

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

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


Ms. Clarissa Cutler, Attorney at Law
155 N. Michigan, Suite 375
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NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that we have today, May 18, 2009, filed with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing, Complainant's Reply Brief, a copy of which is attached and herewith served upon you.

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

BY:



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COMPLAINANT'S REPLY BRIEF

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA
MADIGAN, Attorney General of the State of Illinois, and hereby submits its Reply Brief.

**I. THE PRUIMS ARE PERSONALLY LIABLE FOR THE VIOLATIONS
ALLEGED AGAINST THEM**

In evaluating whether Edward and Robert Pruim should be held liable for the violations alleged in Case No. PCB 04-207, the Board should look to the pertinent Sections of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.* (2006). Section 2 of the Act, 415 ILCS 5/2 (2006), states that it is the purpose of the Act “...to assure that adverse effects upon the environment are fully considered and borne by those who cause them[.]” and directs that the Act’s terms and provisions “....be liberally construed so as to effectuate the purpose of the Act....”. As shown by the evidence, the majority of the violations in the consolidated cases were “caused” by Edward and Robert Pruim.

The Community Landfill Company (“CLC”) offices were not located at the Morris Community Landfill (“Landfill”), but in Crestwood and Riverdale Illinois, where Edward and Robert Pruim’s other businesses were also headquartered (the “home office”). Dumping records and Landfill Permits were kept at these locations, but not at the Landfill. The Landfill’s business operations, including obtaining dumping business, scheduling dumping with customers and arranging credit, was also done at Crestwood and Riverdale, not at the Landfill.

Complainant has requested that the Board find that Edward and Robert Pruim were personally and directly involved in the overweight, financial assurance, and late-filed Permit violations, and therefore personally liable under the express provisions of the Act and Illinois case law¹. For the ‘daily operation violations’, Complainant has asked the Board to consider applying the Responsible Corporate Officer Doctrine, based on the particular facts of this case, to find Edward and Robert Pruim liable for these violations.

¹*People v. C.J.R. Processing*, 269 Ill. App. 3d 1013 (3d Dist. 1995) is most relevant because of the Landfill’s location. The *C.J.R.* Court found that personal liability may attach for ‘active participation or personal involvement’ in a violation.

A. The Pruims were Personally and Directly Involved in the Overheight, Financial Assurance, and Late Permit Violations

1. The Landfill overheight violations have already been established

On October 3, 2002, the Board found Respondent Community Landfill Company (“CLC”) liable for violations related to the dumping of waste outside of the Landfill’s permitted boundaries, i.e. above 580’ above mean sea level (“MSL”). Notwithstanding the Board’s finding, the Respondents’ claim that “...*there has been absolutely no empirical proof of any kind that Parcel B of the landfill was actually filled above 580 feet above mean sea level or other wise filled above its permitted capacity*”. This claim is contrary to the Respondents’ prior admissions and the Board’s findings, and must be rejected ².

At hearing, substantial evidence was presented which not only corroborated the Board’s earlier finding, but proved the amount of overheight dumping. The evidence shows that Edward and Robert Pruum knowingly continued to dump waste well after the Landfill had reached capacity. These actions created the overheight, in violation of the Act, Board regulations, and the Landfill’s Permits. Landfill capacity reports for the years 1994 and 1995 (certified by Edward Pruum, Robert Pruum, and the Landfill’s engineers) prove that Parcel B of the Landfill had reached capacity in mid-1994. However, the evidence also shows that dumping continued thereafter for at least another two years³. The Respondents’ 1996 Sig-Mod permit application

²In finding summary judgement on the overheight counts, the Board noted that “Respondent concedes that waste has been deposited above the permitted levels although the extent of the overheight is still at issue” 10/3/02 Order, p.13.

³The evidence from hearing proved that Parcel B reached capacity in August, 1994. Respondents’ 1997 permit submission to Illinois EPA identified overheight as of July 1996, and admitted that “[w]aste receipts since the topographic survey date of July total 35,000 cubic yards (Complainant’s Exhibit 1(f)). Thus, dumping continued after July, 1996.

(signed and certified by Edward Pruim) contains an engineering diagram showing a substantial portion of the Landfill exceeded 580' MSL. The Respondents' 1997 Permit Addendum admits that 475,000 cubic yards of overheight were present on Parcel B.

Respondents' continued claims of remaining capacity at the Landfill are frivolous, and merely an attempt to avoid an appropriate civil penalty.

2. Edward Pruim and Robert Pruim were personally responsible for the overheight violations

Edward Pruim and Robert Pruim made the decision to continue dumping at the Landfill, despite their knowledge that Parcel B had reached and exceeded capacity. Their personal knowledge is proved by their certification of the Landfill Capacity reports. The report submitted on January 20, 1995 shows that as of April 1, 1994, remaining capacity amounted to only 264,290 cubic yards. Because all dumping business was arranged "at the home office" and not at the Landfill, Edward and Robert Pruim had the obligation to ensure that no more than 264,290 yards worth of waste was accepted, and that the Landfill subsequently be closed. All records of dumping and copies of permits (which would show the permitted limits) were kept at the "home office", not at the Landfill. Site Manager James Pelnarsh testified that he had no knowledge of the details of the Permits⁴. As sole owners of CLC, only Edward and Robert Pruim had the authority to shut down operations⁵. Instead, they decided to continue dumping on Parcel B through at least July, 1996. This decision, made by Edward and Robert Pruim, caused the overheight violations at the Landfill.

⁴Tr., 12/4/08, p.14

⁵In response to Complainant's questions, Landfill Site Manager James Pelnarsh stated that only "Bob or Ed or IEPA" had authority to close the Landfill. Tr., 12/4/08, p. 25

The Respondents attempt to argue that because Illinois EPA inspectors did not find Edward or Robert Pruim at the Landfill, there is no evidence of personal and direct involvement⁶. Whether or not the Illinois EPA inspectors met the Pruims at the Landfill is irrelevant. The question is, did the Pruims have control over and make the decisions to allow the violation? The answer is, emphatically, yes, they alone had control and they alone made the decisions. Only Edward and Robert Pruim could have decided to close the Landfill and only Edward and Robert Pruim could have decided whether to stop accepting waste. Because they failed to close down dumping operations, they are personally and directly responsible for the overweight violations. In advancement of the purposes of the Act, they must be held responsible.

3. Edward and Robert Pruim were personally responsible for the Financial Assurance violations

Similarly, the Pruims' personally caused or allowed the financial assurance violations in this matter. As sole owners, the failure to expend necessary resources for financial assurance ultimately benefitted only them⁷. The required financial assurance was listed in the Landfill's permits, which were kept at the "home office", not at the Landfill. Only the Pruims had the authority to decide to continue to accept waste. They decided to continue even though they knew that the Permit-required financial assurance was not in place⁸. Because, as admitted at

⁶See: e.g., Response, p. 19

⁷ The Pruims provided personal guarantees for the Landfill's financial assurance (Tr., 12/4/08, p.41). Therefore, they were personally at risk for the amount of financial assurance provided. Moreover, as sole owners, the cost savings realized by the delay in posting the correct amount accrued to them.

⁸Either Edward or Robert Pruim reviewed and signed all Landfill Permit applications, and were therefore aware of the Permit requirements. See: Complainant's Exhibits 1(a), 1(d).

hearing, they were the only persons with the authority to increase financial assurance⁹, the failure to upgrade financial assurance was a personal decision, and therefore the violations were personal violations.

The Board granted summary judgment against CLC on all financial assurance counts, but ordered one factual issue to be determined at hearing: the date that the Landfill's gas collection system began operation. As described in Complainant's Post-Hearing Brief, Mr. Pelnarsh admitted to inspector Christine Kovaszny that the system was operating on March 31, 1999, well before the required additional financial assurance was provided. This admission, which was memorialized in an inspection report made soon thereafter, is inherently more reliable than Mr. Pelnarsh's denial in an affidavit prepared, after the fact, for the purpose of litigation¹⁰.

The Board must find that Edward and Robert Pruim were personally and directly involved in the decision to continue waste operations without required financial assurance, and therefore personally and directly involved in the violations.

4. The Pruiims were personally and directly involved in the late-filed SigMod Permit Violations

The Board has already found CLC in violation for failure to file its SigMod Permit application until almost three years past the deadline. The Board should also find that Edward and Robert Pruim were actively and personally involved in this violation.

As described in detail in Complainant's Post-Hearing Brief the Pruiims chose to delay

⁹Tr., 12/4/08, pp. 73-74

¹⁰Mr. Pelnarsh testified that he was not aware of Permit details and that copies of Landfill Permits were not kept at the Landfill. When he made the statements to Inspector Kovaszny, he would have not known of the financial assurance requirements in the Permits, and therefore could not known that he was admitting a violation by his employer.

filing the SigMod application while negotiating with the City of Morris for more dumping space. However, they also decided to continue ongoing dumping operations in the interim. Because only they had the authority to continue or stop operations, this decision, which caused the violation was personal. Edward and Robert Pruim were personally and directly liable for the late-filed SigMod violations¹¹.

None of the cases cited by the Pruims support their denials of personal liability for the overheight, financial assurance, or late-filed Permit violations¹². Although courts have held that it is not required for a corporate officer to 'physically commit' a violation to be held liable¹³ the Pruims did, in fact, personally 'commit' the violations by failing to close the Landfill when at capacity, failing to provide financial assurance, and failing to apply for the SigMod permit.

B. The Board Should Apply the Responsible Corporate Officer Doctrine for Operational Violations

As argued in Complainant's Post-Hearing Brief, based on the facts of this case, the Board should consider applying the Responsible Corporate Officer doctrine, and find the Pruims personally liable for the operational violations at the Landfill. The evidence shows that the Pruims were responsible for all finances, permits, arrangements with the Landfill's owner, and that they controlled the amount of material disposed at the Landfill. Dumping records and

¹¹Complainant has asked to Board to reverse a Hearing Officer ruling and consider the evidence contained in Complainant's Exhibit 27. The information contained therein is highly relevant on the issue of personal liability and motive for continued Landfill operations in violation of the Act.

¹²Respondents claim that the State "ignores" *People v. Petco Petroleum* (363 Ill. App. 613), but fails to note that this case involved violations of the Oil and Gas Act, 225 ILCS 725 *et seq.*, and not the Environmental Protection Act.

¹³*People v. Agpro*, 345 Ill. App. 3d 1011, 1018 (2d Dist. 2004)

permits were kept at their offices in Crestwood and Riverdale, not at the Landfill itself.

The Pruims argue that Site Manager James Pelnarsh was responsible for day-to-day operations and there was "*no directive from Robert or Edward Pruim to Jim Pelnarsh to place waste above permitted capacity*"¹⁴. Essentially the Pruims are attempting to shift liability to Mr. Pelnarsh, a 70 year old man with only a high school education, who:

- had no control over finances;
- was not provided with dumping records by the Pruims;
- did not arrange for the waste disposal at the Landfill; and
- had no knowledge of the details of the Landfill's Permits (and therefore had no idea what the Landfill's 'permitted capacity' was).

The Board has already found that CLC is liable for most of the operating violations. Robert and Edward Pruim were the only persons with the authority and wherewithal to prevent them. CLC is a small company, not a huge organization. It had only two stockholders, Edward and Robert Pruim, who both owned the company and served as its sole officers. Allowing the Pruims to escape liability solely because of the concurrent existence of a corporation that they controlled would defeat the express purpose of the Act, i.e to "assure that adverse effects upon the environment are fully considered and borne by those who cause them."

The Board should seriously consider applying the Responsible Corporate Officer Doctrine to find Edward and Robert Pruim liable for causing or allowing the multiple and repeated daily operating violations at the Landfill.

II. THE EVIDENCE STRONGLY SUPPORTS THE DAILY OPERATING VIOLATIONS

¹⁴Response, p.20

In its Post-Hearing Brief, Complainant provides overwhelming support for a finding of liability for the 'daily operating violations' alleged in the consolidated complaints¹⁵. There is no need to completely restate these arguments, but Complainant directs the Board to the following facts, which were established at hearing:

1. Complainants allegations regarding mismanaged refuse and litter (Count I, both cases) is supported by the personal observations and inspection reports of two Illinois EPA inspectors on five occasions between 1994 and 1999. This evidence not only supports the violations, but also supports a finding against Edward and Robert Pruim personally. Clearly, the Pruiims, who had sole control over Landfill management and finances, allowed mismanagement of waste for at least five years.

2. Violations related to leachate seeps and leachate in waters of the State (Counts II and VI, both cases), are supported by Inspector Weritz's personal observations on three separate occasions, and further supported by inspection reports made soon after each inspection. Included are his observations regarding foul odor and unnatural color in waters of the State.

3. The illegal disposal of landscape waste (Count III both cases), and used tires (PCB 97-193, Count XIII; PCB 04-207, Count XII) have already been found to be violations by CLC. However, the evidence at hearing clearly shows that Edward Pruim and Robert Pruim should also be held liable. As testified to by James Pelnarsh, he did not arrange for dumping business, but rather it was done at the 'home office'. The Board should find that Edward and Robert Pruim arranged for the illegal disposal of landscape waste and used tires.

¹⁵The 'daily operation violations' are PCB 97-193, Counts I, II, III, VI, XIII and PCB 04-207, Counts I, II, III, VI, XII

III. CONCLUSION

Effective regulation of municipal solid waste landfills is a critical element of the management of waste in Illinois. The privilege of conducting landfill operations is conditioned on full compliance with federal and State regulations, and Illinois EPA-issued permits. Therefore, the complete and utter failure of the Respondents to comply with the Act, regulations, and the Landfill's Permits between 1993 and 2000 is astonishing. As alleged by Complainant, the Respondents failed to obtain updated permits, violated multiple conditions of permits already in place, grossly exceeded the permitted capacity of Parcel B, and failed to provide financial assurance sufficient to ensure that the Landfill did not present a future risk to the environment.

The Board has already found CLC liable for many of the alleged violations, but as shown by the evidence, the violations were also the result of the personal and direct actions (and inaction) of Edward and Robert Pruum. In accordance with the express purposes of the Act, the Board must hold Edward and Robert Pruum responsible.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board find the Respondents in violation as requested by Complainant in its Post-Hearing Brief, 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.

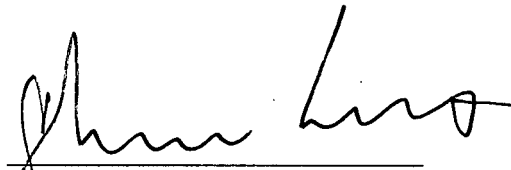
RESPECTFULLY SUBMITTED

PEOPLE OF THE STATE OF ILLINOIS
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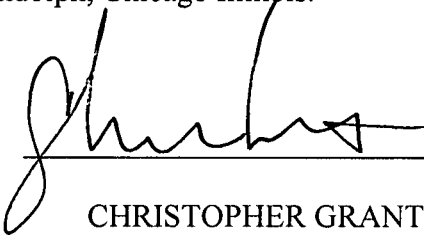
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CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 18th day of May, 2009, the foregoing Complainant's Reply 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