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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**NOTICE OF FILING**

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**PLEASE TAKE NOTICE** that on **SEPTEMBER 28, 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 MEMORANDUM IN SUPPORT OF THEIR MOTION FOR RECONSIDERATION OF THE ILLINOIS POLLUTION CONTROL BOARD'S ODER DATED AUGUST 20, 2009,** a copy of which is attached and hereby served upon you.

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

**THIS FILING IS SUBMITTED ON RECYCLED PAPER.**

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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| 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) (consolidated) |
| COMMUNITY LANDFILL COMPANY, INC., | ) | |
| Respondent. | ) | |

**RESPONDENTS COMMUNITY LANDFILL CO., INC., ROBERT PRUIM AND EDWARD PRUIM'S MEMORANDUM IN SUPPORT OF THEIR MOTION FOR RECONSIDERATION OF THE ILLINOIS POLLUTION CONTROL BOARD'S ORDER DATED AUGUST 20, 2009**

Respondents COMMUNITY LANDFILL CO., INC., ROBERT PRUIM and EDWARD PRUIM, by and through their attorneys Mark A. LaRose and Clarissa Y. Cutler, pursuant to 35 Ill.Adm. Code 101.520(a) and 101.902, hereby move the Illinois Pollution Control Board to reconsider its Order dated August 20, 2009, and in support thereof, state as follows:

## I. INTRODUCTION

Community Landfill Co., Inc. ("CLC"), ROBERT PRUIM and EDWARD PRUIM'S (collectively "the Pruims" as to the individual respondents or "Respondents" as to all respondents) Motion to Reconsider the Illinois Pollution Control Board's Order Dated August 20, 2009 is timely filed pursuant to 35 Ill.Adm. Code 101.520(a) which allows a motion for

reconsideration of an order by the Illinois Pollution Control Board ("Board") to be filed 35 days after receipt of an order. In the present matter, the Order was received via registered mail by Respondents on August 24, 2009. This motion is therefore timely filed on September 28, 2009.

## II. LEGAL STANDARDS

CLC and the Pruims move the Board for reconsideration of its Order dated August 20, 2009 to bring the Board's attention to errors in the Board's application of existing law. 35 Ill.Adm.Code 101.902; Citizens Against Regional Landfill v. County Board of Whiteside County, PCB 920156, slip.op at 2 (March 11, 1993, citing Korogluyan v. Chicago Title Trust Co., 213 Ill.App.3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1991). A motion to reconsider may specify facts in the record which were overlooked.

CLC and the Pruims move the Board for reconsideration of several rulings contained in its Order dated August 20, 2009. (See Order dated August 20, 2009, attached as Exhibit A and incorporated herein). However, CLC and the Pruims specifically reserve the right to raise on appeal to the Third District Appellate Court any and all additional issues in the Order dated August 20, 2009, even if not contained in the present motion.[1]

## III THE BOARD HAS ERRONEOUSLY IMPOSED PERSONAL LIABILITY AGAINST THE PRINCIPALS OF CLC FOR ACTS PERFORMED IN THEIR CAPACITY AS OFFICERS OF THE CORPORATION

The Illinois Pollution Control Board has erroneously imposed personal liability against Robert Pruim and Edward Pruim the principals of Community Landfill Co., Inc. in regard to several counts of the State's complaint against the individual respondents. As will be set forth

[1] The following citations will be used throughout CLC and the Pruims' Motion for Reconsideration: The Illinois Pollution Control Board's Order in PCB 97-193/04-207 (Cons.) dated August 20, 2009 will be referred to as either Exh. A at __" or "Order dated August 20, 2009 at __"; Exhibits admitted at the Hearing in PCB 97-193/04-207 (Cons.) on Dec. 2-4, 2008 will be referred to as either "Complainant's or Respondents' Exh. __"; Transcripts from the Hearing on Dec. 2-4, 2008 are not sequentially numbered and will be referred to as "Dec. 2, 2008 at __", "Dec. 3, 2008 at __"; and "Dec. 4, 2008 at __";Respondents' Post-Hearing Brief filed on May 4, 2009 will be referred to as "Respondents' Brief at __"; Complainant's Post-Hearing Brief filed on February 6, 2009 will be referred to as "Complainant's Brief at __"

below, the State has failed to provide sufficient evidence for a finding of personal liability under the correct analysis of Illinois law. The Board should reconsider its finding of personal liability against the Pruims for the acts alleged in Counts IV and XVII (financial assurance), V (significant modification), VII, VIII, IX and X (overheight), and XIX (cost estimate) as fully set forth below.

**A. Legal Standards for Personal Liability**

In finding no personal liability against the Pruims and therefore dismissing Count I (refuse and litter), Count II (leachate flow), Count III (landscape waste), Count VI (water pollution) and Count XII (used tires) against the Pruims, the Board correctly determined that "the record contains no evidence that the Pruims directed the day to day operations of the site" and therefore did not find "sufficient evidence of personal involvement or active participation." (See Order dated August 20, 2009 at 41, attached as Exh. A and incorporated herein.) This same reasoning should apply to all of the other counts against the Pruims and on reconsideration the Board should find no personal liability for any failure to act by the principals of the corporation as alleged in Count V (significant modification), Counts IV and XVII (financial assurance), Counts VII, VIII, IX and X (overheight) and Count XIX (cost estimate).

In order for the Board to have properly found that the principals of CLC are personally liable for the acts alleged in Counts IV and XVII (financial assurance), V (significant modification), VII, VIII, IX and X (overheight), and XIX (cost estimate), the State must have shown at the 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, 805 N.E.2d 243, 253-54 (1st Dist. 2004). It is not enough to prove that either corporate officer was personally involved in or

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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 prove 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. Furthermore, it is clear that under Illinois law, a failure to act is not sufficient to find personal liability. People v. Petco, 363 Ill.App.3d at 614.

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. In People v. Petco Petroleum Corporation, 363 Ill.App.3d 613, 841 N.E. 2d 1065 (4th Dist. 2006) the State did not find the corporate officer to be personally liable. In contrast, 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 court's findings of fact based on the State's evidence offered in each case undeniably supports the Respondents' position that the Board should not have found the officers of CLC to be personally liable for the acts alleged in Count V (significant modification), Counts IV and XVII (financial assurance), Counts VII, VIII, IX and X (overheight) and XIX (cost estimate).

In People v. 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;

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, respondent Petco contended that the trial court's finding that defendant was not personally liable should be upheld 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 conduct of the president in Petco, and analyzing both what he did and did not do, with the conduct of the CLC principals, the Board should find on reconsideration 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 the present matter is far less than even what was offered in Petco, where the court still found the officer was not personally liable.

In this case:

1) 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)

2) 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)

3) 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)

4) 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)

5) 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)

6) 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)

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) Ellen Robinson testified that the capacity certification forms have no information on the height of the landfill and based on the forms, she could not determine if waste was placed at an elevation over the permitted capacity. (Ellen Robinson, Dec. 3, 2008, p. 30)

9) Contrary to the Sate's claim and the Board's finding – the Pruims were not the only ones that could shut down the landfill. According to Bob Pruim, the state or the City of Morris had that authority. (Robert Pruim, Dec. 4, 2008, p. 67)

10) Once the Pruims became aware that there was an allegation that Parcel B was overheight, they immediately stopped filling at Parcel B, and directed J.P. to move some waste to Parcel A. (Edward Pruim, Dec. 4, 2008, pp. 81-82; Jim Pelnarsh, Dec. 4, 2008, pp. 31-32)

11) Without rehashing all of the evidence that was presented at the hearing, what was clear was that the State presented 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); Robert Pruim, Dec. 4, 2008, pp. 48-49)

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 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. Id.

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. The State did not show that the Pruims were personally involved or actively participated in the acts resulting in liability; all they showed was that they were personally involved in or actively participated in the corporation's management. People v. Tang, 346 Ill.App.3d at 289. Under Illinois law, it is simply not enough to show that either corporate officer was personally involved or actively participated in the corporation's management. People v. Petco, 363 Ill.App. 3d at 623. Furthermore, a corporate officer's failure to act is not sufficient to establish personal liability. Id. at 624.

On reconsideration, the Board should reverse its findings of personal liability against Robert Pruim and Edward Pruim for Count V (significant modification), Counts IV and XVII (financial assurance), Counts VII, VIII, IX and X (overheight) and XIX (cost estimate). Their conduct and acts, or a failure to act, on behalf of CLC in their capacity as corporate officers simply does not rise to the level required under Illinois law as set forth above.

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### B. The Board should reconsider its Order and determine that the Pruims are not personally liable for any acts set forth in Counts VII, VIII, IX and X (overheight) related to any alleged overheight

Counts VII, VIII, IX and X (overheight) of both complaints relate to allegations that the height of Parcel B of the landfill allegedly exceeds its permitted height of 580 feet above sea level. The Board found liability against CLC in its Order dated October 3, 2002. In its Order dated August 20, 2009, the Board found that Robert Pruim and Edward Pruim were personally liable for the alleged overheight. (See Exh. A at 48). The Board should reconsider its finding of liability against Robert and Edward Pruim since insufficient evidence was presented by the State to make such a finding.

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 theorized, alleged and claimed that Edward and Robert Pruim had direct and personal involvement in filling the landfill above the 580 foot level.

The Board found Edward and Robert Pruim to be personally liable for the alleged overheight. (See Exh. A at 48). However, the only evidence that the Board points to are those

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same landfill capacity reports which the Pruims signed in their capacity as corporate officers. The Board incorrectly determined that "...the signatures of the Pruims on the forms and applications establish that the Pruims are responsible for the alleged violations." (See Exh. A at 48). If that were the case, then all landfill forms which are required to be signed by corporate officers of owners and operators, would subject the signer to personal liability if the accuracy of the form is later questioned. Also, under the board's interpretation of "personal liability," Mayor Feeney and Doug Andrews would be personally liable. This is not the correct standard for personal liability. Corporate liability of CLC is already established. The corporation is responsible based on the alleged overheight and corporation's knowledge of it. **This same evidence** is being used to establish personal liability of Ed and Bob Pruim, and that is wrong. In order to hold a corporate officer personally liable, there must be evidence of direct and personal involvement **separate from and in addition to** the evidence that was used to establish any liability of the corporation.

The Board does not cite to any support for its finding that "...only the Pruims could decide to stop accepting waste at the landfill." (See Exh. A at 48). This factual finding is simply not true. Bob Pruim testified that the state or the City of Morris could close the landfill. (Robert Pruim, Dec. 4, 2008, p.67). Indeed, both the state and city had the landfill capacity certifications for over 10 years and never acted to close the landfill. That finding is also in direct contradiction to Site Manager James Pelnarsh's testimony that he "...made the decision on where, when and how to place waste on Parcels A and B." (Jim Pelnarsh, Dec. 4, 2008, p. 27). Pelnarsh also testified that no one directed him to place waste above the permitted capacity. (Jim Pelnarsh, Dec. 4, 2008, p. 26). On that basis alone, the Board should reconsider its finding of personal liability against the Pruims for Counts VII, VIII, IX and X (overheight).

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In addition, however, the Board also ignored the following evidence presented by the Respondents including:

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) 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)

5) 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)

6) 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)

7) 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)

8) Ellen Robinson testified that the capacity certification forms have no information on the height of the landfill and based on the forms, she could not determine if waste was placed at an elevation over the permitted capacity. (Ellen Robinson, Dec. 3, 2008, p. 30)

Furthermore, the Pruims did not even believe that Parcel B was overheight. Without rehashing all of the evidence that was presented at the hearing, what was clear was that the State presented 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). 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.

Robert and Edward Pruim signed landfill Capacity Certificates as corporate officers. Indeed, those reports are required to be signed by a corporate officer. If personal liability can attach in this case, then every corporate officer or agent who signs a landfill capacity report subjects him or herself to personal liability if the accuracy of the report is later questioned. That is the sum and substance of their conduct and is not justification for a finding of personal liability as it is insufficient based on established Illinois law. The Board should reconsider its conclusory statement that "...the Pruims were personally involved in signing reports that no space was available while continuing to accept waste at the landfill" as a basis for a finding of

personal liability. Of course they were involved as corporate officers with signing reports – that is what corporate officers do. The reports were signed by them in their corporate capacity after consultation with their engineers. (Dec. 4, 2008, pp. 47-48 and 76). These same acts were not enough in Petco to establish personal liability and they are not enough here. In addition, it was established that Jim Pelnarsh – not the Pruims – was responsible for accepting waste at the landfill and that there was no directive from the Pruims to place waste above permitted capacity. (Respondents' Brief at 8-9).

The Board should grant the Respondents' Motion for Reconsideration and determine that Robert and Edward Pruim are not personally liable for any allegations related to the alleged overheight as set forth in Counts VII, VIII, XIX and X (overheight).

**C. The Board should reconsider its Order and determine that the Pruims are not personally liable for any acts set forth in Count V related to any alleged failure to file required significant modification.**

Respondents will not completely re-hash the by now well-known legal standards for a finding of personal liability for a corporate officer under Illinois law. All the Board found for Count V was that the Pruims were solely responsible for permits and that they signed the permits. (Exh. A at 47-48). Of course they were responsible for permitting (in consultation with their engineers) and of course they signed the permits – that's what corporate officers do. That type of conduct by a corporate officer was not enough in Petco to establish personal liability and it is not enough here. In Petco, the court found that the president exercised overall control over the company including making significant financial decisions – and it was not enough to establish personal liability. People v. Petco, 363 Ill.App.3d 613, 624. Analogous to the facts in this case, the President in Petco failed to implement a policy of spending money on maintenance that would prevent leaks. Id. The "failure" in Petco is the same type of "failure" herein – the

alleged failure to file a required significant modification. It is simply not enough to establish personal liability against the Pruims. The Board should reconsider its finding of personal liability against the Pruims for the allegations in Count V relating to an alleged failure to file a required significant modification. In light of the standard for personal liability under Illinois law as set forth in Petco, a failure to act is clearly not enough.

**D. The Board should reconsider its Order and determine that the Pruims are not personally liable for any acts set forth in Counts IV and XVII related to any alleged failure to provide and maintain adequate financial assurance**

The allegations against the Pruims in Counts IV and XVII relate to an alleged failure to provide and maintain adequate financial assurance. As in Section III-C above, any "failure" to act in this regard is simply insufficient under Illinois to find a corporate officer personally liable. The alleged failure to provide and maintain adequate financial assurance is the same type of failure in Petco where the President failed to implement a policy of spending money on maintenance that would prevent leaks. Petco, 363 Ill.App.3d 613, 624. It is simply not the type of conduct that is recognized by the appellate court to rise to the level necessary against corporate officers acting in their corporate capacities. The Board should reconsider its finding of personal liability against the Pruims for Counts IV and XVII relating to an alleged failure to provide and maintain adequate financial assurance. In light of the standard for personal liability under Illinois law as set forth in Petco, a failure to act in this regard is clearly not enough.

**E. The Board should reconsider its Order and determine that the Pruims are not personally liable for any acts set forth in Count XIX related to any alleged failure to provide revised cost estimates.**

The allegations against the Pruims in XIX relate to an alleged failure to provide revised cost estimates. As in Sections III-C and D above, any "failure" to act in this regard is simply insufficient under Illinois to find a corporate officer personally liable. The alleged failure to

provide revised cost estimates is the same type of failure in Petco where the President failed to implement a policy of spending money on maintenance that would prevent leaks. Petco, 363 Ill.App.3d 613, 624. It is simply not the type of conduct that is recognized by the appellate court to rise to the level necessary against corporate officers acting in their corporate capacities. The Board should reconsider its finding of personal liability against the Pruims for Count XIX relating to an alleged failure to provide revised cost estimates. In light of the standard for personal liability under Illinois law as set forth in Petco, a failure to act in this regard is clearly not enough.

## IV. THE BOARD HAS ERRONEOUSLY IMPOSED LIABILTY ON CLC FOR A FAILURE TO CONTROL LEACHATE OR FOR THE EXISTENCE OF WATER POLLUTION AS ALLEGED IN COUNTS II AND VI

The Board has erroneously imposed liability on CLC for a failure to prevent or control leachate and water pollution as alleged by the State in Counts II and VI. The Board should reconsider its ruling as the State did not establish that any alleged material was leachate nor did it establish 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

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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. The Board accepted the State's *opinion* that "...there can be only one conclusion that Mr. Weritz correctly identified the leachate entering the waters of the State". (See Exh. A at p. 31). There is simply no basis for this ruling. 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). The hearing officer found no issues with the credibility of witnesses. (Dec. 4, 2008, p. 128). 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 reconsider its ruling and determine that there is no liability for CLC in regard to Counts II and VI (Enf. 97-193) related to the failure to control leachate or to the existence of water pollution.

## V. THE BOARD'S IMPOSITION OF A GROSS PENALTY AGAINST CLC AND THE PRUIMS, JOINTLY AND SEVERALLY, IS INAPPROPRIATE AND IS AN ABUSE OF DISCRETION.

CLC was found in violation of 14 counts of the complaint: Count I (refuse and litter), Count II (leachate flow), Count III (landscape waste), Count IV (financial assurance), Count V (significant modification), Count VI (water pollution), Count VII, VIII, IX and X (overheight), XII (used tires), XV (gas management system), XVII (leachate disposal) and XIX (financial assurance). In contrast, the Pruims were only found in violation of seven counts of the complaint, and those seven are identical to corresponding counts that CLC was found in violation of: Count IV (financial assurance), Count V (significant modification), Count VII, Count VIII, Count IX, Count X (overheight), and Count XIX (financial assurance). The Board found Ed and Bob Pruim not guilty on five counts that CLC was convicted of: Count I (refuse and litter), Count II (leachate flow), Count III (landscape waste), Count VI (water pollution) and Count XII (used tires). Yet, the Board imposed an across the board $250,000.00 blanket penalty against CLC and the Pruims jointly and severally. At a minimum – the Board must attribute a portion of the $250,000.00 to each of the alleged violations against CLC. Then, the Board must use those amounts to reduce the penalties that the Pruims are jointly and severally liable for. For example, if each of the five counts that the Pruims were not guilty on – Count I (refuse and litter), Count II (leachate flow), Count III (landscape waste), Count V (water pollution), Count XII (used tires) – carry a penalty of $10,000.00 each (or $50,000.00 in the aggregate) then the Pruims' penalty obligation should be reduced by $50,000.00. Also, common sense dictates that itemizing the penalties on a per count basis is required by both the Act and the regulations, which the Board has failed to do. Itemizing the penalty will allow both the Board and the Appellate Court to do an amended penalty analysis if either find that a violation was not established and should be

reversed. For example, if the Board finds on reconsideration or the Count finds on appeal that water pollution was not established and should be reversed, itemizing the penalty would allow a simple reduction of the penalty on a per count basis.

Furthermore, as the Board is well aware, the principal reason for authorizing the imposition of civil penalties is to provide a method to aid in the enforcement of the Act and punitive considerations are secondary. City of East Moline v. Pollution Control Board, 136 Ill.App. 3d 687, 693, 483 N.E. 2d 642, 648 (3rd Dist. 1985). In the present matter, several counts for alleged violations that were alleged to have occurred many years ago were dismissed. Evidence in mitigation was also presented by Respondents. Yet, the penalty of $250,000 suggested by the Complainant was adopted by the Board without deducting anything either as a result of proven mitigation or dismissal by the Board due to the State having failed to prove its case.

Any penalty assessed by the Board should be reduced based on the dismissal of the five counts against the Pruims, as well as reduced based on the results of the present Motion to Reconsider. If this motion is granted, which it should be, the penalty against the Pruims should be eliminated and the penalty against CLC should be significantly reduced. Again, the Respondents propose a penalty against CLC of $25,000.

## VI. CONCLUSION

Based on the foregoing, Respondents CLC and Robert Pruim and Edward Pruim respectfully request that the Illinois Pollution Control Board GRANT their Motion to Reconsider and in so doing:

1. dismiss Counts IV and XIX (financial assurance), V (significant modification), VII, VIII, IX, X (overheight), and XIX (cost estimate) against Robert Pruim and Edward Pruim

in PCB 04-207 with a finding that they are not personally liable for the allegations contained therein;

2. dismiss Counts II and VI against CLC in PCB 97-193 with a finding that it did not fail to control leachate or cause water pollution; and

3. revise the penalty assessed to reflect the dismissal of Counts I, II, III, VI, and XII against the Pruims due to the State's failure to prove personal liability; and

4. revise the penalty assessed to reflect the dismissal of all counts against the Pruims as requested herein (Counts IV, V, VII, VIII, IX, X, XVII and XIX of PCB 04-207) and against CLC as requested herein (Counts II and VI in PCB 97-193) and assess a penalty of $25,0000 against CLC.

Respectfully submitted,

/s/ Clarissa Y. Cutler
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ILLINOIS POLLUTION CONTROL BOARD
August 20, 2009

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

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

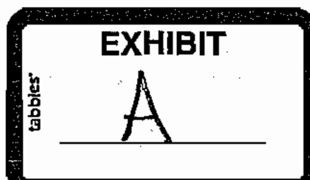
CHRISTOPHER J. GRANT AND JENNIFER VAN WIE OF THE OFFICE OF THE ATTORNEY GENERAL APPEARED ON BEHALF OF THE PEOPLE OF THE STATE OF ILLINOIS.

MARK A. LAROSE OF LAROSE & BOSCO, LTD. AND CLARISSA Y. CUTLER OF THE LAW OFFICES OF CLARISSA Y. CUTLER APPEARED ON BEHALF OF THE RESPONDENTS;

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

## SUMMARY OF THE OPINION

The Office of the Attorney General, on behalf of the People of the State of Illinois (People) filed two separate enforcement actions, which were consolidated by the Board at the request of the parties. The first case brought in 1997, with amended complaints filed in 1998, and 1999, was filed against Community Landfill Company, Inc. (CLC). In 2004, the People brought a second case against Edward Pruim and Robert Pruim (collectively the Pruims), as owners of CLC. CLC operates a permitted landfill, known as Morris Community Landfill (the site or landfill), located at 1501 Ashley Road in Morris, Grundy County. The approximate 119-



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acre site consists of two parcels, Parcel A and Parcel B. Edward Pruim and Robert Pruim are the sole shareholders and officers in CLC.

The Illinois Environmental Protection Agency (Agency) conducted several inspections of the landfill operated by respondents. The complaints allege multiple violations of the Environmental Protection Act (415 ILCS 5/1 *et. seq.* (2008))[1] as well as the Board's landfill regulations and permit conditions based on the observations of the inspectors as well as the reports and filings provided to the Agency.

In ruling on two motions for summary judgment, the Board previously adjudicated CLC in violation of the Act and Board regulations as alleged in Counts III (landscape waste), IV (inadequate financial assurance), Count V (failed to timely file significant modification permit), Counts VII, VIII, IX, and X (daily operations at the site), Count XIII (waste tires), Count XVI (erosion), Count XIV (temporary fencing), Count XIX (in part financial assurance), and Count XXI (revised cost estimates). *See* pgs 4-6. The Board finds today that CLC is also in violation of the Act and Board regulations as alleged in Count I (refuse and litter) (*see* pgs 28-29), Count II (leachate) (*see* pg 30), Count VI (water pollution) (*see* pgs 31-32), Count XV (gas management system) (*see* pg 34), Count XVII (improper use of leachate) (*see* pgs 34-35), and Count XIX (remaining allegations) (*see* pg 33). The Board dismisses Count XX (improper use of leachate) (*see* pg 35). Thus, the Board finds CLC violated numerous sections of the Act and Board regulations as alleged in a total of 17 counts.

The Board declines to apply the "responsible corporate officers doctrine" and instead reviews the record to determine whether the Pruims had personal involvement or active participation in acts which lead to the violations (*see* pg 38). *See* People v. C.J.R. Processing, Inc., 269 Ill. App. 3d 1013, 647 N.E.2d 1035 (3rd dist. 1995). The Board finds that the Pruims did not have active participation and were not actively involved in the actions which resulted in the violations alleged in Counts I, II, III, VI, and XII (daily operations) (*see* pg 41) and the Board therefore dismisses those counts as alleged against the Pruims. The Board does find personal involvement or active participation in acts which lead to the violations in Count V (significant modification permit) (*see* pgs 42-43), Count IV and XVII (financial assurance) (*see* pg 44, 45), Counts VII, VIII, IX and X (overheight) (*see* pg 48), and Count XIX (closure estimates) (*see* pg 49). Thus the Board finds that the Pruims violated multiple sections of the Act and Board regulations as alleged in eight counts.

The Board finds that the Section 33(c) factors weigh both for and against the respondents. *See* pgs 50-52. The Board finds that the character and degree, social and economic value, and technical practicability and economic reasonableness of compliance weigh against respondents. The Board finds that the suitability or unsuitability of the source and any subsequent compliance weigh neither for nor against the respondents. The Board finds that the Section 42(h) factors weigh in aggravation of a penalty or do not impact a penalty. *See* pgs 52-55. The Board finds that the duration and gravity, economic benefit and deterrence weigh in aggravation of a penalty. The Board finds that due diligence, prior violations and disclosure weigh neither in mitigation or

[1] All citations to the Act will be to the 2008 compiled statutes, unless the section at issue has been substantively amended in the 2008 compiled statutes.

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aggravation. Based on the statutory factors and the evidence in the record the Board finds that a civil penalty of $250,000 will aid in the enforcement of the Act, recoup the economic benefit accrued, and deter violations. Therefore the Board finds that CLC and the Pruims are jointly and severally liable for the $250,000 penalty.

## BACKGROUND FOR PCB 97-193

On May 1, 1997, the People filed an initial six-count complaint alleging that CLC violated various sections of the Act (415 ILCS 5/1 *et seq.* (2008)) and the Board's landfill regulations (35 Ill. Adm. Code 807). Specifically the complaint included allegations that CLC allowed uncovered refuse, leachate seeps, and landscape waste at the landfill. On April 3, 1998, the People filed an amended complaint adding Counts VII through X. These counts relate to the depositing of excess waste in Parcel B at elevations above the permitted height. On November 24, 1999, a second amended complaint was filed by the People adding Counts XI through XXII. These additional counts include further allegations that the improper handling of asbestos and improper disposal of waste tires violated the Act and Board's regulations. Counts XI through XXII also include allegations that several permit provisions were violated.

On July 31, 2000, the People filed a partial motion for summary judgment (concerning Counts V and XII) and on October 30, 2000, CLC filed a cross-motion for summary judgment. On April 5, 2001, the Board entered an order granting the People's motion for summary judgment on Count V, but denying both motions for summary judgment on Count XII and directing the parties to hearing on Count XII and the issue of penalties for Count V. People v. Community Landfill Company, Inc., PCB 97-193 (Apr. 5, 2001). On July 26, 2001, the Board granted a motion to reconsider the April 5, 2001 order. In the order of July 26, 2001, the Board denied the People's motion for summary judgment on Count XII and granted CLC's motion for summary judgment on Count XII. *See*, People v. Community Landfill Company, Inc., PCB 97-193 (July 26, 2001) and People v. Community Landfill Company, Inc., PCB 97-193 (Aug. 23, 2001).

On October 15, 2001, the People filed another partial motion for summary judgment. On March 1, 2002, CLC filed a cross-motion for partial summary judgment. On May 6, 2002, the People filed a response and on June 10, 2002, CLC filed a reply.

On October 3, 2002, the Board entered an order granting the People's motion for partial summary judgment in part and denying the motion in part. The Board also granted CLC's motion for partial summary judgment in part and denied the motion in part. Specifically, the Board found that CLC violated the Act and Board regulations as specified in Counts III, IV, VII, VIII, IX, X, XIII, XIV, XVI, XXI, and in part on Count XIX of the complaint. The Board directed the parties to proceed to hearing to present evidence on the appropriate penalty to be levied against CLC for those violations. In addition, the parties proceeded to hearing on Counts I, II, VI, XV, XVII, XX, and in part on Count XIX to determine the liability of CLC. The Board dismissed Counts XI, XVIII, and XXII of the second amended complaint.

On December 5, 2003, the People filed a motion for leave to file a third amended complaint and on January 30, 2004, CLC filed a response in opposition to the third amended

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complaint. On March 18, 2004, the Board found that the third amended complaint would prejudice the other parties, was not timely, and that the People previously had the opportunity to amend the complaint. Because the right to amend a complaint is not absolute, the Board found that the third amended complaint should not be accepted and the Board struck the third amended complaint. The Board further directed the matter to hearing expeditiously.

On February 17, 2006 on a motion by the Pruims to which the People did not object, the Board reluctantly granted a motion to consolidate PCB 97-193 with PCB 04-207.

## PCB 97-193 Violations Found on Summary Judgment

### Count III

Count III of the complaint[2] alleges that CLC was landfilling landscape waste during inspections conducted on August 18, 1993 and April 7, 1994 in violation of Section 22.22(c) of the Act (415 ILCS 5/22.22(c) (2008)). 97Comp. at 10. On October 3, 2002, the Board found that CLC violated Section 22.22(c) of the Act (415 ILCS 5/22.22(c) (2008)). *See* People v. Community Landfill Company, Inc., PCB 97-193 (Oct. 3, 2002)).

### Count IV

Count IV of the complaint alleges that CLC failed to provide adequate financial assurance in violation of Sections 21(d)(2) and 21.1 of the Act (415 ILCS 5/21(d)(2) and 21.1 (2008)) and 35 Ill. Adm. Code 807.601(a) and 807.603(b)(1) of the Board's rules. 97Comp. at 13. More specifically, the complaint alleges that CLC's supplemental permit dated April 20, 1993, required that financial assurance in the amount of $1,342,500 be maintained and CLC failed to increase the total amount of financial assurance within 90 days of the permit issuance. *Id.* The complaint further alleges that CLC provided a performance bond on June 20, 1996. *Id.* On October 3, 2002, the Board found that CLC violated Sections 21(d)(2) and 21.1 of the Act (415 ILCS 5/21(d)(2) and 21.1 (2008)) and 35 Ill. Adm. Code 807.601(a) and 807.603(b)(1) of the Board's rules. *See* People v. Community Landfill Company, Inc., PCB 97-193 (Oct. 3, 2002)).

### Count V

Count V of the complaint alleges that CLC failed to file a request for a significant modification permit in a timely manner in violation of Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) and Section 814.104 of the Board's landfill rules (35 Ill. Adm. Code 814.104). 97Comp. at 15. On April 5, 2001, the Board found that CLC violated Sections 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)). *See* People v. Community Landfill Company, Inc., PCB 97-193 (Apr. 5, 2002)).

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[2] References to the complaint in PCB 97-193 are to the second amended complaint filed on November 24, 1999 and will be cited as "97Comp. at __" in this order.

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Count VII, VIII, IX, AND X

Counts VII, VIII, IX, and X involve the same facts. Specifically, the complaint alleges that CLC has deposited refuse above the permitted elevations for Parcel B. 97Comp. at 21. In so doing, the complaint alleges that CLC has caused or allowed violation of Sections 21(o)(9) (Count VII), 21(d)(1) (Count VIII and X), and 21(a) (Count IX) of the Act (415 ILCS 5/21(a), 21(d)(1) and 21(o)(9) (2008)). On October 3, 2002, the Board found that CLC violated Sections 21(o)(9) (Count VII), 21(d)(1) (Count VIII and X), and 21(a) (Count IX) of the Act (415 ILCS 5/21(a), 21(d)(1) and 21(o)(9) (2008)). *See* People v. Community Landfill Company, Inc., PCB 97-193 (Oct. 3, 2002)).

Count XIII

The complaint alleges that on July 28, 1998, CLC was mixing waste tires with municipal waste in violation of Section 55(b-1) of the Act (415 ILCS 5/55(b-1) (2008)). On October 3, 2002, the Board found that CLC violated Section 55(b-1) of the Act (415 ILCS 5/55(b-1) (2008)). *See* People v. Community Landfill Company, Inc., PCB 97-193 (Oct. 3, 2002)).

Count XVI

The complaint alleges that CLC violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)) and special condition number nine of supplemental permit 1996-240-SP. 97Comp. at 45. Specifically, the allegation arose from a March 31, 1999 inspection where "erosion, ponding and cracks over one inch wide at the facility, [and] no vegetative cover" was observed. 97Comp. at 44. Special condition nine of permit number 1996-240-SP provides:

> While the site is being developed or operated as a gas control or extraction facility, corrective action shall be taken if erosion or ponding are observed, if cracks greater than one inch wide have formed, if gas, odor, vegetative or vector problems arise, or if leachate popouts or seeps are present in the areas disturbed by construction this gas collection facility. 97Comp. at 44.

On October 3, 2002, the Board found that CLC violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)) and special condition number nine of supplemental permit 1996-240-SP. *See* People v. Community Landfill Company, Inc., PCB 97-193 (Oct. 3, 2002)).

Count XIV

The complaint alleges that CLC failed to use a temporary fence to prevent blowing litter on March 31, 1999. 97Comp. at 39-40. The complaint alleges that the failure to use the fence resulted in violations of Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)) and special condition 13 of permit number 1989-005-SP. On October 3, 2002, the Board found that CLC violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)) and special condition 13 of permit number 1989-005-SP. *See* People v. Community Landfill Company, Inc., PCB 97-193 (Oct. 3, 2002)).

Count XIX[3]

The complaint alleges that CLC violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)) and special condition number thirteen of supplemental permit 1996-240-SP. 97Comp. at 52. The complaint alleges that CLC was required to provide financial assurance within 90 days from October 24, 1996, in the amount of $1,431,360 and to increase the amount to $1,439,720 prior to the operation of the gas extraction system. 97Comp. at 51. The complaint alleges that CLC failed to provide such increased financial insurance until September 1, 1999. 97Comp. at 51-52. On October 3, 2002, the Board found that CLC violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)) and special condition number thirteen of supplemental permit 1996-240-SP, in part. *See* People v. Community Landfill Company, Inc., PCB 97-193 (Oct. 3, 2002)).

Count XXI

The complaint alleges that CLC violated Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) and 35 Ill. Adm. Code 807.623(a) by failing to provide a revised cost estimate. 97Comp. at 57. The complaint alleges that pursuant to a supplemental permit issued on April 20, 1993, CLC was required to provide a revised cost estimate to the Agency by December 26, 1994. *Id.* The complaint alleges that CLC did file a cost estimate on July 26, 1996. *Id.* On October 3, 2002, the Board found that CLC violated Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) and 35 Ill. Adm. Code 807.623(a). *See* People v. Community Landfill Company, Inc., PCB 97-193 (Oct. 3, 2002)).

**Remaining Counts for Hearing on Violations in PCB 97-193**

Count I

Count I of the complaint argues that CLC failed to adequately manage refuse and litter at the landfill site in violation of Sections 21(d)(2), 21(o)(1), (5) and (12) of the Act (415 ILCS 5/21(d)(2), 21(o)(1), (5) and (12) (2008)) and 35 Ill. Adm. Code 807.306. 97Comp. at 6. The complaint alleges that these violations occurred during inspections at the landfill on April 7, 1994, March 22, 1995, May 22, 1995, July 28, 1998, November 19, 1998, March 31, 1998, May 11, 1999, and July 20, 1999. 97Comp. at 4. The complaint asserts that on three separate inspections litter was observed in the perimeter ditch and at least once in the retention pond. 97Comp. at 4. Also on one occasion leachate seeps had exposed previously covered refuse, according to the allegations in the complaint. *Id.* On two occasions the Agency inspector alleged that there was uncovered refuse from the day before and on two other occasions the

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[3] On Count XIX, CLC concedes that financial assurance requirements were not met in that CLC failed to increase the financial assurance by January 22, 1997. However the Board denied the motion for summary judgment as to the failure to increase the financial assurance prior to operation of the gas management system. Thus this count appears in both the summary judgment finding of violations section and the hearings on violations.

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inspector maintained that the landfill was accepting waste and there was uncovered refuse, including bags of waste material containing asbestos and blowing litter. 97Comp. at 4-5.

**Count II**

Count II of the complaint alleges that CLC caused or allowed violations of Sections 21(d)(2) and 21(o)(2) and (3) of the Act (415 ILCS 5/21(d)(2) and 21(o)(2) and (3) (2008)) and 35 Ill. Adm. Code 807.314(e) of the Board regulations, by allowing leachate to exit the landfill boundaries and enter waters of the State. 97Comp. at 8. Specifically the complaint alleges that during the inspections on April 7, 1994, March 22, 1995, and May 22, 1995, the Agency inspector observed leachate seeps. 97Comp. at 7. The complaint alleges that CLC failed to take sufficient action to prevent leachate seeps observed at the site and in the north perimeter ditch. 97Comp. at 7. The north perimeter ditch eventually drains into the Illinois River. *Id.*

**Count VI**

Count VI of the complaint alleges that CLC caused or allowed water pollution in violation of Sections 12(a) and 21(d)(2) of the Act (415 ILCS 5/12(a) and 21(d)(2) (2008)) and Section 807.313 of the Board's landfill regulations. 97Comp. at 18. The complaint alleges that these violations occurred during an inspection at the landfill on May 22, 1995. 97Comp. at 16. Specifically, the complaint alleges that CLC allowed leachate to flow into a ditch on site which eventually flows into the Illinois River. 97Comp. at 18.

**Connt XV**

Count XV of the complaint alleges that CLC violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)) and special condition one of permit number 1996-240-SP. 97Comp. at 40. Specifically, the complaint alleges that special condition one required CLC to provide to the Agency specific information regarding the gas management system prior to the operation of the system and CLC failed to do so. 97Comp. at 39-40.

**Count XVII**

The complaint alleges that CLC violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)) and special condition number eleven of supplemental permit 1996-240-SP. 97Comp. at 47. Specifically, the complaint alleges that on March 31, 1999, and July 20, 1999, CLC pumped leachate into new cells for added moisture and did not properly dispose of the leachate at a permitted facility. 97Comp. at 47. Special condition eleven of permit number 1996-240-SP provides:

> Condensate from the gas accumulations system, and leachate pumped and removed from the landfill shall be disposed at an IEPA permitted publicly owned treatment works, or a commercial treatment or disposal facility. The condensate shall be analyzed to determine if hazardous waste characteristics are present. A written log showing the volume of liquid discharged to the treatment facility each

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day by the landfill will be maintained at the landfill. This log will also show the hazardous waste determination analytical results. 97Comp. at 46-47.

Count XIX

The complaint alleges that CLC violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)) and special condition number thirteen of supplemental permit 1996-240-SP. 97Comp. at 52. The complaint alleges that CLC was required to provide financial assurance within 90 days from October 24, 1996, in the amount of $1,431,360 and to increase the amount to $1,439,720 prior to the operation of the gas extraction system. 97Comp. at 51. The complaint alleges that CLC failed to provide such increased financial insurance until September 1, 1999. 97Comp. at 51-52.

Count XX

The complaint alleges that CLC violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)) and special condition number seventeen of supplemental permit 1989-005-SP. 97Comp. at 54. Specifically, the complaint alleges that on March 31, 1999 and July 20, 1999 CLC pumped leachate, a waste, into areas, which had not been certified or approved by the Agency in violation of special condition number seventeen. Special condition seventeen of permit number 1989-005-SP provides:

> Prior to placing waste material in any Area, a registered professional engineer shall certify that the floor and/or sidewall liner or seal has been developed and constructed in accordance with an approved plan and specifications . . . Such data and certification shall be submitted to the Agency prior to placement of waste in the areas referenced above. No wastes shall be placed in those areas until the Agency has approved the certifications and issued an Operating Permit. 97Comp. at 54.

## BACKGROUND ON PCB 04-207

On May 21, 2004, People filed a nineteen-count complaint against the Pruims alleging numerous violations of the Act and the Board's regulations. The Board docketed that case as PCB 04-207. Robert Pruim is the President of CLC and Edward Pruim is the Secretary. The allegations in the complaint revolve around the Pruims' management, operation, and ownership of CLC and the landfill. On June 3, 2004, the Board accepted the complaint for hearing.

On September 10, 2004, the Pruims filed a motion to dismiss the complaint in PCB 04-207 along with a memorandum in support of the motion. The People filed a response on October 4, 2004, and the Pruims filed a reply on October 18, 2004. In a November 4, 2004 order, the Board denied the motion to dismiss except as to Count XI. The Board granted the motion to dismiss Count XI and directed the parties to hearing on the remaining counts.

On February 17, 2005, the Board reluctantly granted a motion to consolidate PCB 04-207 and PCB 97-193.

On March 17, 2005, the Board granted People's motion to strike an alleged affirmative defense in PCB 04-207 finding that the complaint is barred because the People failed to state a claim for personal liability under the Act. The Board found that the second affirmative defense should be stricken as the alleged affirmative defense attacks the sufficiency of the claims and therefore is not an affirmative defense.

On January 13, 2006, the Pruims, each filed a motion for summary judgment and a memorandum in support of the motion only to the case in PCB 04-207. The People responded on February 6, 2006, and included a motion seeking voluntary dismissal of certain counts. On April 20, 2006, the Board found that there were genuine issues of material fact and therefore summary judgment was not appropriate and the Board denied each of the Pruims' motions for summary judgment in PCB 04-207. The Board granted People's motion to dismiss certain counts of the complaint and counts XIII, XIV, XV, XVI, and XVIII were dismissed in PCB 04-207.

**Remaining Counts for Hearing on Violations in PCB 04-207**

**Count I**

Count I of the complaint [4] alleges that the Pruims failed to adequately manage refuse and litter at the landfill site in violation of Section 21(d)(2), 21(o)(1), (5) and (12) of the Act (415 ILCS 5/21(d)(2), 21(o)(1), (5) and (12) (2008) and Section 807.306 of the Board landfill regulation s (35 Ill. Adm. Code 807.306). 04Comp. at 7. The complaint alleges that these violations occurred during inspections at the landfill on April 7, 1994, March 22, 1995, May 22, 1995, July 28, 1998, November 19, 1998, March 31, 1999, May 11, 1999, and July 20, 1999. 04Comp at 4-5. The complaint asserts that on three separate inspections litter was observed in the perimeter ditch and at least once in the retention pond. 04Comp. at 4. Also on one occasion leachate seeps had exposed previously covered refuse, according to the allegations in the complaint. *Id.* On two occasions the Agency inspector alleged that there was uncovered refuse from the day before and on the two other occasions the inspector maintained that the landfill was accepting waste and there was uncovered refuse, including bags of waste material containing asbestos and blowing litter. 04Comp. at 4-5.

**Count II**

Count II of the complaint alleges that the Pruims caused or allowed violations of Section 21(d)(2), (o)(2) and (3) of the Act (415 ILCS 5/21(d)(2), (o)(2) and (o)(3) (2008)) and Section 807.314(e) of the Board's landfill regulations (35 Ill. Adm. Code 807.314) by allowing leachate to exit the landfill boundaries and enter waters of the State. 04Comp. at 8-9. The complaint alleges that these violations occurred during inspections at the landfill on April 7, 1994, March 22, 1995, May 22, 1995, July 28, 1998, November 19, 1998, March 31, 1998, May 11, 1999, and July 20, 1999. 04Comp. at 6-7. Specifically, the complaint alleges that the Pruims failed to take sufficient action to prevent leachate seeps occurring at the landfill and to prevent the leachate

[4] The complaint in PCB 04-207 will be cited as "04Comp." throughout this opinion and order.

seeps from exiting the landfill. 04Comp. at 8-9. The complaint alleges that the Pruims allowed the leachate seeps to leave the landfill and enter the waters of the State. 04Comp. at 9.

**Count III**

Count III of the complaint alleges that the Pruims were landfilling landscape waste in violation of Section 22.22(c) of the Act (415 ILCS 5/22.22(c) (2008)). 04Comp. at 11. The complaint alleges that during inspections at the landfill on August 18, 1993, April 7, 1994, and July 28, 1998, the Agency inspector observed landscape waste in the landfill area. 04Comp. at 10.

**Count IV**

Count IV of the complaint alleges that the Pruims failed to provide adequate financial assurance in violation of Sections 21(d)(2) and 21.1(a) of the Act (415 ILCS 5/21(d)(2) and 21.1(a) (2008)) and Sections 807.601(a) and 807.603(b)(1) of the Board's landfill regulations (35 Ill. Adm. Code 807.601(a) and 807.603(b)(1)). 04Comp. at 13-14. More specifically, the complaint alleges that CLC's supplemental permit dated April 20, 1993 required that financial assurance in the amount of $1,342,500 be maintained and the Pruims failed to increase the total amount of financial assurance within 90 days of the permit issuance. 04Comp. at 12-13. The complaint further alleges that the Pruims provided a performance bond on June 20, 1996. 04Comp. at 13.

**Count V**

The complaint alleges that the Pruims violated Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) and Section 814.104 of the Board's landfill rules (35 Ill. Adm. Code 814.104). 04Comp. at 15. Specifically, the complaint alleges that the Pruims failed to cause CLC to file a request for a significant modification permit in a timely manner.

**Count VI**

Count VI of the complaint alleges that the Pruims caused or allowed water pollution in violation of Sections 12(a) and 21(d)(2) of the Act (415 ILCS 5/12(a) and 21(d)(2) (2008)) and Section 807.313 of the Board's landfill regulations. 04Comp. at 18. The complaint alleges that these violations occurred during an inspection at the landfill on May 22, 1995. 04Comp. at 16. Specifically, the complaint alleges that the Pruims allowed leachate to flow into a ditch on site which eventually flows into the Illinois River. 04Comp. at 17-18.

**Counts VII, VIII, IX and X**

Counts VII, VIII, and X of the complaint involve the same facts. Specifically, the complaint alleges that the Pruims allowed waste to be deposited in Parcel B of the landfill even after the Pruims reported that Parcel B had no remaining capacity. 04Comp. at 19-20. The complaint further alleges that the Pruims have allowed Parcel B to be filled to an elevation exceeding the permitted elevation. 04Comp. at 20. The complaint maintains that these actions

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have resulted in violation of Sections 21 (a) (Count IX), 21(o)(9) (Count VII) and 21(d)(1) (Count VIII and X) of the Act(415 ILCS 5/21(a), 21(o)(9) and (d)(1) (2008)), and standard condition number 3 of supplemental development permit number 1989-005-SP. 04Comp. at 21, 23, and 27.

Count XII

The complaint alleges that on July 28, 1998, the Pruims violated Section 55(b-1) of the Act (415 ILCS 5/55(b-1) (2008)). 04Comp. at 33. Specifically, the complaint alleges that the Pruims allowed the mixing of waste tires with municipal waste. *Id.*

Count XVII

The complaint alleges that the Pruims violated Section 21(d)(1) of the Act and special condition number 13 of permit number 1996-240-SP. 04Comp. at 44. Specifically, the complaint alleges that the Pruims were required to provide financial assurance within 90 days from October 24, 1996, in the amount of $1,431,360 and to increase the amount to $1,439,720 prior to the operation of the gas extraction system. 04Comp. at 43. The complaint alleges that the Pruims failed to provide such increased financial insurance until September 1, 1999. 04Comp. at 44.

Count XIX

The complaint alleges that the Pruims violated Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) and Section 807.623(a) of the Board's landfill regulation (35 Ill. Adm. Code 807.623(a)). 04Comp. at 49. Specifically, the complaint alleges that the Pruims failed to provide a revised cost estimate. 04Comp. at 48. The complaint alleges that pursuant to a supplemental permit issued on April 20, 1993, the Pruims were required to provide a revised cost estimate to the Agency by December 26, 1994. *Id.* The complaint alleges that Pruims did file a cost estimate on July 26, 1996. *Id.*

## PROCEDURAL BACKGROUND OF CONSOLIDATED CASES

After consolidating the cases and ruling on the motion for summary judgment in PCB 04-207, the parties proceeded with the case. Three days of hearing were held before Board Hearing Officer Bradley Halloran on December 2, 3, and 4, 2008[5], in Morris, Grundy County. On December 23, 2008, the People filed an appeal of a ruling by Hearing Office Halloran (Appeal). On January 12, 2009, respondents filed a response in opposition to the appeal (App.Resp.).

On February 6, 2009, the People filed their opening brief (Br.) and on May 18, 2009 the reply brief (Reply). On May 4, 2009, respondents filed their brief (Resp.Br.).

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[5] The transcripts are not sequentially numbered so they will be cited as "12/2Tr.", "12/3Tr.", and "12/4Tr.".

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## APPEAL OF HEARING OFFICER RULING

On December 23, 2008, the People filed a motion asking the Board to overrule a hearing officer decision (HOMot.). On January 12, 2009, the respondents filed a response in opposition to the motion (HOResp.). For the reasons articulated below the Board affirms the hearing officer's ruling.

### Hearing Officer Ruling

On December 2, 2008, the hearing officer granted respondents' motion in *limine* number one and excluded an exhibit offered by the People. 12/2Tr. at 4-5. The hearing officer ruled that the People were attacking the veracity of the Pruims and were offering the exhibit 27 for impeachment purposes. *Id.* The hearing officer relied on People v. Montgomery, 47 Ill.2d 510 (1971). *Id.*

### Arguments

The People argue that the exhibit 27 is being offered as substantive evidence of the Pruims personal and direct involvement in violations of CLC. HOMot. at 1. The People argue that the Montgomery case places a ten year statute of limitation on the use of felony convictions for impeachment and the case did not establish a ten year rule for use for any other purpose. HOMot. at 2. The People maintain that exhibit 27 is being offered to substantiate the Pruims direct involvement and will allow the Board to determine that the Pruims kept the landfill open after reaching capacity for personal reasons. HOMot. at 2-3.

The People also argue that the evidence is relevant as the unpaid debt is relevant to this case. HOMot at 3-4.

The respondents urge the Board to affirm the hearing officer's ruling as the hearing officer reviewed the motions and responses and ruled at hearing. HOResp. at 2.

### Board's Ruling

The Board affirms the hearing officer ruling that People's exhibit 27 should be excluded. The People's own documents indicate that the exhibit will be used for impeachment of the Pruims. *See* HOResp. Exh. A. The Board finds nothing in the People's arguments that convinces the Board that the hearing officer ruled incorrectly. Therefore, the Board affirms the hearing officer's order excluding People's exhibit 27.

## OUTLINE OF OPINION

After the various motions for summary judgment and dismissals, the Board is left with deciding whether or not CLC is in violation of the Act, Board regulations, and permit conditions as alleged in seven remaining counts. The Board must also determine whether or not the Pruims

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are in violation of the Act, Board regulations, and permit conditions as alleged in thirteen remaining counts.

Once the Board has determined whether or not violations have occurred, the Board then must consider what remedy to apply based on any newly found violations and those already found against CLC.

The Board will begin by summarizing the relevant facts. The Board will then look at the remaining alleged violations against CLC and those will be discussed in turn. Next the Board will look at the remaining alleged violations against the Pruims and those too will be discussed in turn. The Board's opinion will then address the remedy issue.

## LEGAL FRAMEWORK

In an.enforcement proceeding before the Board, the burden of proof is by a preponderance of the evidence. Lefton Iron & Metal Company, Inc. v. City of East St. Louis, PCB 89-53 at 3, (Apr. 12, 1990); Bachert v. Village of Toledo Illinois, *et al.*, PCB 85-80 at 3, (Nov. 7, 1985); Industrial Salvage Inc. v. County of Marion, PCB 83-173 at 3-4, (Aug. 2, 1984), *citing* Arrington v. Water E. Heller International Corp., 30 Ill. App. 3d 631, 333 N.E.2d 50,58, (1st Dist. 1975). A proposition is proved by a preponderance of the evidence when it is more probably true than not. Industrial Salvage at 4, *citing* Estate of Ragen, 79 Ill. App. 3d 8, 198 N.E.2d 198, 203, (1st Dist. 1979). A complainant in an enforcement proceeding has the burden of proving violations of the Act by a preponderance of the evidence. Lake County Forest Preserve District v. Neil Ostro, PCB 92-80, (Mar. 31, 1994). Once the complainant presents sufficient evidence to make a prima facie case, the burden of going forward shifts to the respondent to disprove the propositions (Illinois Environmental Protection Agency v. Bliss, PCB 83-17, (Aug. 2, 1984)). *See* Nelson v. Kane County Forest Preserve, *et. al.*, PCB 94-244 (July 18, 1996); People v. Chalmers, PCB 96-111 (Jan. 6, 2000).

## FACTS

The Board will lay out the facts by starting with the facts concerning each of the inspections at the landfill. The Board will then set forth facts relevant to the alleged violations arising from circumstances other than the inspections.

### Inspections

The Agency conducted several inspections of the landfill operated by respondents. Inspections took place on August 18, 1993, April 7, 1994, March 22, 1995, May 22, 1995, March 5, 1997, July 28, 1998, November 19, 1998, March 31, 1999, May 11, 1999, and July 20, 1999. *See generally* 97Comp. at 4 and 04Comp. at 4-5. Agency employees, Warren Weritz and Tina Kovasznay, conducted the inspections. *See* 12/3Tr. at 58-59 and 12/2Tr. at 19-20. During those inspections, Mr. Weritz and Ms. Kovasznay recorded several observations that led to the allegations in the complaint. *See generally* Comp.Exh. 13a, 13b, 13e, 13f, 13i, 13j, 13k, 13l, 13m, and 13n.

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**August 18, 1993 Inspection**

Mr. Weritz inspected the landfill on August 18, 1993 as a result of a complaint investigation and he inspected only Parcel B. 12/3Tr. at 60-61. Mr. Weritz met with Mr. Jim Pelnarsh Sr., whom Mr. Wertiz understood to be the operator of the landfill and Mr. Weritz's main contact. 12/3Tr. at 61. Mr. Wertiz observed garbage and processed landscape waste being landfilled together. 12/3Tr. at 62. Mr. Weritz indicated that Mr. Pelnarsh, Sr. indicated that the landscape waste was being used as a part of the daily cover and Mr. Weritz informed Mr. Pelnarsh Sr. that landfilling of landscape waste was not allowed. 12/3Tr. at 62-63. Mr. Weritz included his observations in the narrative of his inspection report. 12/3Tr. at 63.

Mr. Weritz did not return at the end of the operating day, so he did not observe the site conditions at that time. 12/3Tr. at 85. Mr. Weritz also did not know whether the landscape waste was present at the end of the day. *Id.* Mr. Weritz had no knowledge as to whether the officers or shareholders of CLC had personal involvement in the alleged violations observed during this inspection. *Id.*

The inspection report indicates that Mr. Pelnarsh Sr. was interviewed and that a violation of Section 22.22(c) of the Act (415 ILCS 5/22.22(c) (2008)) was observed. Comp.Exh. 13a at 1, 4. In the narrative, the processing of garbage and landscape waste is noted. Comp.Exh. 13a at 5. The narrative notes that CLC is permitted to compost landscape waste and there was "no clear reason given" as to why some landscape waste was landfilled and some composted. *Id.*

**April 7, 1994 Inspection**

Mr. Weritz testified that the April 7, 1994 inspection was undertaken at the request of the Agency's division of legal counsel and the inspection was of Parcel B only. 12/3Tr. at 64. Mr. Weritz took pictures while inspecting the site, which were included with the inspection report (Comp.Exh. 13b). *Id.* Mr. Pelnarsh Sr. accompanied Mr. Weritz on the inspection and Mr. Weritz observed the "continuing practice of landfilling landscape waste." 12/3Tr. at 65. Mr. Weritz also observed litter in the perimeter ditch at the southwest portion of the landfill. *Id.* Mr. Weritz indicated that Mr. Pelnarsh Sr. "admitted" litter was not being collected at the end of the working day. *Id.* Mr. Weritz also observed leachate seeps along the northwest perimeter that did not appear to migrate offsite. 12/3Tr. at 66.

Mr. Weritz's inspection took place from 2:30 to 3:55 p.m. and he did not return at the end of the day to observe site conditions. 12/3Tr. at 87. Mr. Weritz conceded that the pictures depicting bags along the perimeter ditch did indicate that someone picked up litter at some point. *Id.*, *see also* Comp.Exh. 13a at Pics. 11 and 12. Mr. Weritz also conceded that he had no independent evidence that the observed violations were present at the end of the day. 12/3Tr. at 90. Mr. Weritz had no knowledge as to whether the officers or shareholders of CLC had personal involvement in the alleged violations observed during this inspection. 12/3Tr. at 91.

Mr. Weritz testified that he did not obtain samples of the liquid that he observed both at the site and migrating off the site. 12/3Tr. at 95-96. Mr. Weritz based his conclusion that the liquid was leachate on his observations and he did not personally observe the liquid actually

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leaving the site. 12/3Tr. at 96-97. Mr. Weritz did not observe naturally occurring runoff at the site from iron ore deposits and did not know what that type of liquid might look like. 12/3Tr. at 97-98.

The inspection report indicates that Mr. Pelnarsh Sr. met Mr. Weritz and drove around the active area of the landfill. Comp.Exh. 13b at 5. The inspection report is marked indicating violations of Section 21(o)(12) of the Act (415 ILCS 5/21(o)(12) (2008)) and Section 807.306 (35 Ill. Adm. Code 807.306) were observed. Comp.Exh. 13b at 2. The inspection report also is marked indicating violations of Section 22.22(c) of the Act (415 ILCS 5/22.22(c) (2008)) and Section 807.314(e) (35 Ill. Adm. Code 807.314(e)) were observed. Comp.Exh. 13b at 3, 4. The narrative indicates that Mr. Pelnarsh Sr. "admitted" that litter was not being collected at the end of the day. Comp.Exh. 13b at 5.

**March 22, 1995 Inspection**

Mr. Weritz stated that this investigation was conducted as a result of another complaint and the inspection was of Parcel B only. 12/3Tr. at 66. The inspection report includes pictures and the inspection was conducted with Jim Pelnarsh Jr. present. 12/3Tr. at 67. Mr. Weritz testified that there was no evidence that composted material was being landfilled; however other problems were occurring at the landfill. 12/3Tr. at 67-68. Mr. Weritz stated that he observed litter and a leachate seep flowing into the perimeter ditch. 12/3Tr. at 68. Mr. Weritz indicated that he knew the liquid was leachate based on observing the flow from the sidewall of the landfill and the liquid had a reddish color and foul odor. *Id.* Mr. Weritz indicated that pictures included with the inspection report depicted the leachate. 12/3Tr. at 68-69; Comp.Exh. 13e, Pics. 5, and 6. Mr. Weritz stated that based on his experience the reddish liquid was leachate because the liquid flowed out of the sidewall of the landfill and was discolored and foul smelling. 12/3Tr. at 69.

Mr. Weritz observed litter scattered in and around the perimeter ditch leading to the retention pond and refuse in standing water in the retention pond. 12/3Tr. at 69. Mr. Weritz testified that photographs were taken depicting his observation of the litter. *Id.* Comp.Exh. 13e at Pics. 8, 9, and 10.

Mr. Weritz inspected the site at midday and did not return to the site to observe the conditions at the end of the day. 12/3Tr. at 91-92. Mr. Weritz testified that he had no independent evidence that the litter observed remained uncovered at the end of the operating day. 12/3Tr. at 92. Mr. Weritz had no knowledge as to whether the officers or shareholders of CLC had personal involvement in the alleged violations observed during this inspection. *Id.*

Mr. Weritz testified that he did not obtain samples of the liquid that he observed both at the site and migrating off the site. 12/3Tr. at 95-96. Mr. Weritz based his conclusion that the liquid was leachate on his observations and he did not personally observe the liquid actually leaving the site. 12/3Tr. at 96-97. Mr. Weritz did not observe naturally occurring runoff at the site from iron ore deposits and did not know what that type of liquid might look like. 12/3Tr. at 97-98

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The inspection report is marked indicating violations of Section 21(o)(12) of the Act (415 ILCS 5/21(o)(12) (2008)) and Section 807.306 (35 Ill. Adm. Code 807.306) were observed. Comp.Exh. 13e at 2. The inspection report also is marked indicating violations of Section 21(o)(1) of the Act (415 ILCS 5/21(o)(1) (2008)) and Section 807.314(e) (35 Ill. Adm. Code 807.314(e)) were observed. Comp.Exh. 13b at 3. The narrative indicates that a "significant amount of blown litter" from the prior days' operations was observed along with leachate seeps and refuses in the retention pond. Comp.Exh. 13e at 5. Photos were taken of the leachate seeps and refuse in the retention pond. *Id.*

**May 22, 1995 Inspection**

Mr. Weritz testified that the May 22, 1995 inspection was a routine inspection of Parcel B and pictures were taken. 12/3Tr. at 70-71. Mr. Weritz was accompanied on his inspection by Mr. Pelnarsh Sr. and Jean Ann Robinson, solid waste coordinator for Grundy County. 12/3Tr. at 71. Mr. Weritz observed leachate seeps that resulted in leachate in the perimeter ditch. 12/3Tr. at 72. Mr. Weritz stated that the "ditches were running red with a lot of leachate" and the leachate appeared to be leaving the site. *Id.* Mr. Weritz knew the liquid was leachate because of the appearance, color, and odor. *Id.* Mr. Weritz pointed to photograph 13, as a good depiction of what he observed. 12/3Tr. at 73, Comp.Exh. 13f at Pic. 13. Mr. Weritz prepared a site sketch that depicted the drainage pattern that showed that leachate from parcel B flowing to Parcel A, and eventually to a pond off site. 12/3Tr. at 73, Comp.Exh. 13f at 7. Mr. Weritz indicated that after discussing the drainage with Mr. Pelnarsh Sr., the flow from the pond was "probably flowing into the Illinois and Michigan Canal and or the Illinois River." 12/3Tr. at 73-74. Mr. Weritz concluded that the leachate was migrating into the Illinois River. 12/3Tr. at 74.

Mr. Weritz inspected the site midday and did not return to the site to observe the conditions at the end of the day. 12/3Tr. at 92. Mr. Weritz testified that he had no independent evidence that the litter observed remained uncovered at the end of the operating day. 12/3Tr. at 92-93. Mr. Weritz had no knowledge as to whether the officers or shareholders of CLC had personal involvement in the alleged violations observed during this inspection. 12/3Tr. at 93.

Mr. Weritz testified that he did not obtain samples of the liquid that he observed both at the site and migrating off the site. 12/3Tr. at 95-96. Mr. Weritz based his conclusion that the liquid was leachate on his observations and he did not personally observe the liquid actually leaving the site or flow to the Illinois River. 12/3Tr. at 96-97, 99-100. Mr. Weritz concedes that he did not see the liquid actually enter the waters of the state, but assumed that the liquid would. 12/3Tr. at 100. Mr. Weritz did not observe naturally occurring runoff at the site from iron ore deposits and did not know what that type of liquid might look like. 12/3Tr. at 97-98

The inspection report is marked indicating violations of Section 12(a), 21(o)(1),21(o)(2), 21(o)(3), 21(o)(5), 21(o)(12) of the Act (415 ILCS 5/12(a), 21(o)(1), 21(o)(2), 21(o)(3), 21(o)(5), 21(o)(12) (2008)) and Section 807.306, 807.313, 807.314(e) (35 Ill. Adm. Code 807.306, 807.313, 807.314(e)) were observed. Comp.Exh. 13f at 1-3. The narrative indicates that "a significant amount of leachate had seeped into the perimeter ditch" and there were at least three large eroded areas where leachate seeps had exposed previously covered refuse. Comp.Exh. 13f

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at 5. The narrative indicates that Mr. Pelnarsh Sr. "acknowledged the presumption that the leachate was flowing off-site and into a waterway." *Id.*

**March 5, 1997 Inspection**

Mr. Weritz testified that this was a routine inspection of Parcel B only and pictures were taken. 12/3Tr. at 75. Mr. Weritz was accompanied on his inspection by Mr. Joe Rogbe an equipment operator at the site. *Id.* Mr. Weritz observed open dumping of refuse and refuse being disposed of outside the permitted boundary of the landfill and that the landfill exceeded the permitted elevations. 12/3Tr. at 76. Mr. Weritz testified that he had been notified by the permit section of the Agency that landfill had exceeded the permitted elevations prior to the inspection. *Id.* Mr. Weritz stated that Mr. Rogbe informed him that CLC was still accepting waste in Parcel B. 12/3Tr. at 77.

The inspection report is marked indicating that violations of Sections 21(a), (d)(1), and 21(o)(9) of the Act (415 ILCS 5/21(a), (d)(1), and 21(o)(9) (2008)) were observed. Comp.Exh. 13i at 1-2. In addition the inspection report indicates that there was a failure to obtain a permit modification from the Agency before increasing the height of the landfill. Comp.Exh. 13i at 7.

**July 28, 1998 Inspection**

Mr. Weritz's July 28, 1998 inspection was a routine inspection of both Parcel A and B on which Mr. Pelnarsh Jr. accompanied him. 12/3Tr. at 77-78. Mr. Weritz observed general refuse waste, tires, and landscape waste being landfilled. 12/3Tr. at 78. Mr. Weritz also observed "recontouring" of Parcel A, removing old waste from one area to another. *Id.* Mr. Weritz indicated that pictures taken and included with the inspection report depicted these observations. 12/3Tr. at 79, Comp.Exh. 13j at Pics. 2,3,4,5, and 6.

As to Parcel B, Mr. Weritz observed that the gas extraction wells "apparently were recently installed." 12/3Tr. at 80. Mr. Weritz observed erosion along the landfill as a result of the installation. *Id.*

Mr. Weritz inspected the site between 2:35 and 3:40 p.m. and did not return to the site to observe the conditions at the end of the day. 12/3Tr. at 93. Mr. Weritz testified that he had no independent evidence that the litter observed remained uncovered at the end of the operating day or that the landscape waste remained in the operating space. 12/3Tr. at 93-94. Mr. Weritz. also had no evidence that the tires remained at the end of the day. *Id.* Mr. Weritz had no knowledge as to whether the officers or shareholders of CLC had personal involvement in the alleged violations observed during this inspection. 12/3Tr. at 94.

Mr. Weritz testified that he was not aware of an October 1996 permit that allowed for vertical expansion of Parcel A at the time of the inspections, but was aware of an August 1996 significant modification permit application by CLC. 12/3Tr. at 103. Mr. Weritz was not aware of the permit status of Parcel A at the time of this inspection 12/3Tr. at 105.

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The inspection report is marked indicating that violations of Sections 21(a), 21(d)(1), 21(e), 21(o)(5), 21(o)(7), 21(o)(9), 22.22(c), and 55(b)(1) of the Act (415 ILCS 5/21(a), 21(d)(1), 21(e), 21(o)(5), 21(o)(7), 21(o)(9), 22.22(c), and 55(b)(1) (2008)) were observed. Comp.Exh. 13j at 1-3. The narrative indicates that CLC did not timely file a significant modification permit and consequently at the time of the inspection was operating without a permit. Comp.Exh. 13j at 9.

**November 19, 1998 Inspection**

The November 19, 1998 inspection was a routine inspection of both Parcels A and B. 12/3Tr. at 81. Mr. Pelnarsh Jr. accompanied Mr. Weritz on the inspection. *Id.* Mr. Weritz observed issues with erosion on the side slopes and maintenance needs on the perimeter ditches. 12/3Tr. at 82. Mr. Weritz also noted "numerous" continuing violations as well including operating without a permit. *Id.* Mr. Weritz observed general construction and demolition debris being landfilled at the time of the inspection. *Id.*

The inspection report is marked indicating that violations of Sections 21(a), 21(d)(1), 21(e), 21(o)(7), and 21(o)(9) of the Act (415 ILCS 5/21(a), 21(d)(1), 21(e), 21(o)(7), and 21(o)(9) (2008)) were observed. Comp.Exh. 13k at 1-2. The narrative report indicates that on Parcel B no landfilling activities were observed but the side slopes needed to be addressed and the perimeter ditches needed maintenance. Comp.Exh. 13k at 9. Parcel A was being recontoured and waste had been accepted at the landfill. *Id.*

**March 31, 1999 Inspection**

Ms. Kovasznay testified that she first inspected CLC on March 31, 1999, taking over from Mr. Weritz. 12/2Tr. at 20-21. Ms. Kovasznay performed four inspections before turning over responsibility for inspections to Mark Retzlaff in 2000. *Id.* On March 31, 1999, in a routine inspection, Ms. Kovasznay inspected both Parcels A and B, took pictures of the site and was accompanied by Mr. Pelnarsh Sr. 12/2Tr. at 21-22. On Parcel A, Ms. Kovasznay observed that CLC was accepting waste and there was blowing litter. 12/2Tr. at 23. In addition Ms. Kovasznay noted that leachate was being collected and added to the clay liners of the new cells to increase moisture content. *Id.* Ms. Kovasznay did not specifically observe "anything" but Mr. Pelnarsh Sr. "told" her this practice was occurring. 12/2Tr. at 26.

Ms. Kovasznay's recollection is that Parcel A was not permitted to accept waste material at the time of her inspection. 12/2Tr. at 23. Ms. Kovasznay referred to photos attached to the inspection report (Comp.Exh. 13l at Pic. 7, 8) which depict the site. 12/2Tr. at 24. Ms. Kovasznay spoke with Mr. Pelnarsh Sr. about the litter on site and understood that the litter would not be picked up that day. 12/2Tr. at 25.

Regarding Parcel B, Ms. Kovasznay observed that the gas collection system was operating and that there was severe erosion on the slopes around the whole perimeter of the landfill. 12/2Tr. at 26. Ms. Kovasznay also observed ponding water on top of the landfill and uncovered refuse. 12/2Tr. at 27. Ms. Kovasznay stated that the landfill was not permitted to run the gas collection system at the time of her inspection. *Id.* Ms. Kovasznay asked Mr. Pelnarsh

Sr. if the system was running and "he stated that it had been operating for the last month." *Id.* Ms. Kovasznay did not believe that the system could have been running on the day of inspection as a test. *Id.*

Ms. Kovasznay performed her inspection from 9:30 to 10:40 a.m. and did not return to the site at the end of the day. 12/2Tr. at 44. Ms. Kovasznay conceded that the conditions were windy at the time of the inspection. 12/2Tr. at 46. Ms. Kovasznay did not observe the site conditions at the end of the day and has only Mr. Pelnarsh Sr.'s statements that the litter was not covered at the end of the day. 12/2Tr. at 44. Ms. Kovasznay has no evidence that shareholders or officers of CLC know anything about the alleged violations. *Id.*

As to the running of the gas collection system, Ms. Kovasznay heard the engine and relied on Mr. Pelnarsh Sr.'s statements regarding the gas collection system. 12/2Tr. at 47-48. Ms. Kovasznay could not tell by observing the wells, if the system was running and Ms. Kovasznay has no evidence of involvement of shareholders or officers of CLC. 12/2Tr. at 48.

Ms. Kovasznay did not see liquid being placed in lined areas of the landfill and she did not ask Mr. Pelnarsh Sr. where the liquid was coming from. 12/2Tr. at 49. Ms. Kovasznay, nor anyone else, performed tests on the liquid and Ms. Kovasznay has only Mr. Pelnarsh Sr.'s statements as evidence. 12/2Tr. at 49-50.

The inspection report is marked indicating that violations of Sections 21(a), 21(d)(1), 21(d)(2), 21(e), 21(o)(7), and 21(o)(9) of the Act (415 ILCS 5/21(a), 21(d)(1), 21(d)(2), 21(e). 21(o)(7), and 21(o)(9) (2008)) were observed. Comp.Exh.13l at 1-2. In addition the inspection report indicates violations of the Board's landfill rules at Sections 814.101(b)(3) and 814.105 (35 Ill. Adm. Code 814.101(b)(3) and 814.105) and of permit conditions were observed. Comp.Exh.13l at 5-6. The narrative report notes the operation of the gas management system and the erosion of the slopes on Parcel B. Comp.Exh.13l at 7. The narrative report notes that waste was being accepted and that blowing litter was observed. *Id.* The narrative report indicates that Mr. Pelnarsh Sr. stated his helper was out of the country and that the leachate was being collected and used on the clay liners of new cells. *Id.*

**May 11, 1999 Inspection**

Ms. Kovasznay inspected the landfill on May 11, 1999 with Fred Lebensorger to determine if CLC was in compliance with regulations regarding the handling of asbestos. 12/2Tr. at 29. Ms. Kovasznay did not fill out an inspection report but instead compiled a memorandum (Comp.Exh. 13m). 12/2Tr. at 30. Ms. Kovasznay observed that CLC was accepting waste and that there were severe erosion gullies. 12/2Tr. at 30-31.

**July 20, 1999 Inspection**

This inspection was a routine inspection of both Parcels A and B and Ms. Kovasznay took pictures that depict the site. 12/2Tr. at 31, Comp.Exh. 13n. Mr. Pelnarsh Sr. accompanied Ms. Kovasznay on the July 29, 1999 inspection. *Id.* Ms. Kovasznay observed uncovered refuse on Parcel A and stated that Mr. Pelnarsh Sr. told her Parcel A was "over high" and still accepting

waste. 12/2Tr. at 32, 36. Ms. Kovasznay took pictures two and three of Parcel A including uncovered refuse that "according to Mr. Pelnarsh Sr.'s statements, the waste had been uncovered for at least five days." 12/2Tr. at 37, Comp.Exh. 13n. Ms. Kovasznay stated that Mr. Pelnarsh Sr. told her that "they were still disposing of the leachate into the clay of the cell to reduce the moisture content." *Id.* Ms. Kovasznay did observe erosion gullies on Parcel A and photo five depicts those observations. *Id.*

During the inspection of Parcel B, Ms. Kovasznay noted that the gas management system was still operating and there was uncovered refuse on the top of the landfill. 12/2Tr. at 38. Ms. Kovasznay stated that there was no cover on the majority of the landfill. *Id.* Ms. Kovasznay took photos six and seven which depict the refuse and lack of cover. 12/2Tr. at 39, Comp.Exh. 13n.

The inspection report is marked indicating that violations of Sections 21(a), 21(d)(1), 21(d)(2), 21(e), 21(o)(5), 21(o)(6), 21(o)(7), and 21(o)(9) of the Act (415 ILCS 5/21(a), 21(d)(1), 21(d)(2), 21(e). 21(o)(7), and 21(o)(9) (2008)) were observed. Comp.Exh. 13n at 1-2. In addition the inspection report indicates violations of the Board's landfill rules at Sections 807.302, 807.305(a-c), 807.310(b), 807.623, 814.101(b)(3) and 814.105 (35 Ill. Adm. Code 807.302, 807.305(a-c), 807.310(b), 807.623, 814.101(b)(3) and 814.105) and of permit conditions were observed. Comp.Exh. 13n at 4-6. The narrative report notes the operation of the gas management system. Comp.Exh. 13n at 7. The narrative report notes that CLC chose to fill overheight and daily cover has not been placed on the landfill. *Id.*

. Ms. Kovasznay did not see liquid being placed in lined areas of the landfill and she did not ask Mr. Pelnarsh Sr. where the liquid was coming from. 12/2Tr. at 49. Ms. Kovasznay, nor anyone else, performed tests on the liquid and Ms. Kovasznay has only Mr. Pelnarsh Sr.'s statements as evidence. 12/2Tr. at 49-50. Ms. Kovasznay also had only Mr. Pelnarsh Sr.'s statements regarding the overheight issue as evidence. 12/2Tr. at 52.

**September 7, 1999 Inspection**

Ms. Kovasznay indicated that the September 7, 1999 inspection was not a routine inspection and the inspection was conducted at the request of the Agency's Bureau of Land. 12/2Tr. at 39. Ms. Kovasznay was asked to ascertain if CLC was accepting waste and if so from what generators. *Id.* Ms. Kovasznay prepared a memorandum of her observations from that day. 12/2Tr. at 40, Comp.Exh. 13o. Ms. Kovasznay testified that she observed that CLC was "still operating and still accepting waste" 12/2Tr. at 40. Ms. Kovasznay stated that the Agency's opinion was that CLC could not accept waste as of the date of the inspection. *Id.*

**Forms Filed by CLC**

**Capacity Certification Forms**

Ellen Robinson with the Agency testified concerning the annual capacity certification forms filed by CLC. 12/3Tr. at 4-5. The landfill capacity forms are submitted by landfill operators and the forms provide the Agency with an idea of how much capacity remains each

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year as well as how many cubic yards were accepted at a landfill in a given year. 12/3Tr. at 6. The April 19, 1993 landfill capacity certification form for the site was submitted by Andrews Environmental Engineering (Andrews). 12/3Tr. at 9-10, Comp.Exh. 14c. The remaining capacity, based on the form as of April 19, 1993, was 279,940 cubic yards. 12/3Tr. at 13-14, Comp.Exh. 14c at 2. The remaining life expectancy of the landfill was 1.35 years. 12/3Tr. at 15, Comp.Exh. 14c at 3. The signatures on the report are mayor for the City of Morris, Edward Pruim as secretary/treasurer for CLC and R. Michael McDermont the engineer. 12/3Tr. at 16-17, Comp.Exh. 14c at 4.

Ms. Robinson explained on cross-examination that 279,940 cubic yards is the remaining airspace capacity which is multiplied by the compaction rate to reach the gate yards capacity which would be 464,700 cubic yards. 12/3Tr. at 33.

Ms. Robinson next testified concerning the January 1, 1995 capacity certification form filed by CLC. 12/3Tr. at 17, Comp.Exh. 14d. The form covers a period from April 1, 1994, to December 31, 1994. 12/3Tr. at 18. The amount of capacity remaining on April 1, 1994, was 264,290 cubic yards and the amount of waste received by December 31, 1994, was 457,000 cubic yards. *Id.*, Comp.Exh. 14d at 3. Ms. Robinson opined that the landfill should be closed and noted that the form indicated zero years were remaining. *Id.* The form was signed by the mayor of Morris, Edward Pruim signed as secretary and James Andrews signed as engineer. 12/3Tr. at 19, Comp.Exh. 14d at 4.

On cross-examination, Ms. Robinson was not sure if the 264,290 cubic yards listed on the form were gate yards or airspace. 12/3Tr. at 34-37. This number was provided by the Agency, but Ms. Robinson does not know by whom or how the number was calculated. 12/3Tr. at 37-38.

The January 1, 1996 capacity certification form provided by CLC covered the time period from January 1, 1995, to December 31, 1995. 12/3Tr. at 20, Comp.Exh. 14e. Ms. Robinson testified that the remaining volume available for waste disposal as of January 1, 1995, was zero and that 540,135 cubic yards of waste was received by CLC. *Id.* Ms. Robinson stated that "there were zero years remaining, zero capacity, yet they took in waste." 12/3Tr. at 20. This form was signed by the mayor of Morris, Robert Pruim signed as president, and J. Douglas Andrews. 12/3Tr. at 21, Comp.Exh. 14e.

Ms. Robinson conceded that the capacity certification forms have no information on the height of the landfill and based on the forms, Ms. Robinson cannot determine if waste was placed at an elevation over the permitted capacity. 12/3Tr. at 30.

The January 1, 1997 landfill capacity certification form covered the period from January 1, 1996, until December 31, 1996, and covered both Parcels A and B. 12/3Tr. at 40-41, Comp.Exh. 14f at 3. The remaining capacity is listed as 1,774,789 cubic yards and CLC received 297,988 cubic yards during the prior twelve months. 12/3Tr. at 40-41, Comp.Exh. 14f at 2-3.

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**Loads Delivered to Site in 1994**

Mr. John Enger, who is the city clerk for Morris, testified concerning the records kept for dumping at the site. 12/2Tr. at 119-20, Comp.Exh. 26. The information for each month is compiled from daily tickets delivered to Chamlin & Associates. 12/2Tr. at 120. Chamlin & Associates compile reports and then send a bill to CLC. *Id.* Morris also keeps the reports compiled by Chamlin & Associates. 12/2Tr. at 121. The reports were admitted into the record. *Id.*, Comp. Exh. 26.

**Permit Applications**

Christina Roque reviews permit applications for the Agency and has been doing so since 1992. 12/2Tr. at 62. Ms. Roque is the permit engineer assigned to work with the site. 12/2Tr. at 62-63. Ms. Roque testified concerning the January 5, 1989 permit application filed for the site. *Id.* The operator is listed as CLC and the application was signed by the mayor of Morris as owner, and Edward Pruim, secretary/treasurer for CLC. 12/2Tr. at 63, Comp.Exh. 1a at 8-9[6]. On a site sketch the final elevation is specified as 580 feet above sea level. 12/2Tr. at 67, Comp.Exh. 1a at 21.

On June 5, 1989, the Agency issued the permit in response to the January 5, 1989 application. 12/2Tr. at 67, Comp.Exh. 2a. The permit was sent to Morris and CLC, whose address was in Crestwood. *Id.* Ms. Roque testified that the permit incorporated the 580 foot height limit. 12/2Tr. at 68, Comp.Exh. 2a at 1.

Ms. Roque noted that a 1993 biennial review of the closure plan was filed by CLC and signed by Edward Pruim as secretary/treasurer. 12/2Tr. at 68, Comp.Exh. 1c. The biennial review was also signed by the mayor of Morris. Comp.Exh. 1c at 2. A permit was issued on April 20, 1993, in response to the biennial review. 12/2Tr. at 68, Comp.Exh. 2b. The April 20, 1993 permit requires financial assurance in the amount of $1,342,500 to be posted within 90-days of the date of the permit. 12/2Tr. at 69, Comp.Exh. 2b at 2. This permit was also mailed to CLC at the Crestwood address. *Id.*

On August 5, 1996, an application for significant modification permit for Parcel B was filed. 12/2Tr. at 69, Comp.Exh. 1e. The application was signed by the mayor of Morris, Robert Pruim, president and R. Michael McDermont of Andrews. 12/2Tr. at 70, Comp.Exh. 1e at 2. The August 5, 1996 application includes a diagram of the landfill that includes a height of 580 feet. *Id.*

On April 30, 1997, CLC filed an addendum to the August 5, 1996 application. 12/2Tr. at 70, Comp.Exh. 1f. The addendum includes information that the landfill is overheight by a total of 475,00 cubic yards. 12/2Tr. at 71, Comp.Exh. 1f at 17. The cost estimate for removal of the overheight is $950,000. *Id.* Ms. Roque testified that CLC was to file an application to modify

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[6] As the pages are not numbered sequentially in exhibits 1a, 1c, 1e, and 1f, all page numbers were derived by counting the pages starting with the first as number one.

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the final grade of Parcel B, after the waste was relocated. 12/2Tr. at 71. Ms. Roque stated that the Agency has not received such an application and that Agency has no indication that the waste was relocated. *Id.*

On October 24, 1996, the Agency granted a supplemental permit to CLC which included requirements for financial assurance. 12/2Tr. at 72, Comp.Exh. 2c. The cost estimate for closure and post-closure care was $1,431,360 and the operator was required to provide financial assurance within 90 days of the permit issuance. 12/2Tr. at 72, Comp.Exh. 2c at 3. In addition, the permit required financial assurance in the amount of $1,439,720 be posted prior to operation of the gas extraction system. *Id.*

Ms. Roque testified that she had never seen a document signed by Robert or Edward Pruim as individuals, but only as representatives of the corporation. 12/2Tr. at 78-79. Ms. Roque has no knowledge as to whether officers or shareholders of CLC had any personal knowledge or involvement in the alleged violations. 12/2Tr. at 79-80.

Ms. Roque testified that a surveyor was hired by the Agency to determine the overheight, probably after 2000. 12/2Tr. at 81-82. The survey indicates that the volume above the elevation of 580 feet is 287,321 cubic yard, but Ms. Roque in her testimony continued to use the 475,000 cubic yard figure, because that was the number provided in the application. 12/2Tr. at 83, Resp.Exh. 11.

**Calculation of Economic Benefit**

Ms. Roque prepared a document that represents the Agency's estimate of cost savings from a delayed application for a significant modification permit. 12/2Tr. at 73-74, Comp.Exh. 8. Ms. Roque used the cost estimates from a permit application filed in 2000, and calculated a cost of delayed application, considering the variance received by CLC for the significant modification permit, to be $44,526. 12/2Tr. at 74-75, Comp.Exh. 18 at 2. Ms. Roque calculated the cost without considering the variance at $80,704. *Id.* Ms. Roque calculated the cost based on the more stringent new regulations that a facility must follow after the issuance of a significant modification permit. 12/2Tr. at 75. Specifically, Ms. Roque looked at the monitoring requirements and the frequency of monitoring not required under the old rules and calculated the costs. 12/2Tr. at 75-76.

Blake Harris has been with the Agency since 1993 and is familiar with the site, having testified in prior cases related to the site. 12/2Tr. at 92-94. Mr. Harris testified that the Agency's opinion of the cost savings for failure to provide financial assurance from 1993 to 1996 is $47,871.33. 12/2Tr. at 95, 100-01, Comp.Exh. 19. Mr. Harris verified the information used to calculate the cost savings. *Id.* Mr. Harris stated that the savings were calculated by taking the amount of financial assurance required in the permit minus the financial assurance that was in place and multiplied by a rate of two percent per annum for each day that there was an inadequate amount of financial assurance. 12/2Tr. at 96. Mr. Harris arrived at the two percent per annum figure because a bond furnished by CLC was at two percent per annum; however, based on his experience two percent per annum was low. 12/2Tr. at 99-100, Comp.Exh. 9.

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Gary Styzens is an internal auditor for the State and has been doing this work for about 25 years. 12/2Tr. at 125. He began with the Agency in 1990 and held positions as an internal audit supervisor and chief internal auditor. 12/2Tr. at 131, 134. Mr. Styzens stated that in his opinion "economic benefit" is a type of financial analysis designated by the United States Environmental Protection Agency (USEPA). 12/2Tr. at 133. An economic benefit is where you attempt to identify the financial advantage an organization accrued by either delaying or avoiding expenditures necessary for environmental compliance. *Id.* Mr. Styzens stated that by avoiding or delaying expenditures an organization receives an unfair advantage over competitors who did make the necessary expenditures for compliance. *Id.* Mr. Styzens indicated that the analysis is attempting to identify the financial advantage in order to level the financial playing field. *Id.*

Mr. Styzens begins his analysis by gathering information "geared toward identifying delayed or avoided expenditures relating" to the noncompliance. 12/2Tr. at 139. Mr. Styzens is given parameters or assumptions to work from and the information can come from the corporations being examined while others may come from the attorneys at the Agency. *Id.* Mr. Styzens reviews the documents and makes some assumptions as to whether the estimates are accurate for the delayed or avoided expenditures. *Id.* Mr. Styzens has reviewed a number of documents related to economic benefit including the USEPA's BEN (an acronym for economic benefit) Manual. 12/2Tr. at 140-41. Mr. Styzens' objective in performing these tasks is to develop an objective, reasonable estimate of the financial advantage a corporation has accrued by delayed or avoided compliance. 12/2Tr. at 141-42.

Mr. Styzens performed an economic benefit analysis for this case at the request of the Agency's chief legal counsel and the Office of the Illinois Attorney General. 12/2Tr. at 143. Mr. Styzens provided a written report which was admitted as an exhibit (Comp.Exh. 17). *Id.* Mr. Styzens detailed three types of avoided costs, "Avoidance in Removal of Excess/Overheight Waste," "Avoidance of Post-Closure Costs – Significant Mod Application," and "Avoidance of Financial Assurance Upgrade Costs." 12/2Tr. at 146, Comp.Exh. 17 at 1. The avoided costs information was provided by the Attorney General's Office and these figures were the starting point for estimating the economic benefit. 12/2Tr. at 146.

On the issue of overheight, Mr. Styzens used information from Andrews in 1997 that indicated the cost of removal of some of the overheight waste would be $950,000. 12/2Tr. at 147. Mr. Styzens used that figure to analyze the financial impact of avoiding that cost. *Id*, Comp.Exh. 17 at excel spread sheet 1. Mr. Styzens examined the non-compliance period. *Id.* Mr. Styzens then took the sum and applied a potential tax break and arrived at an "after-tax avoided expenditure" and applied a time value interest rate. 12/2Tr. at 149-50, Comp.Exh. 17 at excel spread sheet 1. The interest rate used was the bank prime loan rate. *Id.* Mr. Styzens estimated the economic benefit for not removing the overheight to be $1,339,793. 12/2Tr. at 152, Comp.Exh. 17 at excel spread sheet 1.

Mr. Styzens received the information on post-closure costs – significant mod application for the Attorney General's Office based on the change in regulations in 1992. 12/2Tr. at 154, Comp.Exh. 17 at excel spread sheet 2. The cost of the additional monitoring was determined to

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be $44,526. *Id.* Mr. Styzens performed the same analysis as with the overheight issue and found an economic benefit of $73,950. 12/2Tr. at 156, Comp.Exh. 17 at excel spread sheet 2.

On financial assurance, the figures were again provided to Mr. Styzens by the Attorney General's Office. 12/2Tr. at 157. The avoided costs were established as $32,074. *Id.* Comp.Exh. 17 at excel spread sheet 3. Mr. Styzens performed the same analysis, and found an economic benefit of $72,336. *Id.* The resulting total economic benefit calculated by Mr. Styzens is $1,486,079. 12/2Tr. at 158.

**Testimony of James Pelnarsh Sr.**[7]

Mr. Pelnarsh is the site operator for the site and has been with CLC since 1983. 12/4Tr. at 9-10. Mr. Pelnarsh reports to either Edward or Robert Pruim who are the only officers and shareholders in CLC. 12/4Tr. at 10-11. Mr. Pelnarsh did not negotiate the agreement to operate the site, that was done by the Pruims. 12/4Tr. at 11. The main office of CLC has never been at the site. 12/4Tr. at 13. Mr. Pelnarsh does not set the dump fees or choose the customers and the business is done primarily by credit. 12/4Tr. at 13-14. Mr. Pelnarsh maintains a daily log of dumping volumes but a monthly log was the responsibility of the main office. *Id.*

Mr. Pelnarsh indicated that Andrews was the engineering firm through the 1990s for CLC, but Mr. Pelnarsh did not hire Andrews and does not know who did. 12/4Tr. at 15. Mr. Pelnarsh is not familiar with the permits for the landfill and copies of the permits were not kept at the site. 12/4Tr. at 16. Mr. Pelnarsh has no responsibility for permitting. *Id.*

Mr. Pelnarsh was also not involved in negotiations for the installation of a gas energy system at the landfill. 12/4Tr. at 16. Mr. Pelnarsh could not recall who told him that the system would be installed. 12/4Tr. at 17.

Mr. Pelnarsh generally accompanied Agency inspectors on their inspections and believed that the relationship was a good one. 12/4Tr. at 18-19. Mr. Pelnarsh did not prepare a report after the inspections. 12/4Tr. at 19. Mr. Pelnarsh reiterated the statements from his affidavit (Resp.Exh. 9) that he did not tell Mr. Weritz that litter was not being picked up at the end of the day. *Id.*

Mr. Pelnarsh discussed excavations in the area around Morris and stated that brownish water and water with an odor of rotten eggs can be found. 12/4Tr. at 20-21, Resp.Exh. 9 at 2. Mr. Pelnarsh asserts that leachate is black and he did not agree with Mr. Weritz's characterization of the liquid as leachate. *Id.* Mr. Pelnarsh stated that a strip mine across the street also had brown water and even a half mile away you can run into brown water. *Id.* Mr. Pelnarsh did not take samples of the water and has not tested the iron content. 12/4Tr. at 21-22.

Mr. Pelnarsh's affidavit was based on his recollections at the time the affidavit was signed, including his descriptions of conversations with Ms. Kovasznay. 12/4Tr. at 22, Resp.Exh. 9 at 2-3. Mr. Pelnarsh stated in his deposition that he believed that engine was being

[7] James Pelnarsh Sr. is referred to as both Mr. Pelnarsh Sr and Mr. Pelnarsh.

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tested on the gas system when Ms. Kovasznay was present, but Mr. Pelnarsh conceded that the operators of the gas system did not report to him. 12/4Tr. at 23, Resp.Exh.9 at 3.

Mr. Pelnarsh did not have the authority to cease operations at the site. 12/4Tr. at 24-25. Mr. Pelnarsh did not submit landfill capacity certification forms to the Agency and the overheight was not his responsibility. *Id.* Mr. Pelnarsh does believe that there is available capacity in Parcel B, and believed that space was available when waste stopped being accepted in Parcel B. 12/4Tr. at 26. Mr. Pelnarsh does not recall ever being directed by the Pruims to place waste in Parcel B above the permitted height. *Id.*

In 1994, 1995, and 1996, Mr. Pelnarsh decided where to place waste in Parcel B and he did not discuss that decision with the Pruims. 12/4Tr. at 27. Mr. Pelnarsh has been deciding where to place the waste at the site since the time he started working at the site, without any input from the Pruims. *Id.* Mr. Pelnarsh is the operator and he has made the decisions on the day-to-day operations of the landfill. 12/4Tr. at 28. Mr. Pelnarsh had on occasion made a decision to close the landfill. *Id.*

When Mr. Pelnarsh found out that Parcel B was allegedly overheight, Mr. Pelnarsh was not placing waste in Parcel B. 12/4Tr. at 29-30. Mr. Pelnarsh has never personally verified that Parcel B was overheight or filled beyond the capacity. 12/4Tr. at 30. Mr. Pelnarsh believes that there is still capacity in Parcel B and there is no waste in that area today. 12/4Tr. at 31. Mr. Pelnarsh indicated that dirt was being moved from Parcel B to Parcel A for daily cover for over two years and estimates that over 100,000 yards of dirt was moved. *Id.*

**Testimony of Robert Pruim**

Robert Pruim is president and one of two owners of CLC. 12/4Tr. at 35. CLC was formed to operate Morris CLC and the offices were located in Riverdale and Crestwood. 12/4Tr. at 37. Robert Pruim has been involved in various businesses that were engaged in waste hauling, disposal and transportation. 12/4Tr. at 36-37. After 1985, the Pruims managed CLC except that they did not "have anything to do with the site operations." 12/4Tr. at 39.

The Pruims personally guaranteed royalties to Morris in the CLC lease agreements and between 1990 and 2000 personally guaranteed bank loans and surety bonds on behalf of CLC. 12/4Tr. at 41. Tipping fees were based on other landfills in the area and with input from Mr. Pelnarsh, tipping fees were set at the site. 12/4Tr. at 41-42. The credit applications were approved at the Crestwood office and the Pruims hired Andrews. 12/4Tr. at 43-44.

Robert Pruim and Edward Pruim signed documents as owners and officers of CLC, including landfill capacity certifications. 12/4 at 45-47, Comp.Exh. 14d and 14e. Robert Pruim believes that Parcel B has available space and there is nothing in the landfill capacity certification forms signed by Robert Pruim which indicates the elevation. *Id.* Robert Pruim believes that the space where the garage office is located is permitted space and he did not understand that the forms he signed indicated there was not space available. 12/4Tr. at 48. Robert Pruim disputed the information with the engineer and believes the issue was corrected on the form filed in 1997. 12/4Tr. at 49-50, Comp.Exh. 14f.

CLC did not put in the gas collection system and did not get royalties on the system. 12/4Tr. at 50-51. Robert Pruim understood that the operator of the system, who also had hired Andrews, would prepare all permitting documents. 12/4Tr. at 51. Any work done by Andrews on the gas collection system was done on behalf of the gas collection system operator and not CLC. 12/4Tr. at 51-52. Robert Pruim understood that the operator would pay for the increased financial assurance. 12/4Tr. at 52.

## Testimony of Edward Pruim

Edward Pruim is the secretary/treasurer and one of two shareholders in CLC. 12/4Tr. at 70-71. Edward Pruim personally guaranteed royalties to Morris between 1990 and 2000 and personally guaranteed bank loans and surety bonds on behalf of CLC. 12/4Tr. at 72. Also during that time period the Pruims were the only persons authorized to sign checks on behalf of CLC. 12/4Tr. at 73. Edward Pruim conceded that only the Pruims could have increased financial assurance on behalf of CLC. 12/4Tr. at 73-74.

Edward Pruim and Robert Pruim signed documents as owners and officers of CLC, including landfill capacity certification forms. 12/4Tr. at 74, Comp.Exh. 14d and 14e. Edward Pruim concedes that the landfill capacity certification form states that there is no remaining disposal capacity. *Id.* Edward Pruim stated that there is financial assurance in the form of bonds, but there is no additional financial assurance. 12/4Tr. at 75-76.

Edward Purim also believes there is still capacity in Parcel B as the original permitted footprint included areas where there are buildings located. 12/4Tr. at 78-79. Edward Pruim believes there is enough remaining capacity in Parcel B to accommodate any waste overheight. 12/4Tr. at 80. Edward Pruim was aware of the dirt moved from Parcel B to Parcel A, and he believes that was done to address the overheight. 12/4Tr. at 81.

Edward Pruim indicated that there was always some financial assurance and CLC worked on increasing the financial assurance "on a constant basis" after being notified that the financial assurance needed to be increased. 12/4Tr. at 84-85.

CLC did not have rights to parcel A in 1993 and they approached Morris to get control over Parcel A. 12/4Tr. at 86-87. On November 14, 1994, a lease agreement became effective. 12/4Tr. at 88, Resp. Exh. 51. At that time, CLC prepared to file an application for a significant modification permit and Edward Pruim as an officer was involved in the application. 12/4Tr. at 86, 88. CLC sought a variance to be allowed to file the application, which the court ultimately allowed. 12/4Tr. at 88-89.

## CLC ALLEGED VIOLATIONS

The Board will now summarize the arguments and issues on each of the counts that have not been adjudicated in PCB 97-193. The Board will arrange the counts based on the allegations and facts relating to the counts, thus the counts are not discussed chronologically.

**Count I, II, and VI (Daily Management of the Site)**

Counts I, II and VI, along with previously adjudicated violations of Counts III and XIII, all involve the daily operations of the landfill including the management of refuse and litter at the site and leachate. *See* 97Comp. at 6, 8, 10, 18, 38. These alleged violations are related to landfill maintenance, supervision, and daily operation. The Board will summarize the arguments by both parties on each count and then make the Board's finding for each count.

**Count I (Manage Refuse and Litter)**

In Count I, the complaint alleges violations of Sections 21(d)(2), 21(o)(1), (5) and (12) of the Act (415 ILCS 5/21(d)(2), 21(o)(1), (5) and (12) (2008)) and 35 Ill. Adm. Code 807.306. 97Comp. at 4.

**People's Arguments.** The People argue that these violations occurred during inspections made by the Agency between 1994 and 1999. Br. at 32. Specifically, the People point to testimony of Mr. Weritz and inspection reports that include observations by Mr. Weritz of litter present in the water in the perimeter ditches and uncovered waste from the previous operating day. *Id.* The People also point to Ms. Kovasznay's testimony and inspection reports which indicate observations of blowing litter and statements made by Mr. Pelnarsh. Br. at 33.

The People take issue with Mr. Pelnarsh's testimony and deposition statement that he did not tell Mr. Weritz that the litter was not collected each day. Br. at 33. The People point out that Mr. Pelnarsh's testimony is based on his recollections and he did not prepare reports of the inspections. *Id.* The People argue that Mr. Weritz's testimony supported by the inspection report should be "considered far more credible" than the recollections of Mr. Pelnarsh about a conversation eight years prior. *Id.*

The People argue that the Board should find for the People as the record establishes that refuse was present in standing or flowing water in violation of Section 21(o)(1) of the Act (415 ILCS 5/21(o)(1) (2008)). Br. at 33-34. Further, the People argue that the record supports a finding that refuse from a previous operating day remained uncovered in violation of Section 21(o)(5) of the Act (415 ILCS 5/21(o)(5) (2008)) and Section 807.306 of the Board's rules (35 Ill. Adm. Code 807.306). Br. at 34. Finally, the People maintain that by violating Section 807.306, a violation of Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) has been established.

**Respondents' Arguments.** Respondents assert that the People have failed to prove that refuse and litter were inadequately managed. Resp.Br. at 24. The respondents claim that the inspectors did not return at the end of the day or observe conditions at the end of the day. Resp.Br. at 25. Further, respondents claim that pictures taken during inspections show attempts to control litter. *Id.* Finally, respondents argue that the inspectors had no independent evidence that the uncovered refuse was from the prior operating day. *Id.*

In contrast, respondents assert that Mr. Pelnarsh testified that he did not tell Mr. Weritz that litter was left at the end of the day and that the practice was to pick up litter at the end of the

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day. Resp.Br. at 26. Respondents argue that Mr. Pelnarsh testified that there were employees whose job was to pick up litter. *Id.* The respondents opine that the State has failed to establish that CLC failed to adequately manage litter and refuse. *Id.*

**Board Finding.** The Board must determine based on a preponderance of the evidence whether or not the violations occurred. Here, respondents emphasize that the inspectors did not return at the end of the day and the Board is cognizant that Section 21(o)(5) and (12) of the Act (415 ILCS 5/21(o)(5) and (12) (2008)) require compliance at the end of the operating day. However, the Board has reviewed all the evidence in the record including the inspection reports. Although the images in many of the photographs are not clear due to reproduction issues, the narrative descriptions are clear. Mr. Pelnarsh on at least one occasion admitted that the litter was not being picked up. *See* Comp.Exh. 13b. The Board is persuaded that the inspectors observed uncovered refuse from the previous operating day (Comp.Exh. 13j at pic 7), as well as litter and refuse in standing water.

The Board notes that at hearing Mr. Pelnarsh denied having told Mr. Weritz that litter was not being collected and some evidence in the record indicates an attempt is being made to control litter. However, the Board finds that the contemporaneous inspection narratives along with the inspectors' recall are more persuasive than Mr. Pelnarsh's memory. Furthermore, achieving compliance with the Act and Board regulations on some occasions does not negate facts here which demonstrate that during some inspections litter and refuse were not properly managed. The Board finds that CLC violated Sections 21(d)(2), 21(o)(1), (5) and (12) of the Act (415 ILCS 5/21(d)(2), 21(o)(1), (5) and (12) (2008)) and 35 Ill. Adm. Code 807.306.

**Count II (Leachate Flow)**

Count II of the complaint alleges that CLC caused or allowed violations of Sections 21(d)(2) and 21(o)(2) and (3) of the Act (415 ILCS 5/21(d)(2) and 21(o)(2) and (3) (2008)) and 35 Ill. Adm. Code 807.314(e) of the Board regulations, by allowing leachate to exit the landfill boundaries and enter waters of the State. 97Comp. at 8.

**People's Arguments.** The People argue that Mr. Weritz's inspections in 1994 and 1995 support a finding of violation as alleged in Count II of the complaint. Br. at 34. The People note that Mr. Weritz observed leachate seeps that were flowing to the perimeter ditches. Br. at 34-35. The People argue that Mr. Weritz identified the liquid as leachate based on the color and odor of the liquid. Br. at 35. The People claim that the presence of the liquid in the perimeter ditches and the retention pond are persuasive evidence that the respondents failed to stop leachate from flowing out of the sides of the landfill. *Id.* The People assert that the respondents "make much of the fact that no samples" of the leachate were taken; however, the respondents do not propose what test should be performed. *Id.* The People note that respondents assert that the red color is due to iron deposits, but no evidence was presented to support this claim. *Id.*

The People argue that the leachate entered surface waters in the perimeter ditches and retention pond. Br. at 35-36. The People maintain that causing or allowing leachate to enter the perimeter ditches and retention pond is a violation of Section 21(o)(2) of the Act (415 ILCS 5/21(o)(2) (2008) and Section 807.314(e) of the Board's rules (35 Ill. Adm. Code 807.314(e)). .

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Finally, the People maintain that by violating Section 807.314(e), a violation of Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) has been established.

**Respondents' Arguments.** The respondents assert that the evidence presented by the People is insufficient to prove violations against CLC. Resp.Br. at 26. Respondents note that Mr. Weritz had no independent evidence that the seeps he saw remained at the end of the day and seeps he had noted during prior inspections were fixed. *Id.* Mr. Weritz never sampled the liquid and he never actually saw the liquid leave the site. Resp.Br. at 27. Conversely, the respondents note that Mr. Pelnarsh disagrees that the liquid was leachate because the color of the liquid was not black and Mr. Pelnarsh testified that the liquid having the same appearance and odor was found in the area. Resp.Br. at 27.

The respondents opine that the People have failed to establish that CLC should be found to have violated Sections 21(d)(2) and 21(o)(2) of the Act (415 ILCS 5/21(d)(2) and 21(o)(2) (2008) and Section 807.314(e) of the Board's rules (35 Ill. Adm. Code 807.314(e)). The respondents argue that the People have not proven that the liquid is leachate or that the liquid was a nuisance. Resp.Br. at 28. Therefore the People argue that the Board should find for CLC. *Id.*

**Board's Finding.** First, the Board must decide if the record establishes that the liquid observed by the Agency inspectors is leachate and the Board finds that the liquid is leachate. The Board notes that "leachate" is defined in the Board's rules as "liquid containing materials removed from solid waste." 35 Ill. Adm. Code 807.104. The Board is convinced that liquid seeping from the landfill, as described by the Agency inspectors, clearly meets the definition of leachate. The Board is not persuaded by Mr. Pelnarsh's testimony concerning the color of liquid in the area being similar to the liquid observed at the landfill site. The color of leachate can be affected by the constituents in the water that contacts waste or even by the constituents in the waste.

Next, the Board must determine whether leachate entered the waters of the State (Section 21(o)(2)). "Waters" are defined in the Act as "all accumulations of water" including artificial and private in the State. 415 ILCS 5/3.550 (2008)). Thus, the retention pond and perimeter ditches are waters of the State and the evidence overwhelmingly establishes that leachate was found in those waters. Therefore, the Board finds that CLC violated Section 21(o)(2) of the Act (415 ILCS 5/21(o)(2) (2008)) and Section 807.314(e) of the Board's rules (35 Ill. Adm. Code 807.314(e)) by failing to adequately control leachate resulting in leachate entering the waters of the State.

Finally, the Board must determine whether the evidence indicates that leachate exited the landfill confines (Section 21(o)(3)). The Board finds that the observations of Mr. Weritz establish that the leachate, after entering the perimeter ditches, was migrating offsite. *See* 12/3Tr. at 72, Comp.Exh. 13f. Therefore, the Board finds that CLC violated Section 21(o)(3) of the Act (415 ILCS 5/21(o)(3) (2008)).

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Count VI (Water Pollution)

In Count VI the complaint alleges that that CLC caused or allowed water pollution in violation of Section 12(a) of the 21(d)(2) of the Act (415 ILCS 5/12(a) and 21(d)(2) (2008)) and Section 807.313 of the Board's landfill regulations. 97Comp. at 40.

**People's Arguments.** The People state that these allegations are based on the May 22, 1995 inspection by Mr. Weritz and incorporate the arguments made above, under Count II, for Count VI. Br. at 36.

The People argue that the evidence clearly indicates that leachate entered perimeter ditches and the retention pond at the site and that there were seeps on the sides of the landfill. Br. at 36. The People assert that dark staining indicates leachate flow and the "foul-smelling, colored liquid" in the retention ponds supports a finding of violation. Br. at 36-37. The People maintain that leachate is a contaminant and liquid coming into contact with the waste at the site "may be presumed" to create a nuisance and that is all that is necessary for leachate to cause water pollution. Br. at 37.

The People argue that respondents presented no evidence on this issue, noting that a witness who provided an affidavit did not testify at hearing. Br. at 37. The People assert that the respondents did not test the leachate to prove the off-color and odor were due to iron. *Id.* The People opine that there can be only one conclusion that Mr. Weritz correctly identified the leachate entering the waters of the State. *Id.*

The People note that Section 12(a) of the Act (415 ILCS 5/12(a) (2008)) prohibits causing, threatening or allowing water pollution while Section 807.313 (35 Ill. Adm. Code 807.313) prohibits operating a landfill in a manner to cause, threaten or allow water pollution. Br. at 27. Furthermore, the People note that Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) prohibits conducting waste disposal in a manner that violates Board regulations. *Id.* Therefore, the People argue that the Board should find for the People on Count VI. Br. at 37-38.

**Respondents' Arguments.** Respondents set forth the same argument for this count as in Count II above, but also add that the People have not proven that the liquid at the site resulted in water pollution. Resp.Br. at 26-28. The respondents rely on the definition of water pollution at Section 3.545 of the Act (415 ILCS 5/3.545 (2008)) to support the argument. Resp.Br. at 26. The respondents maintain that the People have not established that the liquid created a nuisance, or that the waters of the State were rendered harmful, detrimental or injurious to the public health safety and welfare by discharge of the liquid. Resp.Br. at 28. The respondents assert that those factors are prerequisites to a finding of water pollution. *Id.* The respondents argue that the Board should rule for CLC on this count. *Id.*

**Board's Findings.** Having found that the liquid is leachate and that the leachate did enter waters of the State and leave the landfill, the Board must now decide if CLC's actions resulted in water pollution. The Board is unconvinced by respondents' argument that the People have failed to prove a violation of Section 12(a) of the Act (415 ILCS 5/12(a) (2008)). The

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Board is convinced that leachate in waters of the State will at a minimum "threaten" to "cause or tend to cause water pollution". Therefore, the Board finds that the evidence supports a finding that CLC violated of Section 12(a) of the Act (415 ILCS 5/12(a) (2008)).

**Count XIX (Financial Assurance)**

Count XIX involves allegations that financial assurance was not timely increased in violation of permit conditions and thus in violation of Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)). On October 3, 2002, the Board found that CLC had failed to increase financial assurance within 90 days from October 24, 1996, in the amount of $1,431,360. However, the Board found that there were issues of material fact as to whether or not CLC failed to increase the financial assurance amount to $1,439,720 prior to the operation of the gas extraction system. The Board will summarize the arguments of the parties and then make a finding on the remaining issues in Count XIX.

**People's Arguments**

The People argue that the facts establish that CLC failed to increase the financial assurance prior to beginning the operation of the gas management system. Br. at 24. In support of this argument the People note that Ms. Kovasznay inspected the site on March 31, 1999, and the gas extraction system was running. *Id.* Ms. Kovasznay testified that she heard the gas turbines running and based on statements by Mr. Pelnarsh she determined that the gas extraction system was running. *Id.*, 12/2Tr. at 21, 27. The People further note that Ms. Kovasznay noted the information concerning the gas management system in her inspection report. *Id.*, Comp.Exh. 13i at 7.

In contrast, the People point out that Mr. Pelnarsh's denials are based only on his recollections and no reports were made by Mr. Pelnarsh of the inspections. Br. at 24-25. The People argue that the Board should find Mr. Pelnarsh's testimony and affidavits are not accurate. Br. at 25. The People assert that the Board should find that CLC began operation of the gas management system prior to securing the appropriate financial assurance in violation of special condition 13 and Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008). Br. at 25.

**Respondents' Arguments**

The respondents argue that the People have failed to prove when the gas collection system began to operate and therefore have failed to prove the violation. Resp.Br. at 22. The respondents claim that the sole evidence presented by the People is that on March 31, 1999, Ms. Kovasznay observed the gas collection system in operation. *Id.* However, the respondents argue that Mr. Pelnarsh testified that the system was being tested and that he did not remember making a statement to Ms. Kovasznay that the system was in operation. *Id.* The respondents maintain that Ms. Kovasznay has no other evidence to support the allegation that the system was running. Resp.Br. at 23. The respondents claim that the People have failed to establish that the system was running and CLC should not be found in violation. *Id.*

Board's Findings

The key issue to be decided here is: when did the gas management system begin to operate? The Board has reviewed the evidence in the record which is exclusively the testimony and inspection report by Ms. Kovasznay and testimony of Mr. Pelnarsh. Ms. Kovasznay testified that she heard the engines running for the system and was informed by Mr. Pelnarsh the system had been running for a month. She noted these observations and conversations in her contemporaneous narrative of the inspection. *See* Comp.Exh. 13l. Mr. Pelnarsh's memory is that the system was being tested and he does not recall telling Ms. Kovasznay that the system was running. As before, the Board finds that the contemporaneous inspection narratives along with the inspectors recall are more persuasive than Mr. Pelnarsh's memory, which was not supported by contemporaneous notes. In addition, Ms. Kovasznay indicated that the gas management system was also running on July 20, 1999, and that Mr. Pelnarsh had been informed that there was no permit to run the system both at the last inspection and on the phone. *See* Comp.Exh. 13n. Therefore, the Board finds that the gas management system was operating on or before March 31, 1999, and as a result CLC violated permit conditions and Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)).

Count XV (Gas Collection System Permit Condition)

Count XV alleges that CLC violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)) and special condition one of permit number 1996-240-SP. 97Comp. at 40. Specifically, the complaint alleges that special condition one required CLC to provide to the Agency specific information regarding the gas management system prior to the operation of the system and CLC failed to do so. 97Comp. at 39-40. The Board will summarize the arguments of the parties and then make a finding on the issues in Count XV.

People's Arguments

The People argue that the facts regarding this alleged violation are similar to those argued under Count XIX discussed above and relate to when the gas management system began operation. Br. at 39. The People reiterate their arguments that Ms. Kovasznay's testimony and the inspection reports should be considered more credible than Mr. Pelnarsh's statements. Br. at 39. The People maintain that responsibility for the gas collection system does not matter, as CLC was responsible for providing the information to the Agency before the system began operation. Br. at 40. The People argue that the Board should find that CLC violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)) and special condition one of permit number 1996-240-SP. *Id.*

Respondents' Arguments

The Respondents agree that this issue is similar to Count XIX in that the issue is: when did the gas management system begin to run? Resp.Br. at 30. The respondents assert that the only evidence put forth by the People is the testimony of Ms. Kovasznay that she observed the system running and heard the engines. *Id.* The respondents maintain that Mr. Pelnarsh's testimony refutes the observations of Ms. Kovasznay in that he stated the system was being

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tested. *Id.* The respondents claim that Ms. Kovasznay's testimony indicates she "does not know the mechanics" of the system and she had no other evidence that the system was running. *Id.* The respondents opine that the People have not proven their case and argue that the Board should find for CLC. Resp.Br. at 31.

**Board's Findings**

Because the Board finds that the gas management system was operating on or before March 31, 1999 (*See* Count XIX above), the Board also finds that CLC violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)) and special condition one of permit number 1996-240-SP.

**Count XVII (Leachate Collection Permit Condition)**

Count XVII alleges that CLC violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)) and special condition number eleven of supplemental permit 1996-240-SP. 97Comp. at 47. Specifically, the complaint alleges that on March 31, 1999, and July 20, 1999, CLC pumped leachate into new cells for added moisture and did not properly dispose of the leachate at a permitted facility. 97Comp. at 47. The Board will summarize the arguments of the parties and then make a finding on the issues in Count XVII.

**People's Arguments**

The People assert that special condition 11 requires that all gas condensate and leachate removed from the landfill be disposed of at a publicly owned treatment works or other treatment facility. Br. at 40. The People maintain that CLC was using leachate pumped from the landfill to increase the moisture content of new waste disposal cells. *Id.* The People rely on the testimony of Ms. Kovasznay who testified that Mr. Pelnarsh told her that the leachate was being used to increase moisture content of the clay used for liners. Br. at 41, 12/2Tr. at 26, 37. Ms. Kovasznay also included this information on her inspection reports. Br. at 41, Comp.Exh. 13l, 13n. The People note that Mr. Pelnarsh disagrees with Ms. Kovasznay's recall; however, Mr. Pelnarsh did not make notes or reports about the inspections. Br. at 41-42. The People argue that the Board should find that Mr. Pelnarsh's denials are not credible. Br. at 42.

**Respondents' Arguments**

Respondents argue that the People have not proven that CLC violated the permit condition as all the evidence the People have is the testimony of Ms. Kovasznay. Resp.Br. at 31. The respondents maintain the Mr. Pelnarsh's testimony contradicts the testimony of Ms. Kovasznay. *Id.* The respondents assert that Mr. Pelnarsh's testimony is credible and the People have not proven the case. Resp.Br. at 31-32.

**Board's Findings**

The Board is aware of the contradictory testimony on this issue. In this instance, Ms. Kovasznay did not directly observe the pumping of leachate but based her narrative on

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statements by Mr. Pelnarsh. *See* Comp.Exh. 13l and 13n. Mr. Pelnarsh states in his affidavit that he informed Ms. Kovasznay that he was using stormwater from the retention pond to wet the clay. Resp.Exh. 9 at 2. Mr. Pelnarsh stated that even if a small amount of leachate was in the stormwater he "did not consider this depositing waste in an unpermitted area of the landfill." *Id.*

The Board finds that Mr. Pelnarsh's own statements support a finding of violation. Mr. Pelnarsh's statement indicates that the liquid he used, even if stormwater, may have contained leachate. Therefore, pursuant to the permit conditions, the liquid should have been treated. The Board finds that the evidence supports a finding that CLC violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)) and special condition number eleven of supplemental permit 1996-240-SP.

## Count XX

The People presented no evidence on this count and ask that this count be dismissed. The Board will dismiss Count XX.

## Conclusion on CLC Violations

In ruling on two motions for summary judgment , the Board previously adjudicated CLC in violation of the Act and Board regulations as alleged in Counts III (landscape waste), IV (inadequate financial assurance), Count V (failed to timely file significant modification permit), Counts VII, VIII, IX, and X (daily operations at the site), Count XIII (waste tires), Count XVI (erosion), Count XIV (temporary fencing), Count XIX (in part financial assurance), and Count XXI (revised cost estimates). The Board finds today that CLC is also in violation of the Act and Board regulations as alleged in Count I (refuse and litter), Count II (leachate), Count VI (water pollution), Count XV (gas management system), Count XVII (improper use of leachate), and Count XIX (remaining allegations). The Board dismisses Count XX (improper use of leachate). Thus, the Board has found CLC violate numerous sections of the Act and Board regulations as alleged in a total of 17 counts.

## PRUIMS' ALLEGED VIOLATIONS

The Board will begin by summarizing a legal argument made by the People regarding the liability of the Pruims given their status as officers and sole shareholders of CLC. The Board will not make a finding in that Section of the opinion but will make general comments on the legal arguments. The Board will then summarize the arguments and issues on each of the counts that have not been adjudicated. The Board will arrange the counts based on the allegations and facts relating to the counts, thus the counts are not discussed chronologically.

## Personal Liability of Pruims

### People's Argument

The People argue that Robert and Edward Pruim should be held personally liable for the violations alleged in the complaint. Br. at 4. The People assert that the Act does not limit liability to corporations or business and in the two complaints the People allege similar or

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identical violations against the Pruims as alleged against CLC. *Id.* The People maintain that the Pruims can be held individually liable for "personal and direct actions" that constitute a violation of the Act. Br. at 5. The People also advance the argument that the Board consider applying the "responsible corporate officer doctrine". Br. at 7. The Board will summarize these arguments in turn.

**Personal and Direct Involvement.** The People rely on three cases for the proposition that personal liability of a corporate officer can be found for violations of the Act. Br. at 5-6. The People cite to People v. Agpro Inc. & David Schulte, 345 Ill. App. 3d 1011, 803 N.E.2d 1007 (2nd Dist. 2004), which is the only case decided after a "full evidentiary hearing" as well as People v. C.J.R. Processing, Inc., 269 Ill. App. 3d 1013, 647 N.E.2d 1035 (3rd dist. 1995) and People v. Tang, 346 Ill. App. 3d 277, 805 N.E.2d 243 (1st Dist. 2004). Br. at 5-6. In Agpro, the People note that the court affirmed a finding of liability of the corporate officer defendant, recognizing that individual liability could be found based on an individual's personal involvement. Br. at 5. The People assert that the court further found that an officer was not required to physically commit the violations to be held liable. *Id.*

The People argue that in both C.J.R. Processing and Tang, the court also held that corporate officers can be held responsible for their "personal involvement or active participation" in violations of the Act. Br. at 6. More specifically, in C.J.R. Processing the court found that simply alleging that the individual caused or allowed a violation was sufficient, while in Tang the court found that the State must allege personal involvement or active participation. *Id.* The People argue that the Board should apply the Agpro and C.J.R. Processing cases here because those cases "more accurately apply the Act's stated policy of holding those actually responsible liable for violations." *Id.* However, the People assert that "overwhelming" evidence of personal and direct involvement by the Pruims in the violations was presented at hearing. Br. at 6-7.

**"Responsible Corporate Officers Doctrine".** The People ask that the Board also consider holding the Pruims liable under the "responsible corporate officers doctrine" theory of liability. Br. at 7. The People explain that the responsible corporate officers doctrine imposes liability on a corporate officer with the responsibility for compliance, if that officer fails to proactively prevent violations. Br. at 7, citing United States v. Park, 421 U.S. 658, 675, 95 S.Ct. 1903, 1913; 44 L.Ed.2d 489, 502-03 (1975); United States v. Dotterweich, 320 U.S. 277, 281-84, 64 S.Ct. 134, 137-38, 88 L.Ed. 48 (1943). The People assert that the responsible corporate officer doctrine differs from the concept of direct liability because the doctrine does not require personal involvement of the corporate officer. Br. at 7.

The People assert that the doctrine has been used in several states and because the doctrine focuses on the ability to control a facility, the doctrine is consistent with Agpro and C.J.R. Processing. Br. at 7-8, citing Comm'r, Indiana. Department of Environmental Management v. RLG, Inc., 755 N.E.2d 556 (Ind. 2001); BEC Corp. v. Department of Environmental Protection, 775 A.2d 928 (Conn. 2001); State of Washington Department of Ecology v. Lundgren, 94 Wash.App. 236, 971 P.2d 948 (Wash.App. 1999) State of Minnesota v. Modern Recycling, Inc., 558 N.W.2d 770 (Minn.App. 1997). The People maintain that the evidence proves that the Pruims were personally and directly involved in the act that lead to

violations, including violations which the Board has already found CLC to have committed. Br. at 8.

The People maintain that the Pruims were the sole owners and officers of CLC from 1993 through 2000. Br. at 8. The main office for CLC was never at the landfill and financial affairs including writing checks, paying bills and establishing credit was done at the main office. *Id.* Records were also maintained at the main office. Br. at 9. The Pruims were the only persons authorized to sign checks for CLC and they provided personal guarantees for dumping royalties to Morris. *Id.* The People note that the Pruims also provided personal guarantees for financial assurance and one of them signed all permit applications and reports. Br. at 9-10.

**Respondents' Arguments**

The respondents' argue that the evidence at hearing was insufficient to establish personal liability for the Pruims on all counts. Resp.Br. at 2. The respondents claim that in order to attach a personal liability the evidence must establish by a preponderance that the Pruims were directly and personally involving in the acts giving rise to the alleged violations. *Id.* The respondents concede that the Pruims managed some corporate issues from an office 60 miles away from the landfill; however, the respondents assert that the Pruims were not involved in the day-to-day operations and had no involvement in the acts giving rise to the violations. *Id*

**Personal and Direct Involvement.** The respondents argue that in order to find the Pruims liable for violations the Board must find that the Pruims had personal involvement or active participation in the acts resulting in the violations. Br. at 6, citing Tang. The respondents assert that finding the Pruims actively participated in the management of CLC is not sufficient. *Id.*, People v. Petco Petroleum, 363 Ill. App. 3d 613,623, 841 N.E.2d 1065, 1073 (4th Dist. 2006). The respondents argue that two cases have been decided after full evidentiary hearing and both cases support respondents arguments. Br. at 7. The respondents maintain that in Petco Petroleum the court did not find the corporate officer to be personally liable, while in Agpro the court did find liability. *Id.* However, the respondents argue that an analysis of the court's findings supports the respondents' argument that the Pruims should not be held personally liable. *Id.*

The respondents assert that the facts of Petco Petroleum are analogous to the facts in this case. Br. at 7-9. Further, the respondents assert that in Agpro the court cited to specific evidence of the president's involvement. Br. at 11-12. The respondents maintain that the State has not provided sufficient evidence of the Pruims involvement in the operations to establish liability under either Petco Petroleum or Agpro. Br. at 9-10.

**"Responsible Corporate Officers Doctrine".** The respondents argue that the Board should not apply the responsible corporate officers doctrine as the People failed to cite any Illinois case law on point and the cases from other jurisdictions are distinguishable. Br. at 13. The respondents specifically take issue with the People's claim that the doctrine differs from the concept of direct liability because it does not require personal involvement, the respondents assert that an analysis of case law does not support this claim. *Id.*

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The respondents maintain that the Minnesota case did not decide the applicability of the doctrine; while the Lundgren case from Washington had a specific finding of hands on control. Br. at 13. Furthermore, the respondents assert that Lundgren relies on U.S. v. Gulf Park Water Co., Inc. 972 F.Supp 1056 (S.D.Miss. 1997) where liability was found when the officer exercised hand on control of the facility. *Id.* The respondents go on to argue that the Indiana case relied heavily on the officer's admission of responsibility and in BEC Corp the court emphasized the officer's control over the site. Br. at 14.

The respondents argue that the State has not presented a difference between active participation as applied by the Illinois courts and the doctrine. Br. at 14. Therefore, the respondents maintain that the Board should not apply the doctrine. *Id.*

**People's Reply**

The People argue that the Board should apply the responsible corporate officers doctrine and find the Pruims liable for operational violations. Reply at 7. The People assert that the evidence shows the Pruims were responsible for all finances, permits, arrangements with the landfill owner, and the Pruims controlled the amount of material disposed. *Id.* The People claim that the Pruims are attempting to shift liability to Mr. Pelnarsh who had no control over finances, was not provided dumping records and had no knowledge of permits. *Id.* The People maintain that the Board has found CLC liable for most of the operating violations and the Pruims were the only persons with the authority to prevent the violations. Reply at 8. The People assert that allowing the Pruims "to escape liability because of the concurrent existence of a corporation that they controlled" would defeat the purposes of the Act. *Id.*

**Board's Comments**

After a careful review of the cases cited by the People and respondents, the Board declines to adopt the responsible corporate officers doctrine in this case. The Illinois courts have consistently held that liability under the Act for a corporate officer requires personal involvement or active participation in violation of the Act. C.J.R. Processing, 269 Ill. App. 3d at 1018, 647 N.E.2d 1038; Tang, 346 Ill. App. 3d 289, 805 N.E.2d 254-5. The People have presented no persuasive authority or controlling authority which alters that well-settled holding. Furthermore, the Board notes that in responding to a motion to dismiss, the People urged the Board to apply C.J.R. Processing for purposes of reviewing the pleadings. *See* People v. Edward and Robert Pruim, PCB 04-207, (Nov. 4, 2004). Therefore, the Board will examine each of the alleged violations to determine if the People have proven that the Pruims had either personal involvement or were actively participating in acts which resulted in violations.

**Count I, II, III, VI and XII (Daily Management of the Site)**

Counts I, II, III, VI and XII all involve the daily operations of the landfill including the management of refuse and litter at the site and leachate. *See* 04Comp. at 7, 8-9, 11, 18, and 33. These alleged violations are related to landfill maintenance, supervision, and daily operation. The Board will summarize the arguments by both parties on each count and then make the Board's finding for each count.

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**People's Arguments on Count I**

In Count I, the complaint alleges violations of Sections 21(d)(2), 21(o)(1), (5) and (12) of the Act (415 ILCS 5/21(d)(2), 21(o)(1), (5) and (12) (2008)) and 35 Ill. Adm. Code 807.306. 04Comp. at 7. The People argue that these violations occurred during inspections made by the Agency between 1994 and 1999. Br. at 32. Specifically, the People point to testimony of Mr. Weritz and inspection reports that include observations by Mr. Weritz of litter present in the water in the perimeter ditches and uncovered waste from the previous operating day. *Id.* The People also point to Ms. Kovasznay's testimony and inspection reports which indicate observations of blowing litter and statements made by Mr. Pelnarsh. Br. at 33.

The People take issue with Mr. Pelnarsh's testimony and deposition statement that he did not tell Mr. Weritz that the litter was not collected each day. Br. at 33. The People point out that Mr. Pelnarsh's testimony is based on his recollections and he did not prepare reports of the inspections. *Id.* The People argue that Mr. Weritz's testimony supported by the inspection report should be "considered far more credible" than the recollections of Mr. Pelnarsh about a conversation eight years prior. *Id.*

The People argue that the Board should find for the People as the record establishes that refuse was present in standing or flowing water in violation of Section 21(o)(1) of the Act (415 ILCS 5/21(o)(1) (2008)). Br. at 33-34. Further the People argue that the record supports a finding that refuse from a previous operating day remained uncovered in violation of Section 21(o)(5) of the Act (415 ILCS 5/21(o)(5) (2008)) and Section 807.306 of the Board's rules (35 Ill. Adm. Code 807.306). Br. at 34. Finally, the People maintain that by proving violation of Section 807.306, a violation of Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) has been established.

**People's Arguments on Count II**

The People argue that Mr. Weritz's inspections in 1994 and 1995 support a finding of violation as alleged in Count II of the complaint. Br. at 34. The People note that Mr. Weritz observed leachate seeps that were flowing to the perimeter ditches. Br. at 34-35. The People argue that Mr. Weritz identified the liquid as leachate based on the color and odor of the liquid. Br. at 35. The People claim that the presence of the liquid in the perimeter ditches and the retention pond are persuasive that the respondents failed to stop leachate from flowing out of the sides of the landfill. *Id.* The People assert that the respondents "make much of the fact that no samples" of the leachate were taken; however, the respondents do not propose what test should be performed. *Id.* The People note that respondents assert that the red color is due to iron deposits, but no evidence was presented to support this claim. *Id.*

The People argue that the leachate entered surface waters in the perimeter ditches and retention pond. Br. at 35-36. The People maintain that causing or allowing leachate to enter the perimeter ditches and retention pond is a violation of Section 21(o)(2) of the Act (415 ILCS 5/21(o)(2) (2008) and Section 807.314(e) of the Board's rules (35 Ill. Adm. Code 807.314(e)). .

Finally, the People maintain that by proving violation of Section 807.314(e), a violation of Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) has been established.

**People's Arguments on Count VI (Water Pollution)**

The People allege in Count VI that the Pruims caused or allowed water pollution in violation of Section 12(a) of the 21(d)(2) of the Act (415 ILCS 5/12(a) and 21(d)(2) (2008)) and Section 807.313 of the Board's landfill regulations. 04Comp. at 18. The People state that these allegations are based on the May 22, 1995 inspection by Mr. Weritz and incorporate the arguments made above under Count II for Count VI. Br. at 36.

The People argue that the evidence clearly indicates that leachate entered perimeter ditches and the retention pond at the site and seeps on the sides of the landfill. Br. at 36. The People assert that dark staining indicates leachate flow and the "foul-smelling, colored liquid" in the retention ponds supports a finding of violation. Br. at 36-37. The People maintain that leachate is a contaminant and liquid coming into contact with the waste at the site "may be presumed" to create a nuisance and that is all that is necessary for leachate to cause water pollution. Br. at 37.

The People argue that respondents presented no evidence on this issue, noting that a witness who provided an affidavit did not testify at hearing. Br. at 37. The People assert that the respondents did not test the leachate to prove the off-color and odor were due to iron. *Id.* The People opine that there can be only one conclusion: that Mr. Weritz correctly identified the leachate entering the waters of the State. *Id.*

The People note that Section 12(a) of the Act (415 ILCS 5/12(a) (2008)) prohibits causing, threatening or allowing water pollution while Section 807.313 (35 Ill. Adm. Code 807.313) prohibits operating a landfill in a manner to cause, threaten or allow water pollution. Br. at 27. Furthermore, the People note that Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) prohibits conducting waste disposal in a manner that violates Board regulations. *Id.* Therefore, the People argue that the Board should find for the People on Count VI. Br. at 37-38.

**People's Arguments on Count III (Landscape Waste)**

The People note that on October 3, 2002, the Board found that CLC had violated Section 22.22(c) of the Act (415 ILCS 5/22.22(c) (2008)) by failing to properly dispose of landscape waste. Br. at 38. The People allege that the Pruims also violated Section 22.22(c) of the Act (415 ILCS 5/22.22(c) (2008)) by failing to properly dispose of landscape waste. 04Comp. at 11; Br. at 38. The People note that Section 22.22(c) of the Act (415 ILCS 5/22.22(c) (2008)) prohibits owners and operators of landfills from accepting or disposing of mixed landscape/municipal waste. *Id.* The People assert that because of the overall authority and involvement in the management of the landfill the Pruims should be considered operators. *Id.* The People ask the Board to apply the principles of the responsible corporate officer doctrine and find for the People on Count III. *Id.*

People's Arguments on Count XII (Disposal of Used Tires)

The People note that on October 3, 2002, the Board found that CLC had violated Section 55(b-1) of the Act (415 ILCS 5/55(b-1) (2008)) by failing to properly dispose of used tires. Br. at 38. The People allege that the Pruims also violated Section 55(b-1) of the Act (415 ILCS 5/55(b-1) (2008)) by failing to properly dispose of used tires. 04Comp. at 33; Br. at 38-39. The People note that Section 55(b-1) of the Act (415 ILCS 5/55(b-1) (2008)) prohibits persons from accepting or disposing of used tires mixed with other waste. *Id.* The People assert that because of the overall authority and involvement in the management of the landfill the Pruims should be considered operators. *Id.* The People ask the Board to apply the principles of the responsible corporate officer doctrine and find for the People on Count XII. Br. at 39.

Respondents' Arguments on Counts I, II, III, VI, and XII

Respondents claim that the People seek a finding of liability against the Pruims based the responsible corporate officer doctrine; however, the respondents reassert that this doctrine is not applicable to establish personal liability of the Pruims and that the cases relied upon by the People instead support the respondents' position. Resp.Br. at 28-29. The respondents assert that in the Indiana case, RLG, Inc., the court found that the corporate officer's acts facilitated the violation and that is not the case with the Pruims. Resp.Br. at 29. The respondents rely on the testimony of the Agency inspectors who indicated that Mr. Pelnarsh was the person who the inspectors dealt with and who accompanied them on inspections. Resp.Br. Br. at 29, 12/2Tr. at 22, 42, 43, 12/3Tr. at 83, 84. Mr. Pelnarsh testified that he made day to day decisions with regard to the landfill and had done so since 1983. *Id.*, 12/4Tr. at 27, 28. The respondents also note that the Pruims testified that neither of them was involved in day-to-day management of the site. Resp.Br. at 29-30, 12/4Tr. at 52-53, 54-56, 58, 93-94, 96, and 98. Based on this testimony and the legal arguments above, the respondents assert that the Pruims cannot be found liable for the alleged violations in Counts I, II, III, VI, and XII. Resp.Br. at 30.

Board's Findings on Counts I, II, III, VI, and XII Alleged Against Pruims

The Board notes that CLC has been found in violation on each of these counts either in today's opinion or in ruling on prior motions for summary judgment. However, the Board cannot find the Pruims liable for these violations. The evidence in the record indicates that Mr. Pelnarsh made the day-to-day site management decisions. The Pruims were in an office 60 miles away, and the record contains no evidence that the Pruims directed the day-to-day operations of the site. Therefore, the Board cannot find sufficient evidence of personal involvement or active participation to find a violation on these counts. Therefore, the Board finds for the Pruims and dismisses Counts I, II, III, VI and XII.

Count V (Significant Modification Permit)

The Board notes that on October 3, 2002, the Board found that CLC violated Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) and Section 814.104 of the Board's landfill rules (35 Ill. Adm. Code 814.104) by failing to timely file a significant modification permit application. Count V alleges that the Pruims violated Section 21(d)(2) of the Act (415 ILCS

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5/21(d)(2) (2008)) and Section 814.104 of the Board's landfill rules (35 Ill. Adm. Code 814.104). 04Comp. at 15. Specifically, the complaint alleges that the Pruims failed to cause CLC to file a request for a significant modification permit in a timely manner. The Board will summarize the arguments of the parties and then make a finding on this count.

**People's Arguments**

The People assert that the Pruims admit in the answers to the complaint that a significant modification permit application was not filed until August 5, 1996. Br. at 26-27. The People maintain that the Pruims were the sole owners and officers of CLC during the relevant period and were the only persons with authority to cause the company to take action. Br. at 27. The People argue that Mr. Pelnarsh did not have responsibility for permit applications and the Pruims had arranged for and signed the previous applications for permits. *Id.*, Comp.Exh. 1a, 1e. Furthermore, the People argue that Edward Pruim admitted he was involved in the filing of the significant modification permit. *Id.*, 12/4Tr. at 85.

The People assert that the Pruims knew of the application deadline and they made a business decision not to timely pursue the significant modification permit. Br. at 27-28. Specifically, the People assert that the Pruims wanted to expand the landfill to include Parcel A and the Pruims testified that the delay in filing the application was due to negotiations for the use of Parcel A. Br. at 28. The People maintain that the Pruims: 1) caused and allowed the disposal of almost one million cubic yards of waste in Parcel B during 1994 and 1995; 2) failed to request a variance from the Board prior to the 1993 deadline; 3) did not close down the landfill while negotiating for access to Parcel A; and 4) did not file a significant modification permit application for Parcel B alone. *Id.*

The People argue that the Board found that the late filing of the significant modification permit for the landfill was a violation of the Act and regulations for CLC. The People state that the Board should find the Pruims personal and direct involvement in these violations result in violations of Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) and Section 814.104 of the Board's landfill rules (35 Ill. Adm. Code 814.104).

**Respondents' Arguments**

The respondents did not directly address this issue in the brief other than in charts concerning each count. *See e.g.* Resp.Br. at 4. In those charts respondents argue for a finding of no violation against the Pruims.

**Board's Findings on Count V as Alleged Against the Pruims**

The evidence in the record demonstrates that the Pruims were solely responsible for permits. Edward Pruim admitted that "we approached" Morris about negotiating for the rights to Parcel A and after receiving the rights Andrews was employed to prepare the significant modification permit. 12/4Tr. at 87-88. The Pruims signed the permits and Mr. Pelnarsh stated he did not have responsibility for the permits and he did not know who hired Andrews. Given the Pruims' signatures on the permit applications as well as their testimony concerning the

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significant modification permit, the Board finds that the Pruims were personally involved and had active participation in the permitting process. Therefore the Board finds that the Pruims are liable for CLC's failure to timely file a permit application. The Board find that the Pruims violated Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) and Section 814.104 of the Board's landfill rules (35 Ill. Adm. Code 814.104) by failing to timely file a significant modification permit application.

**Count IV and Count XVII (Financial Assurance)**

The Board notes that on October 3, 2002, the Board found CLC had violated Sections 21(d)(2) and 21.1 of the Act (415 ILCS 5/21(d)(2) and 21.1 (2008)) and 35 Ill. Adm. Code 807.601(a) and 807.603(b)(1) of the Board's rules by failing to provide sufficient financial assurance. Count IV alleges that the Pruims violated Sections 21(d)(2) and 21.1(a) of the Act (415 ILCS 5/21(d)(2) and 21.1(a) (2008)) and Sections 807.601(a) and 807.603(b)(1) of the Board's landfill regulations (35 Ill. Adm. Code 807.601(a) and 807.603(b)(1)) by failing to provide sufficient financial assurance. Count XVII alleges that the Pruims violated Section 21(d)(1) of the Act and special condition number 13 of permit number 1996-240-SP. 04Comp. at 44. Specifically, the complaint alleges that the Pruims were required to provide financial assurance within 90 days from October 24, 1996, in the amount of $1,431,360 and to increase the amount to $1,439,720 prior to the operation of the gas extraction system. 04Comp. at 43. The Board will summarize the arguments by both parties on each count. The Board will then make a finding on each count.

**Count IV**

**People's Arguments.** The People assert that the Pruims admit in their answers to the complaint that CLC's permit required financial assurance to be posted in the amount of $1,342,500 and admit to failing to arrange the financing to increase financial assurance in timely manner. Br. at 21. The People argue that the Pruims should be considered operators for purposes of the Act because the Pruims are the owners and managers of CLC. *Id.* Further the People maintain that the Pruims had the sole authority and ability to finance the arrangement of financial assurance for the landfill. *Id.*

The People note that only the Pruims had the authority to sign checks for CLC. Br. at 22. The People also point out that the Pruims both admitted at hearing that only they could have raised the financial assurance. *Id.* The People assert that the Pruims provided personal guarantees for Frontier Insurance and thus had a personal motive in deciding when and how much of their resources to put to risk. Br. 21-22. The People argue that these facts indicate that the Pruims failed to update the financial assurance for three years and by failing to increase the financial assurance violated Section 21(d)(2) and 21.1 of the Act (415 ILCS 5/21(d)(2) and 21.1 (2008)) and 35 Ill. Adm. Code 807.601(a) and 807.603(b)(1) of the Board's rules.

**Respondents' Arguments.** The Board notes that the respondents did not specifically address this count in the briefs; however, respondents did argue generally that the Pruims should not be held liable for the violations (*see supra* 35-36). In addition, the respondents assert that the Pruims maintained financial assurance only in their capacity as officers of the corporation and

not as individuals. Resp.Br. at 22. The respondents further maintain that the Pruims had no direct or personal involvement in the allegations that they failed to provide financial assurance. *Id.*

**People's Reply.** The People argue that the Pruims personally caused the financial assurance violations and as sole owners the decision not to expend resources ultimately benefitted the Pruims. Reply at 5.

**Board's Findings on Count IV as Alleged Against the Pruims**. The testimony of the Pruims indicates that they worked on financial assurance and that they personally guaranteed some bank loans for CLC, provided personal guarantees for Frontier Insurance, and personally guaranteed royalties to Morris. In addition, the Pruims were the only parties authorized to sign checks for CLC and the Pruims guaranteed royalties for dumping to Morris. These facts establish a personal and active involvement by the Pruims in CLC's financial matters, especially in light of the direct mingling of personal and corporate finanees by personally guaranteeing corporate loans and insurance, in addition to royalty payments to Morris. Therefore, the Board finds that the Pruims were personally involved and had active participation in attempts to obtain and the failure to obtain financial assurance. The Board finds that the Pruims violated Sections 21(d)(2) and 21.1(a) of the Act (415 ILCS 5/21(d)(2) and 21.1(a) (2008)) and Sections 807.601(a) and 807.603(b)(1) of the Board's landfill regulations (35 Ill. Adm. Code 807.601(a) and 807.603(b)(1)) by failing to provide sufficient financial assurance for CLC.

**Count XVII (Financial Assurance)**

**People's Arguments.** The People argue that the Pruims admit they were required to upgrade financial assurance as delineated in Special Condition 13. Br. at 25-26. The People "repeats its argument for liability" set forth in Count IV (*see* above). Br. at 26. The People assert that clearly only the Pruims had the authority and capacity to increase the amount of financial assurance and by failing to do so violated Special Condition 13 and Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)).

**Respondents' Arguments.** The respondents also argue that the People have failed to prove when the gas collection system began to operate and therefore have failed to prove the violation. Resp.Br. at 22. The respondents claim that the sole evidence presented by the People is that on March 31, 1999, Ms. Kovasznay observed the gas collection system in operation. *Id.* However, the respondents argue that Mr. Pelnarsh testified that the system was being tested and that he did not remember making a statement to Ms. Kovasznay that the system was in operation. *Id.* The respondents maintain that Ms. Kovasznay has no other evidence to support the allegation that the system was running. Resp.Br. at 23.

The respondents assert that the Pruims are in no way liable for failing to increase the financial assurance as the Pruims had nothing to do with the gas management system. Resp.Br. at 23. The respondents rely on testimony indicating that: 1) only Mr. Pelnarsh ever accompanied the inspectors, 2) Ms. Kovasznay had no evidence of personal or direct involvement of the Pruims, 3) Mr. Pelnarsh was in charge of day-to-day operations, and 4) KMS installed the gas collection system and the Pruim expected that KMS would increase the financial

assurance. Resp.Br. at 23-24. The respondents assert that the People have failed to make a case against the Pruims individually for any alleged violation for failure to increase the financial assurance prior to operation of the gas collection system. Resp.Br. at 24.

**People's Reply.** The People argue that the Pruims personally caused the financial assurance violations and as sole owners decisions not to expend resources ultimately benefitted the Pruims. Reply at 5.

**Board's Findings on Count XVII as Alleged Against the Pruims.** The Board has found that the gas management system began operation on or before March 31, 1999, and that CLC violated Section 21(d)(1) of the Act and special condition number 13 of permit number 1996-240-SP by failing to update the financial assurance prior to the gas management system beginning to operate. Also as indicated above in Count IV, the Board finds that the Pruims were personally involved and had active participation in attempts to obtain and the failure to obtain financial assurance. The Board finds that the Pruims violated Section 21(d)(1) of the Act and special condition number 13 of permit number 1996-240-SP by failing to update the financial assurance.

## Counts VII, VIII, IX, and X (Overheight Violations)

The Board notes that on October 3, 2002, the Board found CLC had violated Sections 21(a), 21(d)(1) and 21(o)(9) of the Act (415 ILCS 5/21(a), 21(d)(1), and 21(o)(9) (2008)) by allowing the placement of waste in the landfill above the permitted height of the landfill. Counts VII, VIII, IX and X allege violations relating to the placement of waste in the landfill in areas that were above the permitted height of the landfill. The Board will summarize the arguments by both parties. The Board will then make a finding.

### People's Arguments

**Capacity.** The People assert that only the Pruims had the authority to shutdown the landfill operations once parcel B of the landfill was filled to capacity and yet records indicate that the Pruims continued to allow waste disposal in Parcel B even after Parcel B was approaching the maximum permitted elevation. Br. at 11-12. The People note that the annual landfill capacity certification forms were signed by the Pruims. Br. at 12. The People assert that those forms establish that the Pruims knowingly and intentionally allowed the landfill to exceed the permitted capacity. *Id.*

In support of this argument, the People point to the January 18, 1995 report signed by Edward Pruim that indicates only 264,290 cubic yards of capacity remained on April 1, 1994, but that 457,008 cubic yards were deposited. Br. at 12, citing Comp.Exh. 14d. Furthermore, the People point to the records of Morris which show that between April 1, 1994 and August 31, 1994, a total of 270, 588 cubic yards of waste were deposited in the landfill. Br. at 13, citing to Comp.Exh. 29. The People assert that the evidence establishes that on August 31, 1994, the landfill was completely full and yet the Pruims did not close Parcel B to waste disposal. *Id.*

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The People maintain that despite reporting to the Agency that the capacity was zero in 1994, the landfill continued to accept waste. Br. at 14. The People note that the January 15, 1997 report signed by Robert Pruim reported that between January 1, 1995 and December 31, 1995 the landfill had disposed 540,135 cubic yards of waste. Br. at 14, citing Comp.Exh. 14e. The People assert that the two reports signed by the Pruims establish that the Pruims knew of the overcapacity at the site and failed to stop dumping or to close the site. Br. at 14-15.

**Overheight.** The People argue that a 1989 application for vertical expansion was signed by Edward Pruim and subsequently granted by the Agency allowed for a final elevation of 580 feet above mean sea level. Br. at 15, Comp.Exh. 1a. The People assert that the subsequent application for a significant modification permit, signed by Robert Pruim, shows existing conditions at the site with a final elevation over 580 feet. Br. at 15, Comp.Exh. 1e. The People point to an addendum to the significant modification permit that provides that the overheight is on the order of 475,000 cubic yards. Br. at 16, Comp.Exh. 1f. The People maintain that that addendum was filed over two and a half years after Parcel B had reached capacity and confirms both the excessive dumping and the Pruims unwillingness to comply with permits and the Act. Br. at 16.

**Credibility.** The People argue that the testimony of Robert Pruim is not credible. Br. at 16. The People assert that despite twice reporting to the Agency that the landfill had no remaining capacity and the acknowledgement of overheight in the significant modification permit, Robert Pruim denied the landfill was overheight. Br. at 16. The People discount Robert Pruim's claims that the engineer had indicated to him that the capacity issue was "mathematical" and would be corrected when the significant modification combined Parcels A and B. Br. at 17. The People assert that Robert Pruim is blaming someone else for Robert Pruim's own admission of violation and the Board should not give consideration to his statements. *Id.*

The People assert that Robert Pruim "completely misrepresents" the 1997 landfill capacity report as prior to 1996 dumping occurred only in Parcel B. Br. at 17. The People argue that the significant modification permit opened up capacity in Parcel A and the 1997 landfill capacity report covers both parcels. Br. at 17, Comp.Exh. 14f. The People maintain that to add all the capacity in Parcel A and argue that this is a mathematical correction to previous reports on Parcel B misrepresents the record. Br. at 18.

The People note that the 1997 significant modification permit addendum was completed after the submission of the 1997 landfill capacity report. Br. at 18, Comp.Exh. 1f. The People argue that the later submission of the addendum demonstrates that the amount of overheight in Parcel B was 475, 000 cubic yards. *Id.*

**Counts VII, VIII, IX, and X.** The People argue that the evidence supports a finding that the Pruims caused and allowed deposition of waste above the permitted area for the disposal of waste and thus violated Section 21(o) of the Act (415 ILCS 5/21(o) (2008)) as alleged in Count VII. Br. at 19. Furthermore, the People assert that the evidence establishes that the Pruims caused and allowed waste to be disposed of in an area not permitted under the permit and thus violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)) as alleged in Count VIII. *Id.*

The People maintain that the Pruims caused and allowed the consolidation of waste from one or more sources above the permitted height and thereby violated Section 21(a) of the Act (415 ILCS 5/21(a) (2008)) as alleged in Count IX. Br. at 20. The People further maintain that the Pruims violated Section 21(d)(1) of the Act (415 ILCS 5.21(d)(1) (2008)) by violating Standard Condition 3 of Permit No. 1989-005-SP as alleged in Count X.

**Respondents' Arguments**

The respondents argue that the evidence is insufficient to establish personal liability of the Pruims. Resp.Br. at 15. The respondents claim that there is no evidence that the Pruims had any personal knowledge or involvement in any acts resulting in the alleged overheight of Parcel B. *Id.* The respondents argue that to find the Pruims were in violation of the Act, the Board must determine that the Pruims were personally involved or directly participated in act which lead to the overheight violation. *Id.* The respondents maintain that if there was evidence that the Pruims knowingly ordered the operator to place waste above the permitted height, that would be the type of evidence necessary to establish personal liability. *Id.* However, the respondents argue that the only competent evidence establishes that the Pruims did not know that waste was placed over the permitted height. Resp.Br. at 15-16.

The respondents argue that none of the People's witnesses could testify that the Pruims had direct or personal involvement in filling Parcel B above 580 feet. Resp.Br. at 16. Respondents opine that the only basis for the People's case are the landfill certification capacity forms signed by the Pruims and these forms are the basis for the People's claim that the Pruims had direct and personal involvement in filling the landfill above the permitted height. *Id.*

The respondents assert that the evidence establishes that the Pruims had no knowledge of the overheight. Resp.Br. at 17. The respondents rely on testimony from Edward Pruim that he had no knowledge of the overheight until noticed in writing by the State and Robert Pruim contested the statement in the report that there was no capacity. Resp.Br. at 17, 12/4Tr. at 82, 48. The respondents concede that the Pruims signed the forms; however, the respondents assert that they signed those reports as corporate officers and not individually. Resp.Br. at 17, 12/4Tr. at 47,76.

The respondents argue that the Pruims and Mr. Pelnarsh believe that Parcel B is not filled to capacity, even today because there is capacity where the building stood. Resp.Br. at 17, 12/4Tr. at 48, 78-79, 30-31. Also, the respondents argue that there are over 1.7 million cubic yards of capacity left in Parcels A and B, with Parcel B having 100,000-200,000 cubic yards of space. Resp.Br. at 17-18. The respondents take issue with the People's argument that Robert Pruims' testimony regarding capacity was not credible and point out that the hearing officer found no issues of credibility. Resp.Br. at 18. The respondents assert that the People presented no evidence to rebut Robert Pruim's testimony and that the Board must also consider that there has been no actual proof submitted that the landfill is overheight. *Id.*

The respondents point to a study produced by Rapier Surveyors (Resp.Exh. 11) for the State, which indicates that there are only 66,589 cubic yards of material above the permitted elevation. Resp.Br. at 18-19. The respondents claim that there has been no "empirical proof of

any kind" that Parcel B was actually filled above 580 feet and in fact the capacity forms do not talk about permitted elevations or the amount of waste above permitted elevations. Resp.Br. at 19. The respondents argue that based on the evidence the Board should find that the Pruims did not have direct and personal involvement in acts leading to the violations. Resp.Br. at 20.

**People's Reply**

The People note that the Board has already found that CLC was in violation of the Act and Board rules by dumping waste outside the permitted boundaries. Reply at 3. The People argue that substantial evidence was submitted at hearing corroborating the Board's earlier finding and that the Pruims knowingly continued to dump waste after Parcel B had reached capacity. *Id.* The People reiterate that landfill capacity certification forms and permit applications support the People's allegations and respondents claims are "merely an attempt to avoid an appropriate civil penalty." Reply at 3-4. Furthermore, the signatures of the Pruims on the forms and applications establish that the Pruims are responsible for the alleged violations. Reply at 4.

**Board's Findings on Counts VII, VIII, IX, and X as Alleged Against the Pruims**

The record establishes that the Pruims were signing landfill capacity certification forms that indicated no space was left in the landfill and yet the landfill remained open accepting waste. Mr. Pelnarsh may have been able to close the landfill for a day or so due to weather, but the testimony establishes that only the Pruims could decide to stop accepting waste at the landfill. Thus, the Pruims were personally involved in signing reports that no space was available, while continuing to accept waste at the landfill. The Board finds that the actions of the Pruims were not merely those of a corporate officers, but that the Pruims were actively participating in acts that resulted in the landfill being filled beyond the permitted capacity. Therefore the Board finds that the Pruims violated Sections 21(a), 21(d)(1) and 21(o)(9) of the Act (415 ILCS 5/21(a), 21(d)(1), and 21(o)(9) (2008)) by allowing the placement of waste in the landfill above the permitted height of the landfill.

## Count XIX (Closure Estimates)

The Board notes that on October 3, 2002, the Board found that CLC violated Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) and Section 807.623(a) of the Board's landfill regulations (35 Ill. Adm. Code 807.623) by failing to provide cost estimates. Count XIX alleges that the Pruims violated Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) and Section 807.623(a) of the Board's landfill regulation (35 Ill. Adm. Code 807.623(a)) because the Pruims failed to provide a revised cost estimate. 04Comp. at 48-49. The Board will summarize the parties' arguments and then make a finding on this count.

**People's Arguments**

The People assert that the Pruims failed to cause the filing of the revised cost estimates as only they had the authority to file the revised cost estimates. Br. at 29. The People argue that the Pruims are persons under the Act and they made all of the significant decisions related to

operation of the landfill. Br. at 30. The People maintain that the Pruims decided whether or not to continue operations and whether and when to comply with pertinent landfill regulations. The People assert that by failing to direct the filing of annual cost estimates the Pruims violated Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) and Section 807.623(a) of the Board's landfill regulation (35 Ill. Adm. Code 807.623(a)). *Id.*

Respondents' Arguments

The respondents did not directly address this issue in the brief other than in charts concerning each count. *See e.g.* Resp.Br. at 4. In those charts respondents argue for a finding of no violation against the Pruims.

**Board's Findings on Count XIX as Alleged Against the Pruims**

Having found that the Pruims were solely responsible for permitting and that the Pruims were liable for failure to secure financial assurance, the Board finds that the Pruims are also liable for the failure to revise cost estimates biennially. Like the permit and financial assurance requirements, the revision of cost estimates was in the purview of the Pruims and the failure to do so is a violation Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) and Section 807.623(a) of the Board's landfill regulation (35 Ill. Adm. Code 807.623(a)).

**Conclusion on Pruims' Violations**

The Board declines to apply the "responsible corporate officers doctrine" and instead reviews the record to determine whether the Pruims had personal involvement or active participation in acts which lead to the violations. *See* People v. C.J.R. Processing, Inc., 269 Ill. App. 3d 1013, 647 N.E.2d 1035 (3rd dist. 1995). The Board finds that the Pruims did not have active participation and were not actively involved in the actions which resulted in the violations alleged in Counts I, II, III, VI, and XII (daily operations) and the Board therefore dismisses those counts as alleged against the Pruims. The Board does find personal involvement or active participation in acts which lead to the violations in Count V (significant modification permit), Count IV and XVII (financial assurance), Counts VII, VIII, IX and X (overheight), and Count XIX (closure estimates). Thus, the Board finds that the Pruims violated multiple sections of the Act and Board regulations as alleged in eight counts.

**REMEDY**

The following discussion will begin with general comments on penalties in Board cases. Then, the Board will discuss the factors from Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2008)) which must be considered when determining the appropriate penalty before the Board. Finally, the Board will assess the appropriate penalty and explain the Board's reasons for the penalty amount.

Having found multiple violations of multiple sections of the Act and Board regulations against both CLC and the Pruims, the Board must now determine the penalty to be assessed. In determining the appropriate civil penalty, the Board considers the factors set forth in Sections

33(c) and 42(h) of the Act. People v. ESG Watts, PCB 01-167 (Jan. 8, 2004), People v. Gilmer, PCB 99-27 (Aug. 24, 2000). The Board must take into account factors outlined in Section 33(c) of the Act in determining the unreasonableness of the alleged pollution. Wells Manufacturing Company v. Pollution Control Board, 73 Ill. 2d 226, 383 N.E.2d 148 (1978). The Board is expressly authorized by statute to consider the factors in Section 42(h) of the Act in determining an appropriate penalty. In addition, the Board must bear in mind that no formula exists, and all facts and circumstances must be reviewed. Gilmer PCB 99-27, slip. op. at 8.

The Board has stated that the statutory maximum penalty "is a natural or logical benchmark from which to begin considering factors in aggravation and mitigation of the penalty amounts." ESG Watts, PCB 01-167, slip. op. at 14, citing Gilmer, PCB 99-27, slip. op. at 8, citing IEPA v. Allen Barry, individually and d/b/a Allen Barry Livestock, PCB 88-71 (May 10, 1990), slip. op. at 72. The basis for calculating the maximum penalty is contained in Section 42(a) and (b) of the Act (415 ILCS 5/42(a) and (b) (2008)). Section 42(a) provides for a civil penalty not to exceed $50,000 for violating a provision of the Act and an additional civil penalty not to exceed $10,000 for each day during which the violation continues. By multiplying only the number of counts the Board has found that respondents violated (25) and not the number of violations of the Act and Board regulations that the Board has found, a potential civil penalty of $1,250,000 is reached. If the Board were to add to that sum a civil penalty of $10,000 a day for each day of noncompliance, the total maximum penalty that could be assessed against respondents is millions of dollars. However, in this case, the People request an imposition of civil penalties in the amount of $250,000 to be imposed jointly and severally upon respondents. Br. at 4, 45. The People also only seek a civil penalty for the violations common to both cases. Br. at 45. The respondents argue for a penalty assessed against CLC of $25,000 and no penalty against the Pruims. Resp.Br. at 3, Resp. Br. at 32.

**Section 33(c) Factors**

Section 33(c) of the Act sets forth five factors the Board examines in determining the appropriateness of a civil penalty. The Board will set forth the factors and summarize the arguments of the parties before making a finding on each factor.

**The Character and Degree of Injury to, or Interference With the Protection of the Health, General Welfare and Physical Property of the People (Section 33(c)(i))**

**People's Argument.** The People argue that the evidence shows a substantial degree of injury as the respondents operated a landfill in "flagrant disregard for the welfare of the surrounding community." Br. at 45. The People assert that the respondents failed to control litter, properly control leachate, violated numerous permit conditions, and failed to provide adequate financial assurance for post-closure care. *Id.*

**Respondents' Arguments.** The respondents argue that there is no evidence in the record that shows an injury to the general welfare. Resp.Br. at 33. The respondents further argue that there is no evidence of any interference with the health or welfare of the general public. *Id.*

**Board's Finding on Section 33(c)(i).** There is substantial evidence in the record that CLC violated provisions of the Act and Board regulations which relate to the daily operations of

the landfill. The Board did not find the Pruims to have been in violation of those provisions. However, the failure to update financial assurance and the failure to timely file significant modification permits was found against both respondents and those violations alone constitute a significant degree of interference with the protection of health and general welfare. Significant modification permits were required because any landfill wanting to remain open was subject to more stringent requirements for monitoring and other duties. Financial assurance is required to ensure that a landfill will be maintained after closure. The Board finds that this factor weighs against respondents.

**The Social and Economic Value of the Pollution Source (Section 33(c)(ii))**

**People's Argument.** The People concede that a well operated landfill has a social and economic value during the time that the landfill accepts waste. Br. at 45. The People opine that a poorly run landfill does not have the same social and economic value. *Id.* The People note that the landfill does not have a valid operating permit. The People argue that therefore the landfill does not offer any social or economic value. *Id.*

**Respondents' Arguments.** The respondents maintain that no evidence was submitted concerning the social and economic value of the landfill. Resp.Br. at 33.

**Board's Finding on Section 33(c)(ii).** The Board disagrees with respondents in that substantial evidence was submitted concerning the maintenance of the landfill and a poorly maintained landfill does not have a social or economic value. For example, leachate seeps were evidenced at the site and litter control was not maintained. Given the fact that respondents also have a history of failing to update financial assurance to ensure proper post-closure care, the Board finds that the evidence does establish that the source of the pollution does not currently have social and economic value. The Board finds that this factor weighs against the respondents.

**The Suitability or Unsuitability of the Pollution Source to the Area in Which it is Located, Including the Question of Priority of Location in the Area Involved (Section 33(c)(iii))**

**People's Argument.** The People assert that the landfill is not suitable to the area where it located, until closure is undertaken. Br. at 46

**Respondents' Arguments.** The respondents assert that the People did not present evidence on this issue. Resp.Br. at 33.

**Board's Finding on Section 33(c)(iii).** The Board agrees that the record lacks sufficient evidence on the location of the site to determine if the location is suitable or unsuitable. The Board finds that this factor weighs neither for nor against the respondents.

**The Technical Practicability and Economic Reasonableness of Reducing or Eliminating the Emissions, Discharges or Deposits Resulting from Such Pollution Source(Section 33(c)(iv))**

**People's Argument.** The People argue that operating a landfill in accordance with the Act and Board regulations is technically practicable and economically reasonable. Br. at 46.

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**Respondents' Arguments.** The respondents concede that operating a landfill in accordance with the Act and Board regulation is technically practicable and economically reasonable is generally true. Resp.Br. at 33. However, the respondents assert that this case is the exception, because the Agency denied CLC's permit which would have allowed CLC to continue to operate. Resp.Br. at 33-34. The respondents claim that if CLC had been able to continue operations, CLC could have generated income necessary and CLC has done "everything it could for years to attempt to bring the landfill into compliance, in spite of difficulties." Resp.Br. at 34.

**Board's Finding on Section 33(c)(iv).** The Board is unconvinced that the Agency's denial of a permit impacted the technically practicability and economically reasonableness of compliance. The Board's landfill regulations were adopted pursuant to the Act, which includes a requirement that the Board consider the technical practicability and economical reasonableness of rules before adoption. Furthermore, the denial of a permit should have had no impact on the daily operations violations observed while the landfill was still operating. The Board finds that this factor weighs against CLC.

**Any Subsequent Compliance (Section 33(c)(v))**

**People's Argument.** The People maintain that the landfill is not now in compliance with the Act and Board regulations. Br. at 46. The People claim that the Board is currently deliberating on relief in People v. Community Landfill Company, Inc. and City of Morris, PCB 03-191[8], which if granted will bring the landfill into compliance. *Id.*

**Respondents' Arguments.** The respondents assert that the People did not present evidence on this issue.

**Board's Finding on Section 33(c)(v).** The People suggest an ongoing enforcement action presents proof that the respondents have not subsequently complied with the Act and Board regulations. However, the evidence in this record demonstrates that regarding many of these violations subsequent compliance was achieved. A significant modification permit was applied for, financial assurance was updated, and many of the daily operations violations were not present upon re-inspection. The record also contains evidence that the overheight still exists and has not been addressed. Therefore, the Board finds that this factor weighs neither for nor against the respondents.

**Section 42(h) Factors**

Section 42 (h) of the Act (415 ILCS 5/42 2008)) sets forth matters that the Board may consider in mitigation or aggravation of a civil penalty. Those factors include: 1) duration and

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[8] The Board notes that on June 18, 2009, the Board entered an order in People v. Community Landfill Company, Inc. and City of Morris, PCB 03-191 finding CLC and Morris had violated the Act and Board regulations. The Board ordered CLC to pay civil penalty of $1,059,534.70 by August 17, 2009 and Morris to pay civil penalty of $399,308.98 by August 17, 2009. The Board is currently considering timely filed motions to reconsider by both CLC and Morris.

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gravity of the violations, 2) presence or absence of due diligence on the part of the respondents in attempting to comply with the Act and Board regulations, 3) any economic benefit accrued by respondents in delaying compliance, 4) the penalty that will serve to deter future violations by respondents and other similarly situated, 5) previously adjudicated violations, 6) voluntary disclosure of violations, and 7) any supplemental environmental project respondents may have agreed to undertake. 415 ILCS 5/42 2008).

**People's Arguments**

**Duration and Gravity (42(h)(i)).** The People assert that the violations were ongoing during a period from 1993 through 1999; although the daily operations violations are single day events. The People argue that for other violations such as the overheight and submission of the significant modification permit the duration f the violation can be computed as 973 days and 1,178 days respectively. Br. at 47. The People argue that the sheer number of the violations places a high degree of gravity on the violations and the People opine that "it is hard to find any area of landfill regulation that was not ignored and/or violated" by respondents. Br. at 47-48.

**Due Diligence (42(h)(ii)).** The People argue that none of the respondents demonstrated due diligence in trying to comply with the Act and Board regulations. Br. at 48. The People note that the respondents knew of the deadline for submission of a significant modification permit and waited until completion of a deal with Morris to file the application. *Id.* Further, the People assert that the financial assurance was not updated until three years after it was required. *Id.* The People maintain that based on the facts of this case respondents "show a complete want of diligence" in complying with the Act and Board regulations. Br. at 49.

**Economic Benefit (42(h)(iii)).** The People point out that evidence submitted establishes that respondents saved over $1,000,000 by violation the Act. Br. at 49. These savings include delay in filing the significant modification application and financial assurance updates. *Id.* The People assert that specifically by filing the permit application late, respondents avoided testing costs in the amount of $44,526 as well as $950,000 in costs of removing the overheight. Br. at 49-50, Comp.Exh. 1f, 18. Furthermore, the savings on financial assurance, according to the People, was $47,871.33. Br. at 50, Comp.Exh. 19. The present value of the avoided expenditures was calculated to be $1,486,079. Br. at 51, Comp.Exh. 19. The People are not seeking to recover the economic benefit; however, the People believe that the requested joint and several penalty of $250,000 will recover at least a majority of the avoided costs. Br. at 51. The People opine that such a fine would recover most of the economic benefit of noncompliance. *Id*

**Deterrence, Prior Violations, Disclosure, and Environmental Projects (42(h) (iv), (v), (vi), (vii).** The People believe that the requested penalty of $250,000 applied jointly and severally against respondents will serve to deter respondents from future violations. Br. at 52. The People note that there is one prior violation, an administrative citation, adjudicated against CLC. *Id.* The People also note that the Board has a pending enforcement action People v. Community Landfill Company, Inc. and City of Morris, PCB 03-191. *Id.* The People maintain that the respondents did not disclose the violations and has not agreed to a supplemental environmental project. *Id.*

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Respondents' Arguments

**Duration and Gravity (42(h)(i)).** The respondents agree that the daily operations violations found by the Board are only provable on the days of inspection. Resp.Br. at 34. Respondents argue that only a nominal fine should be assessed against CLC for violations involving the improper disposal of landscape waste and the mixing of waste tires. *Id.* As to overheight respondents assert "significant testimony" was offered at hearing which mitigates against the penalty sought by the state such as issues of the extent of the overheight and efforts made to move waste. Resp.Br. at 34-35. Respondents argue that a penalty for overheight violations should be assessed against CLC only. Resp.Br. at 36. Respondents also argue that the People's mentioning of the "sheer number" of alleged violations as proof of the gravity of the violations is not enough. *Id.* The respondents argue that the Board should examine the violations instead by looking at the Section 33(c) factors relating to the character and degree of injury. *Id.* Respondents argue that the People have provided no evidence of harm to health, general welfare, and physical property and the Board should consider that when examining the gravity of the violations. *Id.*

**Due Diligence (42(h)(ii)).** The respondents argue that the evidence in the record does demonstrate diligence in compliance. Resp.Br. at 36. The respondents point to testimony from Edward Pruim that as soon as the lease agreement for Parcel A was received, a permit application was filed, which the Agency rejected. *Id.* CLC sought a variance which ultimately allowed the filing of the significant modification permit. Resp.Br. at 36-37. The respondents also note that Edward Pruim testified that CLC was not in good financial shape, but worked on a constant basis to upgrade the financial assurance. Resp.Br. at 37. And as to the overheight, the respondents still believe there is capacity in Parcel B, and that Parcel B is not overheight. .Once informed of the potential overheight, respondents attempted to move the waste. *Id.*

**Economic Benefit (42(h)(iii)).** Respondents take issue with the testimony of the People's witnesses concerning the economic benefit accrued by respondents. Resp.Br. at 38. The respondents note that Ms. Roque testified that the costs she developed were based on information from CLC about the size of the overheight, which may be incorrect based on a later study. *Id.* The same is true of the numbers developed by Mr. Styzens regarding the overheight. *Id.* As to Mr. Styzens final numbers, respondents take issue with the tax rate and the interest rate. Resp.Br. at 39. Finally, respondents argue that the bond rate used by Mr. Harris was incorrect. Resp.Br. at 39-40. As no harm to the environment resulted from the financial assurance violations and the evidence that the overheight may be less than the amount used for calculations, the respondents urge the Board to consider this in deciding that only a nominal penalty or even no penalty should be applied. *Id.*

**Deterrence, Prior Violations, Disclosure, and Environmental Projects (42(h) (iv), (v), (vi), (vii).** The respondents believe that a penalty of $25,000 will serve to deter the respondents from future violations and respondents assert no prior violations have been found against respondents. Resp.Br. at 41. Respondents argue that CLC reported the potential overheight to the Agency in the significant modification permit and thus "self-disclosed" the potential violation. Resp.Br. at 42. Respondents would be willing to undertake a supplemental environmental project, but none has been proposed. Resp.Br. at 43.

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Board's Finding on Section 42(h)

**Duration and Gravity (42(h)(i)).** The Board has found respondents in violation of numerous sections of the Act and Board regulations as alleged in 25 counts. Many of these counts are the same alleged violations for both CLC and the Pruims, although the Board found for the Pruims on several counts dealing with daily operations at the site. With some of the alleged violations, such as the failure to timely file a significant modification permit, the violation was ongoing for 1,178 days. This violation was found as to both respondents. The respondents attempt to shift the blame for the significant modification permit application to the Agency; however, the respondents ignore the fact that when they filed the application the first time it was already 22 months late. *See* People v. Community Landfill Company, Inc., PCB 97-193, (Apr. 5, 2001), citing to Community Landfill Co. v. IPCB and IEPA, No. 3-96-0182 (1996) (unpublsh. op.) As to the overheight violations (again found against both respondents) the evidence establishes that the overheight existed in 2000. *See* Resp.Exh. 11. Thus, with these alleged violations alone the duration of the violations is hundreds of days and this does not take into account the length of time that financial assurance was not properly in place for the landfill.

As to the gravity of the violations, the Board has carefully reviewed the record in this case and found evidence of water pollution (as to CLC only). The Board also has found that the respondents have failed to update financial assurance and biennial cost revisions have not occurred. Also the failure to timely file a significant modification permit allowed respondents to operate the landfill using outdated rules for a substantial period of time. The Board has found that the failure to file a significant modification application is a "substantial violation" and imposed a fine of $5,000 for that violation alone. *See* People v. ESG Watts, PCB 94-127 (May 4, 1997), slip. op at 17, ESG Watts, Inc. v. IPCB, 282 Ill. App. 3d 43, 50, 668 N.E.2d 1015, 1020 (4th Dist. 1996). Based on the evidence the Board finds that this factor weighs in aggravation of a penalty.

**Due Diligence (42(h)(ii)).** While the Board appreciates that monetary difficulties can be faced by corporations, the Board is not convinced that monetary difficulties should be used as an excuse for not complying with the Act and Board regulations. However, the Board finds that the record does contain evidence of attempts to secure financial assurance by the respondents, which was ultimately secured although over three years late. The Board also finds that many of the daily operational violations found against CLC were corrected by the next inspections. Thus, diligence can be found in the record. Conversely, the overheight issue remains and the respondents continue to deny what their own records have established. Further, the delay in filing the significant modification application is explained as being due to a pending lease agreement; but the record lacks clarity as to why negotiations were not begun sooner. Because the evidence on due diligence is mixed, the Board will weigh this factor neither for nor against the respondents.

**Economic Benefit (42(h)(iii)).** The Board will agree that the economic benefit numbers offered by the People on the overheight may be incorrect due to the evidence from the Rapier study (Resp.Exh. 11) and that the overheight may not be as significant as reported by CLC in the significant modification permit application. However, there is still some economic benefit from

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leaving the overheight in place. Furthermore, the Board finds the benefit accrued for failure to timely apply for the significant modification permit and the failure to secure timely financial assurance to be significant. Those raw numbers are $44,526 and $32,074 with a time adjusted rate of $73,950 and $72,336. So the record establishes that the economic benefit accrued for these violations alone is over $140,000. The record contains no other specific information regarding the economic benefit that respondents may have accrued, though clearly additional benefit was had. Therefore, the Board finds that this factor weighs in aggravation of the penalty.

**Deterrence, Prior Violations, Disclosure, and Environmental Projects (42(h) (iv), (v), (vi), (vii).** The Board agrees that violations not yet adjudicated should not be considered when weighing this factor. The Board will also concede that the overheight issue may have been self disclosed in the significant modification permit; although, respondents still continue to deny the existence of overheight. An environmental project is not at issue here in this case. This leaves the issue of deterrence. The Board disagrees that a penalty of $25,000 against CLC alone would deter future violations. That penalty amount is substantially lower than others assessed by the Board as early as 1997 to landfill operators similarly situated to CLC and those fines did not deter CLC. Therefore the Board finds that a more substantial fine is appropriate and weighs this factor against CLC.

**Penalty**

The Board has carefully reviewed the evidence in this record and the arguments of the parties. In examining the Section 33(c) and 42(h) factors and applying them to the evidence in this case, the Board is convinced that a substantial penalty is warranted. Further, the Board finds that the Section 33(c) factors weigh in favor of ordering the respondents to cease and desist from further violations of the Act and Board regulations. The Board has previously penalized two dollars for each dollar gained through noncompliance with the Act and Board regulations. *See* People v. ESG Watts, PCB 01-167 (Jan. 8, 2004), citing ESG Watts v. PCB, 282 Ill. App. 3d 43, 668 N.E.2d 1015 (4th Dist. 1996); People v. ESG Watts, PCB 96-233 (Feb. 5, 1998), People v. ESG Watts, PCB 96-237 (Feb. 19, 1998). The penalties assessed in those cases ranged from $60,000 in ESG Watts v. PCB, 282 Ill. App. 3d 43, 668 N.E.2d 1015 (4th Dist. 1996) to $680,200 in People v. ESG Watts, PCB 96-233 (Feb. 5, 1998). In People v. ESG Watts, PCB 01-167 (Jan. 8, 2004), the Board assessed a $1,000,000 penalty against ESG Watts. People v. ESG Watts, PCB 01-167 (Jan. 8, 2004), slip. op. at 1. Many of the alleged violations in these cases were similar if not identical to the violations found against respondents here (PCB 94-127, failure to timely file significant modification permit, PCB 01-167, overheight).

The Board will accept the People's recommendation of a $250,000 fine against the respondents jointly and severally. This fine reflects the sheer volume of violations of the Act and Board regulations found, while also taking into consideration some of the attempts to comply. A $250,000 fine also removes the economic benefit accrued as to some of the violations. Considering the Board's findings on the Pruims involvement in the violations which resulted in the calculated economic benefit, the Board is convinced that they should be equally liable for the fine. Therefore, the Board imposes a $250,000 fine jointly and severally against the respondents.

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## Conclusion on Remedies

The Board finds that the Section 33(c) factors weigh both for and against the respondents. The Board finds that the character and degree, social and economic value, and technical practicability and economic reasonableness of compliance weigh against respondents. The Board finds that the suitability or unsuitability of the source and any subsequent compliance weigh neither for or against the respondents. The Board finds that the Section 42(h) factors weigh in aggravation of a penalty or do not impact a penalty. The Board finds that the duration and gravity, economic benefit and deterrence weigh in aggravation of a penalty. The Board finds that due diligence, prior violations and disclosure weigh neither in mitigation or aggravation. Based on the statutory factors and the evidence in the record the Board finds that a civil penalty of $250,000 will aid in the enforcement of the Act , recoup the economic benefit accrued, and deter violations. Therefore the Board finds that CLC and the Pruims are jointly and severally liable for the $250,000 penalty.

## CONCLUSION

In ruling on two motions for summary judgment, the Board previously adjudicated CLC in violation of the Act and Board regulations as alleged in Counts III (landscape waste), IV (inadequate financial assurance), Count V (failed to timely file significant modification permit), Counts VII, VIII, IX, and X (daily operations at the site), Count XIII (waste tires), Count XVI (erosion), Count XIV (temporary fencing), Count XIX (in part financial assurance), and Count XXI (revised cost estimates). *See* pgs 4-6. The Board finds today that CLC is also in violation of the Act and Board regulations as alleged in Count I (refuse and litter) (*see* pgs 28-29), Count II (leachate) (*see* pg 30), Count VI (water pollution) (*see* pg 34), Count XV (gas management system) (*see* pg 33), Count XVII (improper use of leachate) (*see* pg 34), and Count XIX (remaining allegations) (*see* pg 32). The Board dismisses Count XX (improper use of leachate). Thus, the Board has found CLC violate numerous sections of the Act and Board regulations as alleged in a total of 17 counts.

The Board declines to apply the "responsible corporate officers doctrine" and instead reviews the record to determine the Pruims had personal involvement or active participation in acts which lead to the violations. *See* People v. C.J.R. Processing, Inc., 269 Ill. App. 3d 1013, 647 N.E.2d 1035 (3rd dist. 1995). The Board finds that the Pruims did not have active participation and were not actively involved in the actions which resulted in the violations alleged in Counts I, II, III, VI, and XII (daily operations) (*see* pg 41)and the Board therefore dismisses those counts as alleged against the Pruims. The Board does find personal involvement or active participation in acts which lead to the violations in Count V (significant modification permit) (*see* pg 42), Count IV and XVII (financial assurance) (*see* pg 43, 44), Counts VII, VIII, IX and X (overheight) (*see* pg 48), and Count XIX (closure estimates) (*see* pg 48-49). Thus the Board finds that the Pruims violated multiple sections of the Act and Board regulations as alleged in eight counts.

The Board finds that the Section 33(c) factors weigh both for and against the respondents. *See* pgs 50-52 The Board finds that the character and degree, social and economic value, and technical practicability and economic reasonableness of compliance weigh against respondents.

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The Board finds that the suitability or unsuitability of the source and any subsequent compliance weigh neither for or against the respondents. The Board finds that the Section 42(h) factors weigh in aggravation of a penalty or do not impact a penalty. *See* pgs 52-55. The Board finds that the duration and gravity, economic benefit and deterrence weigh in aggravation of a penalty. *See* pg 56. The Board finds that due diligence, prior violations and disclosure weigh neither in mitigation or aggravation. Based on the statutory factors and the evidence in the record the Board finds that a civil penalty of $250,000 will aid in the enforcement of the Act, recoup the economic benefit accrued, and deter violations. Therefore the Board finds that CLC and the Pruims are jointly and severally liable for the $250,000 penalty.

This opinion constitutes the Board's findings of fact and conclusions of law.

## ORDER

1. The Board finds that respondents, Community Landfill Company, Inc. and Edward and Robert Pruim, have committed the violations as set forth in this opinion.

2. Community Landfill Company, Inc. and Edward and Robert Pruim must pay a civil penalty of two hundred and fifty thousand dollars ($250,000) against respondent, jointly and severally, no later than September 21, 2009, which is the first business day following the 30th day after the date of this order. Community Landfill Company, Inc. and Edward and Robert Pruim must pay the civil penalty by certified check, money order, or electronic funds transfer, payable to the Illinois Environmental Protection Trust Fund. The case name, case number, and Community Landfill Company, Inc. and Edward and Robert Pruim, Social Security Number or Federal Employer Identification Number must appear on the face of the certified check or money order.

3. Community Landfill Company, Inc. and Edward and Robert Pruim must submit payment of the civil penalty to:

   Illinois Environmental Protection Agency
   Fiscal Services Division
   1021 North Grand Avenue East
   P.O. Box 19276
   Springfield, Illinois 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).

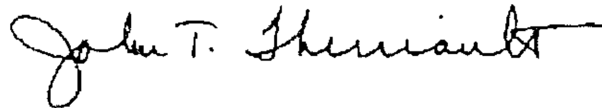
5. Community Landfill Company, Inc. and Edward and Robert Pruim must cease and desist from violations of the Act and the Board's regulations.

Electronic Filing - Received, Clerk's Office, September 28, 2009


IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2008); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 20, 2009, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

## 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 MEMORANDUM IN SUPPORT OF THEIR MOTION FOR RECONSIDERATION OF THE ILLINOIS POLLUTION CONTROL BOARD'S ORDER DATED AUGUST 20, 2009** by electronic filing, e-mailing, 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 **28th** day of **SEPTEMBER, 2009,** addressed as follows:

**By U.S. Mail and email**
Christopher Grant
Jennifer Van Wie
Environmental Bureau
Assistant Attorney General
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Chicago, Illinois 60602
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**By U.S. Mail and email**
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Hearing Officer
Illinois Pollution Control Board
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/s/ Clarissa Y. Cutler
One of Respondents' Attorneys

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**THIS FILING IS SUBMITTED ON RECYCLED PAPER.**