board deems a penalty appropriate, it should be for a nominal amount.

VIII. REQUESTED REMEDY

The Respondents request that the Board assess a total civil penalty of no more than Twenty-Five Thousand Dollars ($25,000.00) against Respondent CLC for the violations in PCB 97-193 and no penalty ($0) against respondents Robert and Edward Pruim in PCB 04-207.

A. An Analysis of the 33(c) factors Suggest a Minimal 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;*

Contrary to the State's assertion, the evidence shows no injury to the general welfare. No evidence whatsoever was presented from any expert or lay witnesses of any interference with the health, or welfare of the general public. The State failed to prove its case in regard to water pollution as alleged in Count VI. It is immaterial to this proceeding whether any other proceeding is pending before the Board.

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

Again, the State makes broad, sweeping statements in regard to this factor which are not supported by any evidence presented at the hearing. The State did not present any evidence concerning the social and economic value of the pollution source.

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

The State makes the conclusory statement that the landfill is not suitable to the area where it is located, without having presented a shred of evidence to support it. The State did not present any evidence in regard to the suitability or unsuitability of the pollution source.

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

While the State comments that operating a landfill in accordance with regulations is "technically practicable and economically reasonable", this is generally true. However, there are numerous reasons why this is not the case in the present matter. First and foremost, the Agency

itself denied CLC's operating permit which would have allowed it to continue accepting waste and therefore generate income necessary. CLC has done everything it could for years to attempt to bring the landfill into compliance, in spite of difficulties.

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

Again, the State presented no evidence at this hearing of any current non-compliance. Any other proceedings currently pending are irrelevant to this proceeding.

Summary of 33(c) Factors

Based on an evaluation of the 33(c) factors, Respondents believe that a penalty of no more than Twenty-Five Thousand Dollars ($25,000.00) against CLC for violations in PCB 97-193 would be sufficient and reasonable in order to accomplish the purposes of the Act and Board landfill regulations.

B. Analysis of the 42(h) Factors

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

The State correctly notes that in regard to daily operations, any violations that the Board deems to have actually occurred, or for which liability has already been determined, are only provable on the dates of inspection (State's Brief at p. 47). In regard to the counts for which liability is at issue, the State has failed to prove its case against CLC on Counts I, II and VI, so these counts should be dismissed. In regard to Counts III and XIII for which liability has already been determined, only a nominal penalty should be assessed.

In regards to the alleged overheight violations, in Counts VII-X (PCB 97-193 and 04-207) even though liability has already been determined against CLC, significant testimony was presented at the hearing which mitigates against the penalty sought by the State.

First, there are significant questions as to the existence of the overheight. Without completely rehashing previous sections of Respondents' Post-Hearing Brief, a summary of the testimony presented is as follows:

- No one has ever provided any empirical proof that any waste was placed above its permitted height. (Robert Pruim, Dec. 4, 2008, p. 68; Edward Pruim, Dec. 4, 2008, pp. 80-81)

- Jim Pelnarsh, Robert Pruim and Ed Pruim all testified as to specific areas on Parcel B where substantial permitted waste volume still exists. (Robert Pruim, Dec. 4, 2008, p. 48; Edward Pruim, Dec. 4, 2008, pp. 78-79; Jim Pelnarsh, Dec. 4, 2008, pp. 30-31)

- Robert Pruim disputed the landfill capacity reports when they were made and Vince Madonia advised him that the mathematical errors would be corrected. (Robert Pruim, Dec. 4, 2008, p. 48)

- The mathematical errors ultimately were corrected and it was determined that more than 1.7 million cubic yards of air space remained at the landfill. (Robert Pruim, Dec. 4, 2008, pp. 49-50; Comp. Exh. 14(f))

- Neither Robert Pruim, Edward Pruim nor Jim Pelnarsh believe that Parcel B was overheight and all believe that capacity remains today. (Robert Pruim, Dec. 4, 2008, p. 47, Edward Pruim, Dec. 4, 2008, p. 78; Jim Pelnarsh, Dec. 4, 2008, pp. 24, 26, 30-31)

The State says there is no evidence that the overheight violations were ever remedied. However, testimony was presented at hearing that waste was moved. Jim Pelnarsh testified that when they were advised that the government was claiming that waste in Parcel B was above the permitted height, they began taking some material from Parcel B to Parcel A to use it as daily cover. He did that for several years on a regular basis and moved "a lot", which he estimates to have been 100,000 cubic yards. (Jim Pelnarsh, Dec. 4, 2008, pp. 31-32). Edward Pruim testified that they rented a truck to haul some of the material from Parcel B to be used as cover on Parcel A (Edward Pruim, Dec. 4, 2008, pp. 81-82).

Clearly efforts were made in this regard. The state is patently incorrect when it says there is no evidence that the overheight violations were ever corrected. Because liability has already

been determined against CLC for Counts VII – X in regard to the overheight allegations, a reasonable penalty should be assessed against CLC only.

Gravity

The State attempts to quantify the concept of gravity by mentioning the "sheer number" of alleged violations. However, the Board should not consider simply the number of alleged violations but instead, look at the factors in 33(c) which relate to the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people. As stated above, the State presented absolutely no evidence as to any harm to the health, general welfare and physical property of the people that is what the Board should consider when it considers "gravity". However, if it considers "sheer numbers" of violations it should also consider that four of 22 violations were dismissed against CLC prior to hearing (and one at hearing) and six of 19 violations against the Pruims have also been dismissed. (See Exh. A).

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.*

In spite of the State's attempts to portray CLC and the Pruims as not acting diligently, the testimony shows that is not the case.

In regard to the 1993 deadline for filing the SigMod, Edward Pruim testified that in November 1994, they entered into a lease for Parcel A with the City of Morris (Dec. 4, 2008, p. 87). CLC was prepared to file the SigMod and hired Andrews Engineering to do so (Dec. 4, 2008, p. 88). The Agency rejected the SigMod because it wasn't submitted on time (Dec. 4, 2008, p. 89). CLC was forced to file for a variance with the Board which upheld the Agency

decision and denied the variance (Dec. 4, 2008, p. 89). CLC then was forced to proceed in the Appellate Court which ruled in CLC's favor, allowing CLC to file the SigMod on August 6, 1996 (Dec. 4, 2008, p. 90).

In regard to not upgrading financial assurance in 1993, Edward Pruim testified that between 1993-1996, CLC was not in good shape financially but that there was always some financial assurance in place (Dec. 4, 2008, p. 84). Over time, the financial assurance needed to be increased, supplemented or replaced and that ultimately happened in 1996 when CLC obtained its first Frontier bond for approximately $1.4 million (Dec. 4, 2008, p. 84). CLC obtained the bond and paid a 2% premium per year but they would have qualified for a lesser premium if they were in a stronger financial position (Dec. 4, 2008, pp. 84-85). He further testified that between 1993-1996, they did not ignore the situation, but worked on a constant basis for the corporation through a broker (Dec. 4, 2008, p. 85). This shows plenty of diligence.

Finally, much has already been written on the subject of the overheight. To summarize, the annual capacity certifications were signed by Robert and Edward Pruim in their corporate capacities. (Edward Pruim, Dec. 4, 2008, pp. 74, 76, 86). As previously and repeatedly stated, no one with CLC believed that Parcel B was overheight, and they believed that capacity remains today. (Robert Pruim, Dec. 4, 2008, p. 47; Edward Pruim, Dec. 4, 2008, p. 78; Jim Pelnarsh, Dec. 4, 2008, pp. 24, 26, 30-31). In addition, CLC, once it was alerted to the possibility there was an overheight, made efforts to move waste from Parcel B to Parcel A (Edward Pruim, Dec. 4, 2008, pp. 81-82; Jim Pelnarsh, Dec. 4, 2008, pp. 31-32). This shows plenty of diligence.

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 lowest cost alternative for achieving compliance.*

The State makes much of the amount of money allegedly saved by the Respondents in this case. However, the testimony presented shows it is not nearly as clear as the State would have the Board believe.

In regard to the overheight, Christine Roque testified that the figure of 475,000 cubic yards overheight is being used because that was submitted by CLC. (Christine Roque, Dec. 2, 2008, pp. 84-85). However, she admitted that Rapier Surveying, Inc. was hired by the State to survey the landfill to determine the amount of the overheight. (Christine Roque, Dec. 2, 2008, p. 82). Roque further admitted that in 2000, Rapier determined that the total volume of material above the permitted capacity was 287,321 cubic yards. (Christine Roque, Dec. 2, 2008, p. 83; Resp. Exh. 11). Roque, however, continued to use the figure of 475,000 cubic yards. (Christine Roque, Dec. 2, 2008, pp. 84-85). The Rapier Report itself further states that the total volume of material above the permitted maximum elevation of 580 feet was 66,589 cubic yards. (Resp. Exh. 11).

The State's "expert" witness, Gary Styzens, admitted that this figure of $950,000 (based on overheight of 475,000 cubic yards) was provided to him by the Attorney General's office (Gary Styzens, Dec. 2, 2008, p. 146). He assumed it was correct. (Gary Styzens, Dec. 2, 2008, pp. 146-147). Gary Styzens testified that he was not aware of the Rapier Report and had never seen it before. (Gary Styzens, Dec. 2, 2008, pp. 178-79, 183). He testified that the Rapier Report would have reduced his penalty calculation on the overheight. (Gary Styzens, Dec. 2, 2008, p. 179). Styzens testified that if the Rapier document was accurate, it would have been inappropriate for him to apply interest to the entire $950,000.00. (Gary Styzens, Dec. 2, 2008, p. 184). But, he never saw it. (Gary Styzens, Dec. 2, 2008, pp. 178-79, 183).

Gary Styzens did not "put it all together" as the State attempts to characterize his contribution. (State's Brief at p. 50). He testified that he took numbers that were given to him at face value and did nothing to recalculate them. (Gary Styzens, Dec. 2, 2008, p. 187). Then he applied a marginal tax rate to show a reduction of each of those numbers to which he then applied a bank prime interest rate. (Gary Styzens, Dec. 2, 2008, pp. 187-188). He did absolutely nothing mathematically or otherwise to confirm that the numbers he was given were accurate, other than to rely upon the professional judgment of the lawyers. (Gary Styzens, Dec. 2, 2008, p. 190). Further, 42(h)(3) does not include the word "interest" and does not require him to apply the bank prime interest rate.

In summary, Styzens admitted that the Rapier Report would have reduced his penalty calculation. (Gary Styzens, Dec. 2, 2008, pp. 178-79, 183). In addition, Christine Roque acknowledged that Rapier determined the total volume over permitted capacity was 287,321 cubic yards. But, if Gary Styzens had used the Rapier figure of 66,589 cubic yards for the overheight, his estimated penalty calculation would have been approximately 14% of what it was. (Resp. Exh. 11).

Additionally, the State's witness Blake Harris provided Gary Styzens with the figures that Styzens plugged in to reach the figure of $47,871.33 in so-called avoided costs for CLC for not having provided and maintained adequate financial assurance. (Blake Harris, Dec. 2, 2008, p. 95). Harris testified that he used a 2% bond rate to come up with his calculation. (Blake Harris, Dec. 2, 2008, p. 96). Harris testified that this was a reasonable cost for a surety bond because it is the lowest he had ever seen (Blake Harris, Dec. 2, 2008, p. 100). However, he quickly corrected his own testimony to state that in fact 2% was not the lowest he had ever seen. (Blake Harris, Dec. 2, 2008, pp. 102-03). He confirmed that the Frontier bonds later issued to CLC in the

amount of $17 million had premiums of $217,000 (approximate) which were issued for 1.25% in September 2001. (Blake Harris, Dec. 2, 2008, pp. 102-03, 106; Resp. Exhs. 45, 46, 47, 48 and 49). Therefore, it is obvious that he had in his possession by September 2001, information that in fact the lowest interest rate he had seen was not 2% but was 1.25% (Blake Harris, Dec. 2, 2008, p. 114). Harris testified that if he had used the 1.25%, that would have reduced his penalty calculation proportionately. (Blake Harris, Dec. 2, 2008, p. 115).

Gary Styzens testified that he never talked to Blake Harris about the amount of money he used to calculate the penalty for the financial assurance. (Gary Styzens, Dec. 2, 2008, p. 193). He testified that if the 2% used by Blake Harris could have been lower, that would have affected his number. (Gary Styzens, Dec. 2, 2008, p. 196). As with the overheight, Styzens did absolutely nothing mathematically or otherwise to confirm that the numbers he was given were accurate, other than to rely on the professional judgment of the lawyers. (Gary Styzens, Dec. 2, 2008, p. 190). Furthermore, testimony was presented at the hearing that even though they did not believe the landfill was either overheight or overfilled, significant amounts of waste were moved from Parcel B to Parcel A at great expense. (Edward Pruim, Dec. 4, 2008, pp. 81-82; Jim Pelnarsh, Dec. 4, 2008, pp. 31-32). Finally, the State did not present any evidence that any environmental harm occurred as a result of any alleged overheight. All of this evidence (and lack thereof) should be considered by the Board in concluding that a reasonable penalty be assessed against CLC for the overheight violations in Counts VII – X of PCB 97-193.

Liability has been found against CLC in PCB 97-193 in regard to Count IV (failure to provide and maintain adequate financial assurance) and Count V (failure to timely file the required application for significant modification). A reasonable penalty should be assessed

against CLC for these violations. No harm to the environment occurred as a result of these violations and both were eventually corrected.

42(h)(4): *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.*

CLC believes the appropriate civil penalty in this matter is no more than Twenty Five Thousand Dollars and 00/100 ($25,000.00) which should be entered against CLC alone. Robert Pruim and Edward Pruim acted in their corporate capacities, not on behalf of themselves individually. (Edward Pruim, Dec. 4, 2008, pp. 73-74, 76, 85-86; Robert Pruim, pp. 60-61, 62-63). Both Robert and Edward Pruim testified that they did not have any direct or personal involvement in any of the allegations in the complaint. (Robert Pruim, Dec. 4, 2008, pp. 54-63; Edward Pruim, pp. 93-100).

A fine of no more than $25,000 to CLC would be a reasonable amount for the violations contained in Counts III, IV, V, VII-X, XIII, XIV, XVI, XIX (part) and XXI in PCB No. 97-193 for which liability has already been found by the Board. The State has failed to prove its case against CLC at hearing for the alleged daily operation violations contained in Counts I, II, VI, XV, XVII, XIX (part) and XX. All counts against Robert and Edward Pruim in PCB 04-207 should be dismissed since the evidence falls woefully short of establishing personal liability.

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

There are no previously adjudicated violations against CLC or the Pruims. Contrary to what the State represents, a grant of partial summary judgment in 2006 against CLC where a

final order has not been entered is not a previously adjudicated violation. An administrative citation issued in 1989 against CLC is not an adjudicated violation.

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

It is curious that the State claims that CLC did not self-disclose any of the violations. In fact, the State only learned of the issue of potential overheight through the significant modification application filed by CLC in August 2006 wherein Andrews Environmental Engineering reported that Parcel B of the landfill may be overheight by 475,000 cubic yards. (Christine Roque, Dec. 2, 2008, pp. 84-85). This is the primary evidence on which the State shows to bring perhaps the most serious charges in this case against CLC and the Pruims. Since the time that these matters were originally alleged in 1997, more specific evidence has been presented to show that Andrews' statement regarding the overheight which was in a small, nondescript paragraph within a permit application consisting of numerous volumes and may not have been at all accurate. The Pruims and Mr. Pelnarsh testified that there is still available capacity on Parcel B. After learning of the potential for overheight, the Pruims ordered Mr. Pelnarsh to move more than 100,000 yards of waste from Parcel B to Parcel A. The Rapier Survey showed only 66,589 cubic yards of material above the permitted elevation capacity. Despite conflicting evidence of whether Parcel B of the landfill is or ever was overheight, it must be admitted and CLC must be given credit that the issue of overheight was self-disclosed by CLC.

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

The State has not proposed a supplemental environmental project but CLC would consider undertaking a feasible proposal.

IX. ATTORNEYS' FEES AND COSTS

The State has not requested the assessment of attorneys' fees and costs. Indeed, in a hotly contested case like this where the Respondents have presented competent evidence of both non-liability and no substantial penalty, a grant for attorneys' fees and costs would be inappropriate.

X. CONCLUSION

At hearing on December 2-4, 2009, the State failed to prove the violations against CLC that are contained in PCB 97-193: Counts I, II, VI, XV, XVII, XIX (part) and XX. It failed to prove any personal involvement in any of the violations against Robert and/or Edward Pruim in PCB 04-207. Therefore, since liability has already been found against CLC for violations in PCB 97-193 (Counts III, IV, V, VII-X, XIII, XIV, XVI, XIX (part) and XXI), the Board should assess a penalty of no more than $25,000.00 against CLC only.

Respectfully submitted,

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EXHIBIT A
TO
RESPONDENTS COMMUNITY LANDFILL CO., INC., ROBERT PRUIM AND EDWARD PRUIM'S POST-HEARING BRIEF

COUNTS *People v. CLC* (2nd Am. Complaint) PCB No. 97-193	COUNTS *People v. Edward & Robert Pruim* PCB No. 04-207	ALLEGATION	DISPOSITION
I	I	Failure to adequately manage refuse and litter	•Liability and Penalty for CLC •Liability and Penalty for Pruims
II	II	Failure to prevent or control leachate flow	•Liability and Penalty for CLC •Liability and Penalty for Pruims
III	III	Failure to properly dispose of landscape waste	•Penalty only for CLC •Liability and Penalty for Pruims
IV	IV	Failure to provide and maintain adequate financial assurance	•Penalty only for CLC •Liability and Penalty for Pruims
V	V	Failure to timely file the required application for significant modification	•Penalty only for CLC •Liability and Penalty for Pruims
VI	VI	Water pollution	•Liability and Penalty for CLC •Liability and Penalty for Pruims
VII	VII	Depositing waste in unpermitted portion of landfill (Parcel B)	•Penalty only for CLC •Liability and Penalty for Pruims

COUNTS ***People v. CLC*** **(2nd Am. Complaint)** **PCB No. 97-193**	**COUNTS** ***People v. Edward & Robert Pruim*** **PCB No. 04-207**	**ALLEGATION**	**DISPOSITION**
VIII	VIII	Conducting waste disposal operation without a permit	•Penalty only for CLC •Liability and Penalty for Pruims
IX	IX	Open Dumping	•Penalty only for CLC •Liability and Penalty for Pruims
X	X	Violation of Special Condition 3 – overheight	•Penalty only for CLC •Liability and Penalty for Pruims
XI		Improper handling of asbestos	•Dismissed against CLC on October 3, 2002
XII	XI	Conducting waste disposal operation without a permit (Parcel A)	•Dismissed against CLC on July 26, 2001 (on reconsideration) •Dismissed against the Pruims on November 4, 2004
XIII	XII	Improper disposal of waste tires	•Penalty only for CLC •Liability and Penalty for Pruims
XIV	XIII	Violating Standard Operating Permit 1989-005-SP Condition #13 (temporary fencing)	•Penalty only for CLC •Dismissed against the Pruims on April 20, 2006
XV	XIV	Violating Standard Operating Permit 1996-240-SP Condition #1 (operation of gas control)	•Liability and Penalty for CLC •Dismissed against the Pruims on April 20, 2006

COUNTS ***People v. CLC*** **(2nd Am. Complaint)** **PCB No. 97-193**	**COUNTS** ***People v. Edward & Robert Pruim*** **PCB No. 04-207**	**ALLEGATION**	**DISPOSITION**
XVI	XV	Violation of Standard Operating Permit 1996-240-SP Condition #9 (erosion, ponding & cracks)	•Penalty only for CLC •Dismissed against the Pruims on April 20, 2006
XVII	XVI	Violation of Standard Operating Permit 1996-240-SP Condition #11 (leachate disposal)	•Liability and Penalty for CLC •Dismissed against the Pruims on April 20, 2006
XVIII		Violation of permit condition – final cover	•Dismissed against CLC on October 3, 2002
XIX	XVII	Failure to provide and maintain financial assurance pursuant to October 24, 1996 permit (Violation of Permit 1996-240-SP Condition #13): (a) Failure to increase financial assurance from $1,342,500 to $1,431,600 by January 22, 1997 (b) Failure to increase financial assurance to $1,439,720 before operation of gas system	(a) Failure to increase financial assurance from $1,342,500 to $1,431,600 by January 22, 1997 •Penalty only for CLC •Liability and Penalty for Pruims (b) Failure to increase financial assurance to $1,439,720 before operation of gas system •Liability and Penalty for CLC •Liability and Penalty for Pruims

COUNTS ***People v. CLC*** **(2nd Am. Complaint)** **PCB No. 97-193**	**COUNTS** ***People v. Edward & Robert Pruim*** **PCB No. 04-207**	**ALLEGATION**	**DISPOSITION**
XX	XVIII	Violation of Standard Operating Permit 1989-005-SP Condition #17 (caused or allowed placement of leachate in areas not certified or approved by the IEPA)	•Liability and Penalty for CLC •State seeks a voluntary dismissal against CLC (See State's Brief, p. 42) •Dismissed against the Pruims on April 20, 2006
XXI	XIX	Failure to provide revised cost estimate by December 26, 1994	•Penalty only for CLC •Liability and Penalty for Pruims
XXII		Failure to provide revised cost estimate by 7/26/98	•Dismissed against CLC on October 3, 2002

CERTIFICATE OF SERVICE

I, Clarissa Y. Cutler, an attorney, hereby certify that I caused to be served a copy of the foregoing **RESPONDENTS COMMUNITY LANDFILL COMPANY, INC., ROBERT PRUIM AND EDWARD PRUIM'S POST-HEARING BRIEF,** by electronic filing, emailing, and by placing same in first-class postage prepaid envelopes and depositing same in the U.S. Mail Box located at 200 North LaSalle Street, Chicago, Illinois, this 4th day of **MAY, 2009**, addressed as follows:

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