

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney)
General of the State of Illinois,)
)
Complainant,)

-vs-)

EDWARD PRUIM, an individual, and)
ROBERT PRUIM, an individual,)
)
Respondents.)

PCB No. 04-207
PCB No. 97-193
(Consolidated)
(Enforcement)

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney)
General of the State of Illinois,)
)
Complainant,)

-vs-)

COMMUNITY LANDFILL COMPANY, INC.,)
)
Respondent.)

to: Mr. Mark La Rose, La Rose & Bosco
200 N. La Salle Street, #2810
Chicago, IL 60601

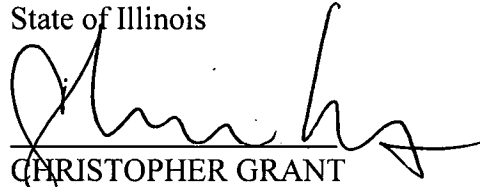
Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph, #2001

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that we have today, December 28, 2011, filed with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing, Complainant's Brief on Apportionment of Penalty, a copy of which is attached and herewith served upon you.

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

BY:



CHRISTOPHER GRANT
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Environmental Bureau
69 W. Washington St., #1800
Chicago, IL 60602
(312) 814-5388

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COMPLAINANT'S REPLY

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA
MADIGAN, Attorney General of the State of Illinois, and submits its Reply to Respondents'
Response Brief on Apportionment of Penalty.

I. COMPLAINANT'S PENALTY RECOMMENDATIONS ARE BASED ON THE RECORD AT HEARING

In its opening brief, the State noted the dissolution of Respondent CLC and the Bankruptcy filing of Respondent Robert Pruim. Both of these events occurred subsequent to the Board's 8/20/09 decision in this matter¹. Thus, they were not part of the record before the Board at the time of its decision. Accordingly, Complainant does not believe that these events should have bearing on the Board's penalty allocation on remand. These facts were included in the State's opening brief merely to advise the Board, and to demonstrate that the Board's continued deliberations were not impaired.

However, to avoid prejudice, Complainant would like to address one argument advanced by Respondents. Specifically, Respondents claim that, because of the Chapter 7 Bankruptcy case of Robert Pruim, any judgment against him "...will not be enforceable²". This statement is incorrect. While the Bankruptcy Code clearly prevents the State from *collecting* a civil penalty judgment during the pendency of the bankruptcy case, any civil penalty assessed would be nondischargeable³. Thus, any penalty imposed by the Board could be collected from Respondent Robert Pruim once his Bankruptcy case is closed. Moreover, since the penalty assessed by the Board was joint and several between Robert Pruim, Edward Pruim, and CLC, Complainant may choose to collect the entire penalty from Edward Pruim⁴.

¹ CLC was dissolved on May 10, 2010. Robert Pruim filed his Bankruptcy petition on October 27, 2011.

² Response, p.5

³ See: *In re: Damm*, 2001 WL 34065016 (Bkrcty. C.D. Ill.) (pursuant to 11 U.S.C 523(a)(7), civil penalties assessed in enforcement proceeding under the Act are not discharged in Chapter 7 bankruptcy proceeding, and may be collected despite discharge of other debts and closing of bankruptcy case.)

⁴ As noted in its 2009 Post-Hearing Brief, Complainant believes that CLC had been stripped of its assets well before this matter went to hearing.

II. COMPLAINANT'S RECOMMENDED ALLOCATION CONFORMS TO THE PURPOSES OF THE ACT.

In their Response, Respondents argue that only \$10,000.00 of the Board's \$250,000.00 civil penalty should be allocated to the Joint Respondents (CLC, Edward Pruim, and Robert Pruim). Such an allocation would render the penalty almost meaningless.

It is well established that the purpose of civil penalties are to aid in the enforcement of violations of the Act⁵. A major goal of Act is to ensure that those responsible for adverse environmental impact should be held responsible⁶. After examining the evidence, the Board found that Edward and Robert Pruim were personally and directly liable for the major violations in this case.

Clearly the "Joint" violations⁷ in this case are the most serious. These violations continued for longest period. The gravity of the threats to the environment posed by, for example, the failure to provide post-closure financial assurance, are obvious. Moreover, all of the demonstrable economic benefit from the multiple violations found by the Board in this case was derived from the Joint violations. As no penalty has yet been paid, the Joint Respondents retain this benefit⁸.

A penalty allocation of less 4% of the total assessed by the Board, as suggested by the Respondents, would have no deterrent effect against other individual violators. Moreover it would recover almost no economic benefit. Conversely, Petitioner's recommendation that \$237,300.00 be allocated to the Joint Violations conforms with the purpose of the Act by

⁵ *People v. McHenry Shores Water Company*, 295 Ill. App. 3d 628, 638 (2nd Dist. 1998); *ESG Watts, Inc. v. Pollution Control Board*, 282 Ill. App. 3d 42, 52 (4th Dist. 1996).

⁶ See: 415 ILCS 5/2(b) (2010).

⁷ Counts V, IV, VII, VIII, IX, X, XVII, and XIX

⁸ The evidence at hearing showed that Edward and Robert Pruim were the sole shareholders and officers of CLC.

removing accrued economic benefit and addressing the duration and gravity of these serious violations.

V. CONCLUSION

Based on the record and the arguments set forth herein, Complainant requests that the Board apportion the \$250,000.00 Civil Penalty assessed in this matter as follows:

Counts I, II, III, VI, and XII: \$8,000.00 against Respondent CLC;

Counts XIV, XV, XVI, and XVII: \$4,700.00 against Respondent CLC;

Counts V, IV, VII, VIII, IX, X, XVII, and XIX: \$237,300.00 against Respondents CLC, Edward Pruum, and Robert Pruum, jointly and severally.

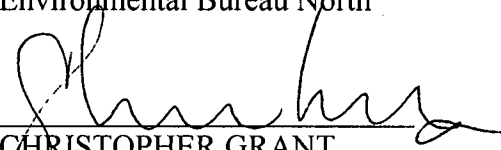
RESPECTFULLY SUBMITTED

PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN,
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

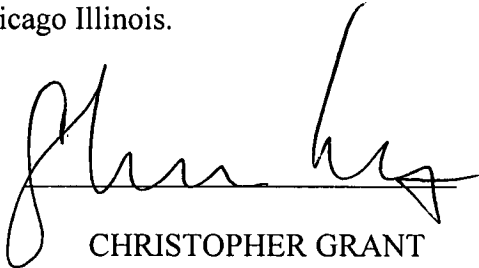
ROSEMARIE CAZEAU, Chief
Environmental Bureau North

BY:


CHRISTOPHER GRANT
Environmental Bureau
Assistant Attorney General
69 W. Washington Street, #1800
(312)814-5388

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 28th day of December, 2011, the foregoing Reply and Notice of Electronic Filing upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.



CHRISTOPHER GRANT