

Electronic Filing - Received, Clerk's Office, December 9, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

COMMUNITY LANDFILL COMPANY,)
INC.,)

Respondent.)

PCB No. 97-193
(Enforcement – Land)
(consolidated)

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

EDWARD PRUIM and ROBERT PRUIM,)

Respondents.)

PCB No. 04-207
(Enforcement – Land)

NOTICE OF FILING

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PLEASE TAKE NOTICE that on **DECEMBER 9, 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 MOTION FOR STAY PENDING APPEAL**, a copy of which is attached and hereby served upon you.

/s/ Mark A. LaRose
One of Respondents’ Attorneys

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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)	(Enforcement – Land)
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)	(Enforcement – Land)
EDWARD PRUIM and ROBERT PRUIM,)	
)	
Respondents.)	

**RESPONDENTS COMMUNITY LANDFILL CO., INC.,
EDWARD PRUIM AND ROBERT PRUIM'S
MOTION FOR STAY PENDING APPEAL**

Respondents, COMMUNITY LANDFILL CO., INC. (CLC), EDWARD PRUIM and ROBERT PRUIM, by and through their attorneys Mark A. LaRose of LaRose & Bosco, Ltd. and Clarissa Y. Cutler, pursuant to Illinois Supreme Court Rule 335 and § 101.906(c) of the Illinois Pollution Control Board's General Rules, hereby moves the Board for a stay pending appeal for the following reasons:

1. Section 101.906(c) of the Board's General Rules provides that stays pending appeal are governed by Illinois Supreme Court Rule 335. Rule 335(g) states that a stay pending appeal shall ordinarily be sought in the first instance from the administrative agency.

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2. The Illinois Supreme Court has addressed factors that should be considered in ruling on a motion for stay pending appeal. *Stacke v. Bates*, 138 Ill.2d 295, 304-05, 562 N.E.2d 192, 196 (1990). One consideration is "whether a stay is necessary to secure the fruits of the appeal in the event that the movant is successful." *Stacke*, 138 Ill.2d at 305, 562 N.E.2d at 196. Other equitable factors should be balanced, and include whether the *status quo* should be preserved, the respective rights of the litigants, and whether hardship on other parties would be imposed. *Stacke*, 138 Ill.2d at 305-06, 309, 562 N.E.2d at 196, 198. Another consideration is whether there is a "substantial case on the merits" (not likelihood of success on the merits), but this "should not be the sole factor." *Stacke*, 138 Ill.2d at 309, 562 N.E.2d at 198. Here, all factors favor a stay.

3. In its August 20, 2009 Opinion and Order, the Board ordered the following:

- 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.

- 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)).

Electronic Filing - Received, Clerk's Office, December 9, 2009

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

(Board's August 20, 2009 Order at p. 58)

4. On September 28, 2009, CLC, Robert Pruim and Edward Pruim moved the Board to reconsider its August 20, 2009 Order, and on November 5, 2009, the Board issued an order denying CLC, Robert Pruim and Edward Pruim's Motion to Reconsider.

5. Pursuant to the Board's November 5, 2009 Order, the 30-day time frame for payment of the civil penalty was December 5, 2009.

6. Because the December 5, 2009 penalty payment deadline preceded and conflicted with the December 14, 2009 deadline to file a motion to stay in this court, and to file an appeal in the Third District Appellate Court, CLC and the Pruims filed a motion to extend the payment penalty deadline until after December 14, 2009.

7. On December 3, 2009, the Board granted CLC and the Pruim's motion to extend the payment penalty deadline to "January 5, 2010, unless the payment is stayed by either the Board or the Appellate Court."

8. Here, a stay is "necessary to secure the fruits of the appeal in the event that the movant is successful" and to preserve the status quo.

9. Ordering CLC, a closely-held corporation, and the Pruims to pay \$250,000 in penalties would render the appeal meaningless.

10. CLC and the Pruims' main arguments on appeal will be that the Board's order of any penalty, let alone a \$250,000.00 penalty was erroneous, and that the Board erroneously imposed personal liability against Robert Pruim and Edward Pruim, the principals of CLC, in regard to several counts of the State's complaint against the individual respondents.

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11. If CLC and the Pruims pay now, there is no easy process for the return of the funds if CLC and the Pruims prevail on appeal, and the State, currently in dire need of liquid funds, could spend the monies. While a court could order the State to return the funds, this could require a legislative appropriation or other complicated process. A stay should be entered in order to maintain the status quo. If the penalty is paid, then under the Act, those monies go to a special fund, the Environmental Protection Trust Fund. 415 ILCS 5/42(a); 30 ILCS 105/125.1. The disbursement of this fund is controlled by a commission of four persons, including the Attorney General, the Director of Natural Resources, the PCB Chairman, and the Director of the Environmental Protection Agency, 30 ILCS 105/125.1. These four persons have the right to approve grants and administer the funds on behalf of the State. *Id.* If this fund is inactive for 18 months or if discontinued by legislative action, the monies are transferred to the General Revenue Fund. 30 ILCS 105/5.102. The Illinois Legislature also may order the transfer of monies from the Environmental Protection Trust Fund into the General Revenue Fund. For example, starting July 1, 2006, the Legislature ordered that \$2,228,031 be transferred to the General Revenue Fund. 30 ILCS 105/8.44. Put a different way, there is no simple way to recover money from the State.

12. There is no real urgency to this matter. The initial case of PCB No. 97-193 was filed in May of 1997 and consolidated with PCB No. 04-207 in February of 2005. Allowing this matter to proceed through its final stage in the Illinois Appellate Court will not present any further harm or threat to the public or the environment. The fact that the matter has been lingering in the Pollution Control Board for more than 12 years, belies any urgency to the payment of the fine.

13. The *status quo* would be preserved by a stay.

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14. The respective rights of the litigants would not be affected and there would not be any hardship imposed on any other parties. The stay would merely postpone the effect of the Board's order pending appeal. If the state is successful on appeal, the Board's order will be in full force and effect and therefore, will have no adverse effect on the state. To the contrary, there would be an extensive adverse effect on CLC and the Pruims if the penalty requirement was imposed pending appeal.

15. An additional factor is that there is a substantial case on the merits. *Stacke*, 138 Ill.2d at 309, 562 N.E.2d at 198. This is not the same as likelihood of success on the merits, and is only one consideration, not the "sole factor." *Id.* This Board is familiar with CLC's position through its post-hearing briefs and briefs submitted in support of its Motion to Reconsider, adopted and incorporated herein by reference. While this Board did not agree with CLC's and the Pruims' position, it cannot be said that there is not a substantial case on the merits.

16. For all the reasons discuss herein, a stay is necessary in this case. The United States Supreme Court recently explained why stays pending appeal are necessary.

It takes time to decide a case on appeal. Sometimes a little; sometimes a lot. "No court can make time stand still" while it considers an appeal, *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 9 (1942), and if a court takes the time it needs, the court's decision may in some cases come too late for the party seeking review. That is why it "has always been held, . . .that as part of its traditional equipment for the administration of justice, a federal court can stay the enforcement of a judgment pending the outcome of an appeal." *Id.*, at 9-10 (footnote omitted). A stay does not make time stand still, but does hold a ruling in abeyance to allow an appellate court the time necessary to review it.

Niken v. Holder, 129 S.Ct. 1749, 1754, 173 L.Ed.2d 550 (2009) (holding a court's inherent authority to stay pending appeal and the traditional factors apply, not the demanding standards of 8 U.S.C. § 1252(f)(2)).

CONCLUSION

For the foregoing reasons, Community Landfill Co., Robert Pruim and Edward Pruim request that the Board stay its order pending appeal and grant such other relief as the Board deems proper.

Respectfully submitted,

/s/ Mark A. LaRose
One of the Attorneys for
COMMUNITY LANDFILL CO., INC.

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CERTIFICATE OF SERVICE

I, Mark A. LaRose, 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 MOTION FOR STAY PENDING APPEAL**, 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 **9th** day of **DECEMBER, 2009**, addressed as follows:

By U.S. Mail and email

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One of Respondents' Attorneys

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