BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, *by* LISA MADIGAN, Attorney General of the State of Illinois,	)	
Complainant,	)	
-vs-	)	
EDWARD PRUIM, an individual, and ROBERT PRUIM, an individual,	)	
Respondents.	)	PCB No. 04-207
	)	PCB No. 97-193
	)	(Consolidated)
	)	(Enforcement)
PEOPLE OF THE STATE OF ILLINOIS, *by* LISA MADIGAN, Attorney General of the State of Illinois,	)	
Complainant,	)	
-vs-	)	
COMMUNITY LANDFILL COMPANY, INC.,	)	
Respondent.	)	

to: Mr. Mark La Rose, La Rose & Bosco
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Hearing Officer
Illinois Pollution Control Board
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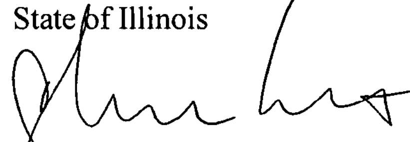
NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that we have today, October 13, 2009, filed with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing, Complainant's Response to Motion for Reconsideration, a copy of which is attached and herewith served upon you.

Electronic Filing - Received, Clerk's Office, October 13, 2009

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

BY: 

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-vs-

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Respondent.

RESPONSE TO MOTION FOR RECONSIDERATION

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and responds to the Motion for Reconsideration filed by Respondents Community Landfill Company ("CLC"), Edward Pruim, and Robert Pruim ("Respondents").

I. INTRODUCTION

Motions for Reconsideration are limited to newly discovered evidence, changes in law, or claimed errors in the Board's previous application of existing law[1]. The Respondents do not bring forth newly discovered evidence, nor do they point to any changes in the applicable law. Instead, the Respondents claim that the Board misinterpreted existing law. However, the Respondents merely repeat the same arguments already put forth in their Post-Hearing Brief. These arguments have been considered and rejected by the Board, and the Respondents' Motion for Reconsideration should be denied.

II. THE BOARD CORRECTLY FOUND PERSONAL LIABILITY ON COUNTS IV, V, VII, VIII, IX, X, XVII, and XIX

A. The Board applied the proper standard in its finding of personal liability

In its August 20, 2009 Opinion and Order ("Final Order"), the Board applied the analysis laid down in *People v. C.J.R. Processing et al.*[2]. In *C.J.R.*, the Appellate Court held that a Defendant could be individually liable for personal involvement and/or direct participation in violations of the Illinois Environmental Protection Act ("Act").

In their Motion for Reconsideration, the Respondents ignore the *C.J.R.* standard, and rely on the decision in *People v. Petco Petroleum Corporation*[3], which does not relate to individual liability under the Act. Rather, the *Petco* case was limited to consideration of personal liability

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[1]*Citizens against Regional Landfill v. County Board of Whiteside,* PCB 93-156 (March 11, 1993); *People v. Community Landfill Company, Inc. and the City of Morris*, PCB 03-191 (June 1, 2006).

[2]269 Ill. App. 3d 1013, 647 N.E. 2d 1035 (3d Dist. 1995)

[3]363 Ill. App. 3d, 613, 841 N.E. 2d 1065 (4th Dist. 2006)

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under the Illinois Oil and Gas Act[4]. The distinction is significant, because different standards apply.

In *C.J.R.*, the Court relied heavily on the provisions of Section 2 of the Act, noting:

> *[a]s we have previously stated, the Act must be liberally construed to effectuate its purpose (415 ILCS 5/2(c) (West 1992). Moreover our General Assembly intended to impose liability on those responsible for harming the environment. (415 ILCS 5/2(b) (West 1992). Imposing liability only upon the corporation and not on the individuals involved in harming the environment would undermine the Act's purposes. Accordingly, we hold that corporate officers may be held liable for their personal involvement or active participation in a violation of the Act*[5].

The Illinois Oil and Gas Act contains no language comparable to Section 2 of the Act. Obviously the General Assembly did not intend that two statutes to be interpreted in the same fashion[6].

Moreover, the decision in the *Petco* dealt with issues of 'overall corporate responsibility' for remote oil spill violations. Accordingly, the *Petco* decision has no relation to the *remaining* violations against Robert Pruim & Edward Pruim[7]. In finding liability against Edward and Robert Pruim, the Board found that the Pruims were personally and directly involved in the actions and omissions leading to the violations. The Board did not find liability under a Responsible Corporate Officer theory.

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[4]225 ILCS 725/1-725/28.1

[5]269 Ill. App. 3d at 1018,

[6]The definitions of 'person' in each statute also differ.

[7]In its Final Order, the Board declined to adopt Complainant's suggestion that the 'responsible corporate officer' doctrine should be adopted to find personal liability for remote daily operating violations, and dismissed the allegations in Counts I, II, III, VI, and XII against Edward and Robert Pruim.

B. The Board correctly found personal involvement and active participation in the 'overheight' violations (Counts VII-X)

The 'overheight' violations were the direct result of the Pruims' continued dumping of waste at the Landfill after it had reached its permitted capacity. As noted by the Board, the evidence showed that Edward and Robert Pruim were fully aware that the Landfill had reached and exceeded capacity, but decided to continue operations. The evidence also showed that they were the only persons at CLC who had the authority to stop the dumping and close down, and (as sole owners of CLC), the only ones who benefitted financially from the continued operations. They must be held personally responsible.

The Respondents claim that "...there has never been any actual proof submitted that Parcel B of the landfill is overheight or that there in not any remaining capacity in Parcel B"[8]. This statement ignores their own judicial admissions, and the mountain of evidence presented at hearing.

On October 3, 2002, the Board granted summary judgment on this issue based on CLC's admission of overheight. The admission was then corroborated by substantial evidence introduced at the 2008 hearing. A partial list of this evidence includes 1) Landfill Capacity Certifications certified by the Pruims under penalty of law; 2) The Respondents' 1996 SigMod Permit application, which included engineer diagrams and surveys showing a significant overheight[9]; and 3) Permit documents submitted by the Respondents in 1997, acknowledging

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[8]Motion for Reconsideration, p.12

[9]Complainant's Exhibit 1(e)

both 475,000 cubic yards of overheight and continued dumping despite the overcapacity[10]. There is no question that the Pruims knew that capacity was reached, and made a conscious decision to continue dumping. The result was the unquestionable overheight problems, and the violations alleged in Counts VII-X. The Pruims were personally and actively involved in these violations.

C. The Board correctly found personal involvement and active participation in the financial assurance violations (Counts IV & XVII)

The undisputed evidence from hearing proved that only Edward and Robert Pruim had the authority to expend CLC funds, and as sole owners of CLC, only they benefitted from profits for continued dumping. Moreover, because they personally guaranteed the financial assurance instruments (finally obtained in 1996), only they were at risk for the increased level of financial assurance. The failure to provide sufficient financial assurance during several periods between 1993 and 1999 was a personal decision by Edward and Robert Pruim. Accordingly, the Board properly found them in violation.

D. The Board correctly found personal involvement and active participation in the Permit and Cost-Estimate violations (Counts V &XIX)

In its Final Order, the Board Found that Edward and Robert Pruim were solely responsible for Landfill permits, that they delayed submission of the SigMod permit due to ongoing negotiations with the City of Morris, and that they personally failed to timely file the permit application[11]. This decision was fully supported by the evidence at hearing. Similarly, the Board also has found that the revision of closure/post closure cost estimates was "in the

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[10]Exhibit 1(f), p.11

[11]Final Order, pp. 42-43

purview of the Pruims...."[12]. The Pruims are unable to escape a finding of liability for these knowing personal and direct violations. The Board properly applied the appropriate standard in finding personal liability on these Counts.

III. THE BOARD IS NOT REQUIRED TO ALLOCATE THE ASSESSED PENALTY

The Board found CLC liable for the violations alleged in 17 counts, and found Edward and Robert Pruim liable for the violations alleged in 8 counts. Edward and Robert Pruim were thereby held liable for 9 violations of the Act, and four violations of the Board's regulations[13]. The Board subsequently imposed a $250,000.00 penalty, joint and several, against all Respondents[14].

The penalty assessed by the Board is a small fraction of the maximum allowed under the Act. The statutory maximum for the violations found in Count V alone amount to $11,830,000.00[15]. The numbers are similarly staggering for other Counts where the Board found all Respondents liable. For each overheight count, the duration of violation amounted to at least 972 days, for a total maximum penalty of $9,770,000.00[16]. Because the Complainant did not

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[12]Final Order, P. 49.

[13]The Pruims' violations include three separate violations of 415 ILCS 5/21(d)(1), three violations of 415 ILCS 5/21(d)(2), one violation each of 415 ILCS 5/21(a), 415 ILCS 5/21.1(a), 415 ILCS 5/21(o)(9), and violations of 35 Ill. Adm. Code Sections 807.601(a), 807.603(b), 807.623(a), and 814.104.

[14]Complainant believes that CLC has no remaining assets, and that the assessed penalty will need to be recovered from Edward and Robert Pruim.

[15]Complainant's Post Hearing Brief, p.47

[16]Complainant believes that the violations continue to this date. However, the evidence at hearing showed that the Landfill went overcapacity by September 1, 1994. On April 30, 1997, the Respondents submitted a permit addendum admitting at least 475,000 cubic yards of

seek a penalty in excess of $250,000.00, it has not calculated the statutory maximum penalty for all 25 violations of the Act.

Complainant provided evidence that the Respondents derived an economic benefit of $1,486,079.00 from violations in three areas (late SigMod Permit filing, failure to update financial assurance, and overheight)[17]. $1,339,793.00 of this is the State's estimate of the economic benefit from failure to relocate the overheight waste. Clearly, the Board had sufficient evidence before it to assess a much higher penalty than the State requested, just for the overheight violations.

The Respondents' sole argument for a 'breakdown' of the penalty is "...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"[18]. Aside from this naked claim, the Respondents provide no authority. No cases, statutes or regulations are cited in support.

The Board is vested with broad discretionary power in the imposition of civil penalties[19]. In this case, the Board reviewed substantial evidence and the arguments made by the parties. The Board also carefully evaluated Complainant's penalty request in comparison to penalties

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overheight waste (Complainant's Exhibit 1(f), p.11). Using only the Respondents' permit-related admissions (i.e. including calculating from the date of the survey in Complainant's Exhibit 1(e) to the 1997 Permit Addendum), the evidence showed a duration of at least 267 days, resulting in a potential penalty of $2,720,000.00 for each overheight count.

[17]Complainant's Post Hearing Brief, p. 51

[18]Motion for Reconsideration, p. 18

[19]*ESG Watts, Inc. v. Illinois Pollution Control Board*, 282 Ill. App. 3d 43, 50; 668 N.E. 2d 1015, 1020

assessed in similar cases[20]. With multiple violations, each of which would alone support the entire penalty in this case, the Board should feel no obligation to allocate fractions for each individual violation. However, if the Board wishes to allocate penalty, Complainant suggests that the $250,000.00 penalty be allocated entirely to Counts VII-X (the overheight counts). The Board has found all Respondents jointly and severally liable for these violations.

IV. THE BOARD SHOULD NOT RECONSIDER COUNTS II AND VI

The Respondents attempt to re-argue the Board's imposition of liability on Counts II and VI, related to the discharge of leachate from the Landfill to adjacent waters. However the Respondents' argument is identical to that in its Post-Hearing Brief. The Respondents do not raise any new arguments regarding the Board's interpretation of existing law.

The Board already has found that the discharged liquid was leachate, and that its discharge threatened water pollution. The Board should not again review the identical arguments in reconsideration.

V. CONCLUSION

The Respondents have failed to provide any basis for the Board to reconsider its Final Order. The Respondents' Motion for Reconsideration should be denied.

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[20]Final Order, p. 56.

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RESPECTFULLY SUBMITTED

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Environmental Enforcement/Asbestos
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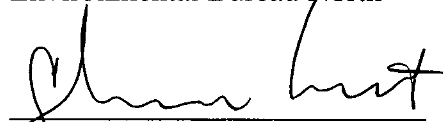
BY: 

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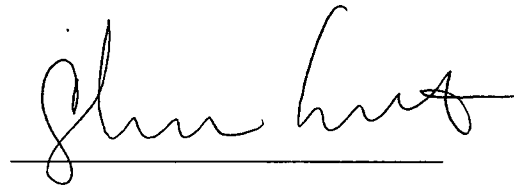
CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 13th day of October, 2009, the foregoing Complainant's Response to Motion for Reconsideration, and Notice of Electronic Filing, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.



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