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 ELECTRONIC FILING

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PLEASE TAKE NOTICE that on **MAY 15, 2012,** the undersigned caused to be electronically filed with Mr. John Therriault, Clerk of the Illinois Pollution Control Board, 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60601, **RESPONDENTS COMMUNITY LANDFILL COMPANY, INC., ROBERT PRUIM AND EDWARD PRUIM'S MEMORANDUM IN SUPPORT OF THEIR MOTION FOR RECONSIDERATION OF THE BOARD'S ORDER DATED APRIL 5, 2012,** a copy of which is attached and hereby served upon you.

/s/ Mark A. LaRose
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THIS FILING IS SUBMITTED ON RECYCLED PAPER.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
vs.	)	PCB No. 97-193
	)	(Enforcement – Land)
COMMUNITY LANDFILL COMPANY, INC.,	)	(consolidated)
	)	
Respondent.	)	
PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
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	)	(Enforcement – Land)
EDWARD PRUIM and ROBERT PRUIM,	)	
	)	
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COMMUNITY LANDFILL COMPANY, INC., ROBERT PRUIM AND EDWARD PRUIM'S MEMORANDUM IN SUPPORT OF THEIR MOTION FOR RECONSIDERATION OF THE BOARD'S ORDER DATED APRIL 5, 2012

Respondents, Community Landfill Co., Inc., Robert Pruim and Edward Pruim, by and through their attorneys Mark A. LaRose of LaRose & Bosco, Ltd., pursuant to 35 Ill.Adm. Code 101.520(a) and 101.902, hereby submit their Memorandum in Support of their Motion for Reconsideration of the Board's Order dated April 5, 2012, and state as follows:

I. INTRODUCTION

On April 5, 2012, the Board issued an order (received by Respondents' counsel on April 10, 2012) reapportioning the $250,000 penalty in this matter as follows: $25,000 for nine counts (36 violations) by CLC only to CLC only; $225,000 for eight counts (10 violations) by CLC and

the Pruims to CLC and the Pruims, jointly and severally. (*See* April 5, 2012 Order, attached hereto as Exhibit 1)

In reapportioning the penalty, the Board overlooked the evidence and misapplied the law.

1. The imposition of any joint and several penalty against CLC and the Pruims is contrary to the provisions of the Act and the Illinois Code of Civil Procedure.

2. The assessment of a mere 10% of the penalty to CLC for more than 75% of the violations is unfair and results in an inequitable apportionment of the penalty. The penalty to CLC only for the nine counts (36 violations) for which it was found solely responsible should be at least $100,000.

3. CLC should have been assigned an additional several penalty of $100,000 for the violations for which both CLC and the Pruims were found liable. CLC, not the Pruims, was the day-to-day operator that was mainly responsible for the violations.

4. Only $25,000 each, at most, should be attributable to Edward and Robert Pruim, severally because:

- These were paperwork violations – there was no harm to the environment;
- The Pruims were diligent;
- Overheight is really only one violation, not four violations and there was no proven harm to the environment as a result of the overheight violation.

5. Apportionment of joint and several liability to CLC, Robert Pruim and Edward Pruim puts an inequitable burden on Edward Pruim – CLC is defunct and insolvent, and Robert Pruim's bankruptcy will prevent collection of any penalty from him.

II. STANDARD FOR RECONSIDERATION

CLC and the Pruims move the Board for reconsideration of its Order dated April 5, 2012, 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.

III. ARGUMENT

A. The Imposition of any Joint and Several Penalty Against CLC and the Pruims is Contrary to the Provisions of the Act and the Illinois Code of Civil Procedure.

The Illinois Environmental Protection Act does not specify, let alone require, how penalties are to be apportioned among the parties. **There is no mention** of joint and several liability anywhere in the Act itself, and the imposition of joint and several liability under the Act is not supported by any precedent. The only authority for the imposition of joint and several liability in environmental cases derives from the Illinois Code of Civil Procedure. Specifically, 735 ILCS 5/2-1118 allows for the imposition of joint and several liability amongst parties found to have committed certain environmental situations. Specifically, 735 ILCS 5/2-1118 provides that joint and several liability shall be imposed in an action:

> "which the trier of fact determines that the injury or damage for which recovery is sought was caused by an **act involving the discharge into the environment of any pollutant**, including any waste, hazardous substance, irritant or contaminant, including, but not limited to smoke, vapor, soot, fumes, acids, alkalis, asbestos, toxic or corrosive chemicals, radioactive waste or mine tailings, and including any such material intended to be recycled, reconditioned or reclaimed" [Emphasis added]

None of the eight counts that the Pruims and CLC were jointly convicted of involved discharge of pollutants into the environment. Ironically, all of the CLC only violations

potentially involved such activity. Research into the case law into Pollution Control Board orders reveals no authority supporting the imposition of joint and several liability for parties that have violated the act for committing violations that do not involve discharge of pollutants.

The Appellate Court, in its July 27, 2011 decision, cited *Sakellariadis v. Campbell*, 391 Ill. App. 3d 795, 801 (1st Dist. 2009) to support the rejection of joint and several liability on the Pruims for the CLC-only violations, stating that "[t]he existence of a single, indivisible injury is necessary to establish that multiple defendants are jointly and severally liable." Third District Appellate Court Order, July 27, 2011, at p. 28. The Appellate Court is only partially correct; though the Pruims should not be found joint and severally liable for the CLC-only violations, the imposition of joint and several liability at all in this matter is inappropriate.

Sakellariadis is clearly distinguishable from the present case, and the application of joint and several liability in this case is unsupported by the case law. *Sakellariadis* dealt with the issue of the divisibility of an injury and corresponding determination of joint and several liability in a personal injury action arising out of a motor vehicle accident. *Sakellariadis*, 391, Ill.App.3d, at 797-98. The Illinois Code of Civil Procedure, 735 ILCS 5/2-1117 (West 2012) clearly allows for joint and several liability in cases where the action is "on account of **bodily injury or death or physical damage to property, based on negligence"** (emphasis added). Indeed, all the cases cited in *Sakellariadis* for support of the court's conclusion concerning the indivisibility of injury arose from claims of negligence. *See*, *Sakellariadis*, 391, Ill.App.3d, at 801, citing, *Board of Trustees of Community College District No. 508, County of Cook v. Coopers & Lybrand,* 208 Ill.2d 259, 280–82 (2003) (two auditing firms were jointly and severally liable for damages based on a theory of professional negligence); *Padgett v. A & M Insulation Co.*, 266 Ill.App.3d 320, 321–23 (3rd Dist. 1994) (defendant asbestos manufacturers were jointly and severally liable

to the plaintiff for their negligence contributing to plaintiff's asbestosis); *Oakes v. General Motors Corp.*, 257 Ill.App.3d 10, 21 (1st Dist. 1993) (the plaintiff's quadriplegia was caused by a defectively designed seating system and by the negligence of the defendant who drove his truck into the plaintiffs car); *Burke v. Rothschild's Liquor Mart, Inc.*, 148 Ill.2d 429, 439 (1992) (the plaintiff's quadriplegia was attributable to the negligence of the defendant liquor store employee and the defendant City of Chicago police officers). All of these cases deal with joint and several liability in the context of the tort of negligence, which conforms with the Illinois Code of Civil Procedure. *See* 735 ILCS 5/2-1117. The so-called "joint violations" in this case do not arise out of the tort of negligence; thus this line of cases does not support the imposition of joint and several liability on the CLC and the Pruims.

The Appellate Court does cite the decision in *People ex. Rel. Ryan v. Agpro*, 345 Ill.App.3d 1011, 1018 (2d Dist. 2004) as support for a finding of joint and several liability among both CLC and the Pruims. Third District Appellate Court Order, July 27, 2011, at p. 28. In *Agpro*, the appellate court affirmed the imposition of joint and several liability against corporate and individual defendants for violations under the Act. *Agpro,* 345 Ill.App.3d at 1018. What is not discussed in the Appellate Court's July 27, 2011 decision is the fact that the environmental violations that the corporate and individual defendants were found liable for in *Agpro* all arose from dumping contaminants into the ground water. *See*, *Agpro*, 354 Ill.App.3d at 1015. In other words, the defendants in *Agpro* committed an "act involving the discharge into the environment of any pollutant", as contemplated by 735 ILCS 5/2-1118, unlike the violations that CLC and the Pruims are being held jointly and severally liable for. As such, there is no authority for the imposition of joint and several liability for violations of the act that do not arise from negligence or from the discharge of pollutants into the environment.

CLC and the Pruims have consistently argued for the imposition of several liability between CLC and the Pruims. (On remand, the Respondents sought penalty apportionment of $100,000 to CLC for the CLC violations only; $140,000 to CLC only for the joint violations; and $10,000 to the Pruims for the joint violations.) (*See* Exhibit 1, at p. 13). Under the circumstances, and based on existing law, the imposition of joint and several liability against CLC and the Pruims would be both inappropriate and contrary to existing law.

B. The Assessment of a Mere 10% of the Penalty to CLC for More than 75% of the Violations was Unfair and Resulted in an Inequitable Apportionment of the Penalty.

The penalty to CLC only for the nine counts for which it was found solely responsible should be at least $100,000. The Board's assignment of a mere 10% of the total penalty to CLC only is contrary to the penalty factors set forth under §§ 33(c) and 42(h) of the Act. The Board acknowledged that the nine counts that only CLC was convicted of contained evidence that was ". . . grave and weighed in aggravation." (Opin. at p. 21) These nine counts all included matters that had a direct potential effect on the environment: Count I failure to manage refuse and litter (seven separate dates; 18 separate violations); Count II – failure to prevent leachate flow (three separate dates; nine separate violations); Count III - failure to properly dispose of landscape waste (two separate dates; two separate violations); Count VI – causing or threatening water pollution (one violation); Count XIII – causing or allowing improper disposal of tires (one violation); Count XIV – failure to prevent blowing litter (one violation); Count XV - operation of the gas system in violation of permit (one violation); Count XVI – failure to take corrective action for cracks, erosion and ponding (one violation); and Count XVII – improper disposal of leachate (two separate dates; two separate violations). (Opin. at pp. 19-20)

CLC only was responsible for these 36 separate violations. The Pruims were exonerated. Yet the seemingly nominal penalty assigned to CLC only for these violations makes it as if the Pruims were liable as well. By assigning less than 10% of the penalty to CLC for more than 75% of the violations is inequitable and unfair. The People and the Board have improperly looked to collectability when assigning the penalty. After recognizing that CLC is defunct and insolvent, by attributing to it an inequitably small fraction of the total $250,000 penalty, the Board has attempted to influence the collectability of the penalty. This is improper.

The 36 CLC only violations should garner at least 50% of the total $250,000 penalty. The Board clearly has some discretion in assessing the appropriate penalty. Respondents argue on reconsideration that the CLC penalty for the 36 violations should be at least $100,000. This is the position of all three Respondents – CLC itself is arguing that it is inappropriate to inequitably punish its shareholders for acts attributed to the corporation only.

C. CLC Should Have Been Assigned an Additional $100,000 Several Penalty for the Violations for which Both CLC and the Pruims are Liable.

All 17 of the counts and all of the multiple violations were mainly attributable to the actions of the corporation CLC, not its officers Edward and Robert Pruim. The Board recognized this when it repeatedly held that the Pruims were not responsible for the day-to-day operation of the landfill. (August 20, 2009 Opinion at pp. 2, 41, 49, 50-51, 57, April 5, 2012 Opinion (Exhibit 1) at pp. 3, 4, 5 and 6). It is on this basis that the Board exonerated the Pruims from liability for nine of the 17 counts. Now to give the Pruims an equal share of the remaining $225,000 penalty, jointly and severally with CLC, is simply unfair and inequitable. Regarding financial assurance and closure estimate violations (Counts IV, XVII (XIX - CLC), and XIX (XXI - CLC)), it is the company's/permittee's obligation to post financial assurance and revised cost estimates – not the shareholders or officers. The Board held (incorrectly Respondents claim) that the Pruims had a

sufficient level of personal involvement to attach liability personally. But that does not negate the fact that the only responsibility to perform any of these acts (or refrain from taking acts such as the overheight) rested with the permittee CLC. The same stands for the overheight violations (Counts VII, VIII, IX and X) and the significant modification violation (Count V). The Board should have given more of the penalty to CLC for the eight counts for which both CLC and the Pruims were found liable. There is nothing in the law that requires the Board to impose identical joint and several penalty on persons and entities found liable for the same violations. It is possible that the various actors' culpability levels are different based on their actions and respective responsibility. That is exactly what happened here. CLC as permittee had sole responsibility to comply with the permit and the Act. The Pruims, as corporate officers, were stuck signing papers and making applications that ultimately resulted in questionable findings and personal liability. Simply put, assigning $225,000 in joint and several liability to CLC and the Pruims is inequitable and unfair.

D. Only $50,000 at Most Should be Attributable to Edward and Robert Pruim Because there was no Harm to the Environment

CLC was found liable for 17 counts (more than 46 separate violations); the Pruims were convicted of eight counts (a total of 10 violations). To hold the Pruims responsible for 90% of the $250,000 penalty based on less than 25% of the alleged violations is unfair and not in accordance with the Act.

Most of the violations that the Pruims were found responsible for were paperwork violations with no proof (or even allegation) of potential harm to the environment (Count IV, financial assurances - two violations; Count V, significant modification filing – one violation; Count XVII, financial assurance increases – two violations; Count XXI, revised cost estimate – one violation). These violations, which stemmed from the Pruims mostly performing their duties

as corporate officers by signing documents that only corporate officers could sign, were not like the counts that unquestionably caused potential harm to the environment – water pollution, tire disposal, mismanagement of leachate, blowing litter, operating the gas system without a permit, failure to control erosion.

Also, contrary to the Board's finding, the Pruims showed diligence throughout. The Board inappropriately found "that the over-height-related violations had not been addressed and continued through the time of final Board determination on August 20, 2009." (Opin. at p. 23) To the contrary, the uncontroverted testimony from site superintendent J. Pelnarsh and the Pruims was that they were unaware of any potential overheight until notified by the IEPA in the late 1990's, and that they immediately ordered J. Pelnarsh to move significant amounts of material from Parcel B to Parcel A. (Transcript of Hearing, December 4, 2008 at p. 31) According to this uncontested testimony, approximately 100,000 yards were moved from Parcel B to Parcel A. (*Id.*) Also, the overheight, really only one violation of the Act not four, has (a) never been proven to exist at any identifiable level; and (b) has never been alleged to have threatened or caused any harm to the environment. Regarding the failure to file the significant modification, that could not be done until the City of Morris approved a lease for Parcel A. Immediately after that occurred, the Pruims sought a variance from the Board which was denied, then reversed and granted by the Third District Appellate Court. Diligence in this regard is beyond question.

With regard to the financial assurance violation, the Pruims were diligent in attempting to replace the financial assurance vehicles for the landfill, and engaging in a long and complicated battle with the Agency to require an appropriately lesser amount of financial assurance.

Regarding the failure to file revised cost estimates, the Pruims relied upon CLC's long-standing engineering firm, Andrews Environmental, to handle that issue. There was no intentional violation on the part of the Pruims.

Based on the number, duration and gravity of the eight counts (10 violations) that the Pruims were convicted of, giving them $225,000 out of the $250,000 total penalty is unfair. Based on the Pruims' diligence and lack of <u>any</u> economic benefit (CLC is defunct and insolvent and Robert Pruim is in bankruptcy), the fine to the Pruims should be no more than $25,000 each, severally.

E. Apportionment of Joint and Several Liability to CLC, Robert Pruim and Edward Pruim puts a Potential Inequitable Burden on Edward Pruim.

CLC is defunct and insolvent, and Robert Pruim's bankruptcy will prevent collection of any penalty from him. By imposing a $225,000 penalty, jointly and severally, on CLC, Robert Pruim and Edward Pruim, the Board has in essence imposed a $225,000 penalty on Edward Pruim. For that reason, it is more appropriate to spread the burden among the Respondents. The Respondents propose $100,000 against CLC for the CLC only violations, $100,000 severally against CLC for the eight counts for which CLC and the Pruims were jointly convicted, and $25,000 each against Robert Pruim and Edward Pruim, severally, for these eight counts.

IV. CONCLUSION

Respondents CLC, Robert Pruim and Edward Pruim, respectfully pray that the Board grant Respondents' Motion to Reconsider and reapportion the civil penalty as follows:

(a) $100,000 to CLC only for Counts I, II, III, VI, XIII, XIV, XV, XVI and XVII;

(b) $100,000 to CLC severally for Counts IV, V, VII, VIII, IX, X, XIX and XXI;

(c) $25,000 each to Robert Pruim and Edward Pruim severally for Counts IV, V, VII, VIII, IX, X, XVII and XIX.

Respectfully submitted,

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ILLINOIS POLLUTION CONTROL BOARD
April 5, 2012

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,	)	
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v.	)	PCB 04-207
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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 D. Glosser):

On September 21, 2011 the Appellate Court Third District (Court) issued a mandate in Community Landfill Co. *et al.* v. IPCB *et al.*, 2011 ILApp. (3rd) 091026-U. The Court was reviewing the Board's August 20, 2009 opinion and order finding Community Landfill Company, Inc. (CLC) and Edward Pruim and Robert Pruim (Pruims) had violated various provisions of the Environmental Protection Act (Act) (415 ILCS 5/1 *et. seq.* (2010)) as well as permit conditions and the Board's landfill regulations. The Court "remanded the cause for an apportionment of the penalties." 2011 ILApp. (3rd) 091026-U at ¶1. Today the Board adopts an opinion and order apportioning the $250,000 civil penalty against respondent, CLC and respondents, the Pruims. The Board finds that a $25,000 apportionment for CLC-only violations

is appropriate given the slight duration, gravity and lack of economic benefit from the CLC-only violations. The Board further finds that given the substantial duration, gravity and economic benefit accrued, an apportionment of $225,000 jointly and severally is appropriate.

The Board will summarize the Court's decision and then provide a brief summary of the background of the case. Next the Board will summarize the Board's findings of violation. The Board will then proceed to summarize the arguments by the People, the respondents, and the People's reply. The Board will then discuss the decision on apportionment of penalties

APPELLATE COURT'S DECISION

The Court reviewed the Board's August 20, 2009 opinion and order (*see* People v. Community Landfill Co., Inc. and the Pruims, PCB 97-193, 04-207 (consol.) (Aug. 20, 2009)) finding CLC and Pruims had violated various provisions of the Act (415 ILCS 5/1 *et. seq.* (2010)) as well as permit conditions and the Board's landfill regulations. The Court "remanded the cause for an apportionment of the penalties." 2011 ILApp. (3rd) 091026-U at ¶1.

The Court affirmed the Board's decision finding the Pruims personally liable for certain violations committed as a part of operating a landfill. 2011 ILApp. (3rd) 091026-U at ¶56. However, the Court noted that the Board found CLC alone liable for certain violations. *Id.* at ¶60. The Court remanded the decision, finding that the Board should have divided the liability for the violations so that the Pruims were not liable for a penalty accruing to CLC alone. *Id.* The Court instructed the Board:

> To apportion the penalty between the violations for which CLC is liable and those for which both CLC and the Pruims are personally liable. The Board may then impose joint liability on the violations concurrent to CLC and the Pruims individually. *Id.*, citing People v. Agpro Inc. & David Schulte, 345 Ill. App. 3d 1011, 1018, 803 N.E.2d 1007 (2nd Dist. 2004) (affirming joint and several judgment against corporate and individual defendants). *Id.*

BACKGROUND

The Board will not reiterate the extensive background of this consolidated case or of the individual cases prior to consolidation. For an extensive review please see the Board's opinion and order in People v. Community Landfill Co., Inc. and the Pruims, PCB 97-193, 04-207 (consol.) (Aug. 20, 2009) . Here the Board will briefly summarize the proceeding.

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 CLC. In 2004, the People brought a second case against 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-

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.* (2010))[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. The counts in the May 21, 2004 complaint against the Pruims correspond with 19 counts of those in the November 24, 1999 second-amended complaint against CLC. Counts I through X are identical as to the violations alleged in both complaints. Counts XI, XII, XIII, XIV, XV, XVI, XVII, and XVIII of the May 21, 2004 complaint against the Pruims are essentially identical to Counts XII, XIII, XIV, XV, XVI, XVII, XIX, and XX, respectively, of the November 24, 1999 second-amended complaint against CLC. Counts XI, XVIII, and XXII of the November 24, 1999 second-amended complaint against CLC are unique to that complaint.

Prior to the filing of PCB 04-207, the Board ruled on two motions for summary judgment. The Board found 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).

Regarding the PCB 04-207 complaint, the Board dismissed one count and denied dismissal as to the remaining 19 counts of the complaint against the Pruims on November 4, 2004; however on April 20, 2006, the Board granted a motion to dismiss five additional counts.

Three days of hearing were held before Board Hearing Officer Bradley Halloran on December 2, 3, and 4, 2008, with briefing by the parties following. On August 20, 2009, the Board decided the case. The Board found that CLC violated numerous sections of the Act and Board regulations as alleged in a total of 17 counts. The Board declined to apply the "responsible corporate officers doctrine" and instead reviewed the record to determine whether the Pruims had personal involvement or active participation in acts which lead to the violations. *See* Community Landfill/Pruims, slip op. at 38 (Aug. 20, 2009)); *see also* People v. C.J.R. Processing, Inc., 269 Ill. App. 3d 1013, 647 N.E.2d 1035 (3rd Dist. 1995). The Board found that the Pruims did not have active participation and were not actively involved in the actions which resulted in the violations under specified counts of the complaint. However, the Board did find personal involvement or active participation in acts which lead to the violations multiple sections of the Act and Board regulations as alleged in eight counts of the complaint.

The Board found that the factors identified in Section 33(c) of the Act weighed both for and against the respondents. The Board further found that the factors of Section 42(h) of the Act

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[1] All citations to the Act will be to the 2010 compiled statutes, unless the section at issue has been substantively amended in the 2010 compiled statutes.

weighed in aggravation of a penalty or did not impact a penalty. Based on the statutory factors and the evidence in the record the Board found that a civil penalty of $250,000 would aid in the enforcement of the Act, recoup the economic benefit accrued, and deter violations. Therefore the Board found that CLC and the Pruims were jointly and severally liable for the $250,000 penalty.

CLC and the Pruims appealed the Board's decision and on September 21, 2011 the Court issued a mandate remanding the case to the Board. On remand, on October 20, 2011, the Board ordered the parties to brief issues relating to apportionment of liability between the findings of violation that are attributable to CLC and the Pruims jointly and those attributable only to CLC. The People submitted a brief on November 18, 2011 (Br.). CLC and the Pruims responded on December 16, 2011 (Resp.). The People filed a reply on December 28, 2011 (Reply).

SUMMARY OF THE BOARD'S FINDINGS ON EACH OF THE COUNTS

Through the course of this proceeding, the Board adjudicated each of the counts in both the November 24, 1999 second-amended complaint against CLC and the May 21, 2004 complaint against the Pruims. The Board dismissed several counts and made a number of findings of violations. The Board summarizes those findings below.

Count I (Identical Allegations in Both Complaints)

The Board found that CLC had failed to adequately manage refuse and litter in violation of 415 ILCS 5/21(d)(2), (o)(1), (o)(5), and (o)(12) (2010) and 35 Ill. Adm. Code 807.306. Community Landfill/Pruims, slip op. at 29 (Aug. 20, 2009). There was insufficient evidence that the Pruims had personal involvement or active participation in the violations, and the Board dismissed Count I as to the Pruims. *Id.* at 41.

Count II (Identical Allegations in Both Complaints)

The Board found that CLC had failed to prevent leachate flow in violation of 415 ILCS 5/21(d)(2), (o)(2), and (o)(3) (2010) and 35 Ill. Adm. Code 807.314(e). Community Landfill/Pruims, slip op. at 30 (Aug. 20, 2009). There was insufficient evidence that the Pruims had personal involvement or active participation in the violations, and the Board dismissed Count II as to the Pruims. *Id.* at 41.

Count III (Identical Allegations in Both Complaints)

The Board found that CLC had failed to properly dispose of landscape waste in violation of 415 ILCS 5/22.22(c) (2010). People v. Community Landfill Co., PCB 97-193 (Oct. 3, 2002), slip op. at 10 (granting summary judgment). The Board found that there was insufficient evidence that the Pruims had personal involvement or active participation in the violations, and the Board dismissed Count III as to the Pruims. Community Landfill/Pruims, slip op. at 41 (Aug. 20, 2009).

Count IV (Identical Allegations in Both Complaints)

The Board found that CLC and the Pruims had jointly failed to provide adequate financial assurance in violation of 415 ILCS 5/21(d)(2) and 21.1(a) (2010) and 35 Ill. Adm. Code 807.601(a) and 807.603(b)(1). Community Landfill/Pruims, slip op. at 44 (Aug. 20, 2009); Community Landfill, slip op. at 10 (Oct. 3, 2002).

Count V (Identical Allegations in Both Complaints)

The Board found that CLC and the Pruims had jointly failed to timely file a required request for a significant modification of permit in violation of 415 ILCS 5/21(d)(2) (2010) and 35 Ill. Adm. Code 814.104. Community Landfill/Pruims, slip op. at 42-43 (Aug. 20, 2009); People v. Community Landfill Co., PCB 97-193, slip op. at 6 (Apr. 5, 2001) (granting summary judgment).

Count VI (Identical Allegations in Both Complaints)

The Board found that CLC had caused, threatened, or allowed water pollution in violation of 415 ILCS 5/12(a) and 21(d)(2) (2010) and 35 Ill. Adm. Code 807.313. Community Landfill/Pruims, slip op. at 31-32 (Aug. 20, 2009). The Board found that there was insufficient evidence that the Pruims had personal involvement or active participation in the violations, and the Board dismissed Count VI as to the Pruims. Community Landfill/Pruims, slip op. at 41 (Aug. 20, 2009).

Count VII (Identical Allegations in Both Complaints)

The Board found that CLC and the Pruims had jointly deposited waste above the permitted level, thereby depositing refuse in unpermitted portions of a landfill in violation of 415 ILCS 5/21(o)(9) (2010). Community Landfill/Pruims, slip op. at 48 (Aug. 20, 2009); Community Landfill, slip op. at 13 (Oct. 3, 2002).

Count VIII (Identical Allegations in Both Complaints)

The Board found that CLC and the Pruims had jointly deposited waste above the permitted level, thereby conducting a waste disposal operation without a permit in violation of 415 ILCS 5/21(d)(1) (2010). Community Landfill/Pruims, slip op. at 48 (Aug. 20, 2009); Community Landfill, slip op. at 13 (Oct. 3, 2002).

Count IX (Identical Allegations in Both Complaints)

The Board found that CLC and the Pruims had jointly deposited waste above the permitted level, thereby causing or allowing open dumping in violation of 415 ILCS 5/21(a) (2010). Community Landfill/Pruims, slip op. at 48 (Aug. 20, 2009); Community Landfill, slip op. at 13(Oct. 3, 2002).

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Count X (Identical Allegations in Both Complaints)

The Board found that CLC and the Pruims had jointly deposited waste above the permitted level in violation of standard condition 3 of permit number 1989-005-SP and 415 ILCS 5/21(d)(1) (2010). Community Landfill/Pruims, slip op. at 48 (Aug. 20, 2009); Community Landfill Co., slip op. at 13 (Oct. 3, 2002).

Count XI (Allegations Against CLC Only)

The Board found there was insufficient evidence of improper disposal of asbestos-containing material in violation of 415 ILCS 5/9.1(d) (2010), and the Board dismissed Count XI of the complaint against CLC. Community Landfill Co., slip op. at 14 (Oct. 3, 2002.

Count XII (CLC)/Count XI (the Pruims)[2]

The Board found that the pendency of a permit appeal precluded CLC from conducting a waste disposal operation without a permit in violation of 415 ILCS 5/21(d) (2010) and 35 Ill. Adm. Code 814.301 and 814.401, and the Board dismissed Count XII of the complaint against CLC. People v. Community Landfill Co., PCB 97-193, slip op. at 5- 6(July 26, 2001), (granting summary judgment). The Board dismissed Count XI of the complaint against the Pruims after the People consented to the dismissal. People v. Pruim, PCB 04-207, slip op. at 4, 7 (Nov. 4, 2004).

Count XIII (CLC)/Count XII (the Pruims)

The Board found that CLC had caused or allowed the improper disposal of used tires in violation of 415 ILCS 5/55(b-1) (2010). Community Landfill, slip op. at 15 (Oct. 3, 2002. The Board found that there was insufficient evidence that the Pruims had personal involvement or active participation in the violations, and the Board dismissed Count XII of the complaint against the Pruims. Community Landfill/Pruims, slip op. at 41 (Aug. 20, 2009).

Count XIV (CLC)/Count XIII (the Pruims)

The Board found that CLC had failed to use movable fencing to prevent blowing litter in violation of special condition 13 in permit number 1989-005-SP and 415 ILCS 5/21(d)(1) (2010). Community Landfill Co., slip op. at 15 (Oct. 3, 2002). The Board granted voluntary dismissal of Count XIII of the complaint against the Pruims. Community Landfill/Pruims, slip op. at 5-6 (Aug. 20, 2009).

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[2] The allegations in both complaints are identical; however, due to allegations against only CLC the numbering of the counts do not agree from this point on in the separate complaints.

Count XV (CLC)/Count XIV (the Pruims)

The Board found that CLC had failed to notify the Agency before operation of a landfill gas collection system in violation of special condition 1 of permit 1996-240-SP and 415 ILCS 5/21(d)(1) (2010). Community Landfill/Pruims, slip op. at 34 (Aug. 20, 2009). The Board granted voluntary dismissal of Count XIV of the complaint against the Pruims. *Id.*, at 5, 6.

Count XVI (CLC)/Count XV (the Pruims)

The Board found that CLC had failed to take corrective action when cracks greater than one inch developed, there was erosion, and ponding occurred in violation of special condition 9 of permit 1996-240-SP and 415 ILCS 5/21(d)(1) (2010). Community Landfill, slip op. at 17 (Oct. 3, 2002). The Board granted voluntary dismissal of Count XV of the complaint against the Pruims Community Landfill/Pruims, slip op. at 5-6 (Aug. 20, 2009).

Count XVII (CLC)/Count XVI (the Pruims)

The Board found that CLC had improperly disposed of landfill leachate on-site, in violation of special condition 11 of permit 1996-240-SP and 415 ILCS 5/21(d)(1) (2010). Community Landfill/Pruims, slip op. at 34-35 (Aug. 20, 2009). The Board granted voluntary dismissal of Count XVI of the complaint against the Pruims. *Id.* at 5- 6.

Count XI (Allegations Against CLC Only)

The Board found that CLC had not failed to ensure the required minimum cover depth above all appurtenances of the landfill gas collection system in violation of special condition 10 of permit 1996-240-SP and 415 ILCS 5/21(d)(1) (2010), and the Board dismissed Count XVIII of the complaint against CLC. Community Landfill, slip op at 19-20 (Oct. 3, 2002).

Count XIX (CLC)/Count XVII (the Pruims)

The Board found that CLC and the Pruims had jointly failed to obtain a required increase in the amount of financial assurance before January 22, 1997 (90 days after the date of permit issuance) and to increase the amount of financial assurance before operation of the landfill gas collection system in violation of special condition 13 of permit 1996-240-SP and 415 ILCS 5/21(d)(1) (2010). Community Landfill/Pruims, slip op. at 33, 49 (Aug. 20, 2009).

Count XX (CLC)/Count XVIII (the Pruims).

The Board granted voluntary dismissal of Count XX of the complaint against CLC and Count XVI of the complaint against the Pruims, which alleged placement of waste (leachate) in unapproved area of a landfill in violation of special condition 17 of supplemental permit number 1996-240-SP and 415 ILCS 5/21(d)(1) (2010). Community Landfill/Pruims, slip op. at 5-6, 35 (Aug. 20, 2009).

Count XXI (CLC)/Count XIX (the Pruims)

The Board found that CLC and the Pruims had jointly failed to timely provide a revised cost estimate for facility closure and post-closure care as required by special condition 9 of the permit granted CLC on April 20, 1993 in violation of 415 ILCS 5/21(d)(2) (2010) and 35 Ill. Adm. Code 807.623(a). Community Landfill/Pruims, slip op. at 33, 49 (Aug. 20, 2009).

Count XII (Allegations Against CLC Only)

The Board found that filing revised cost estimates in an application for significant modification of permit fulfilled special condition 9 of the permit granted CLC on April 20, 1993. The Board dismissed the alleged violation of 415 ILCS 5/21(d)(2) (2010) and 35 Ill. Adm. Code 807.623(a). Community Landfill, slip op. at 23-24 (Oct. 3, 2002).

Summary of Violations

The Board found that CLC individually had violated the Act and Board regulations on nine of the 22 counts alleged against CLC. The Board found CLC responsible for the following violations:

Count I—Failure to adequately manage refuse and litter.
Count II—Failure to prevent leachate flow.
Count III—Improper disposal of landscape waste.
Count VI—Causing, threatening, or allowing water pollution.
Count XIII—Causing or allowing the improper disposal of used tires.
Count XIV—Failure to prevent blowing litter in violation of a permit condition.
Count XV—Failure to notify the Agency before operation of a landfill gas collection system in violation of a permit condition.
Count XVI—Failure to take corrective action when cracks greater than one inch developed, there was erosion, and ponding in violation of a permit condition.
Count XVII—Improper disposal of landfill leachate in violation of a permit condition.

The Board found that CLC and the Pruims jointly violated the Act and Board regulations on eight of the 22 counts alleged against CLC and eight counts alleged against the Pruims. The Board found CLC and the Pruims jointly responsible for the following violations:

Count IV—Failure to provide adequate financial assurance.
Count V—Failure to timely file a required request for significant modification of permit.
Count VII—Depositing refuse in unpermitted portions of a landfill.
Count VIII—Conducting a waste disposal operation without a permit.
Count IX—Causing or allowing open dumping.
Count X—Depositing waste in violation of a permit condition.
Count XIX (CLC)/Count XVII (the Pruims)—Failure to obtain required increases in the amount of financial assurance in violation of a permit condition.

Count XXI (CLC)/Count XIX (the Pruims)—Failure to timely provide a revised cost estimate for facility closure and post-closure care in violation of a permit condition.

PEOPLE'S ARGUMENT

The People recommend apportionment of the $250,000 civil penalty as follows: 1) $8,000.00 against CLC for the one-day operating violations (Counts I, II, III, VI, and XII); 2) $4,700.00 against CLC for all other CLC-only violations (Counts XIV, XV, XVI, and XVII); and 3) $237,300.00 against CLC and the Pruims jointly and severally for all joint violations (Counts V, VI, VII, IX, X, XIX, and XXI as to CLC, corresponding with Counts V, VI, VII, IX, X, XVII, and XIX as to the Pruims). Br. at 2.

Bankruptcy of Robert Pruim and CLC Dissolved

The People indicate that CLC was involuntarily dissolved by the Secretary of State on May 10, 2010. The People argue that the dissolution of CLC does not affect the Board' authority to continue the action against CLC. Br. at 3, citing 805 ILCS 5/12.30(c)(5) (2010). The People state that the arguments in this brief are based on the record produced at the 2008 hearing and thus the dissolution should have no bearing on the Board's apportionment of civil penalty. Br. at 3.

The People likewise argue that the personal bankruptcy filing of Robert Pruim should have no impact on the allocation. Br. at 3. The People argue that the automatic stay provisions of federal law do not apply to the remand from the Court. *Id.*

CLC Daily Operations Violations (Counts I, II, III, VI, and XII)

The People argue that the Board should allocate $8,000 of the civil penalty against CLC for the violations that constituted one-day operating violations discovered when the Agency conducted unannounced inspections. Br. at 5. The People opine that the Board should apply the statutory penalty of $500 per violation that is statutorily prescribed for administrative citations under Section 21(o) of the Act (415 ILCS 5/21(o) (2010)). Br. at 5, 7; *see* 415 ILCS 5/21(o) and 42(b)(4) (2010). In support of this position, the People highlight the transient nature of the one-day operating violations found during Agency inspections of the landfill.

The People note that the Board found the following separate one-day operating violations:

On March 22, 1995 and May 22, 1995, refuse in standing or flowing waters (415 ILCS 5/21(o)(1) (2010)) (Count I), a recommended total of $1,000;

On March 22, 1995, refuse remaining uncovered after the end of an operating day (415 ILCS 5/21(o)(5) (2010)) (Count I), a recommended total of $500;

On April 7, 1994, March 22, 1995, May 22, 1995, July 28, 1998, March 31, 1999, May 11, 1999, and July 20, 1999, failing to collect and contain litter after the end

of an operating day (415 ILCS 5/21(o)(12) (2010) (Count I), a recommended total of $3,500. Br. at 5-6

On April 7, 1994, March 22, 1995, and May 22, 1995, leachate flows entering the waters of the State (415 ILCS 5/21(o)(2) and (o)(3) (2010)) (Count II), a recommended total of $1,500;

Based on the above violations, the People argue for for an allocation of $6,500 for these violations. *Id.*

The People further argue that the Board should apply the $500 statutory administrative citation penalty for the other daily operational violations to which the administrative citation provisions would not otherwise apply. The People note that the Board found the following additional daily management violations:

On August 8, 1993 and April 17, 1994, disposal of landscape waste in the landfill (415 ILCS 5/22.2(c) (2010)) (Count III), a recommended total of $1,000;

On May 22, 1995, causing or allowing water pollution (415 ILCS 5/12(a) and 21(d)(2) 2010)) (Count VI), no penalty recommended; and

On July 28, 1998, improper disposal of used tires (415 ILCS 5/55(b-1) 2010)) (Count XII), a recommended total of $500.

For these violations, the People argue an allocation of $1,500 is appropriate. Br. at 6-7. The People note that for the May 22, 1995 violation, the People are not seeking an additional assessment of penalty. Br. at 7. The People indicate that the violations arise from the same acts or omissions as those in Count II and for this case no additional penalty should be allocated. *Id.*

The People argue that the penalties recommended for these violations are consistent with the factors set forth in Section 42(b) of the Act (415 ILCS 5/42(h) (2010)). Br. at 7. The People maintain that CLC derived no "large, identifiable economic benefit" from the violations. *Id.* Further the People point out the violations were one-day violations; and "several of the violations were corrected" before the next Agency site inspection. *Id.* The People opine that the penalty amount recommended is consistent with a prior adjudicated administrative citation against CLC in 1998. The People state that the People are not suggesting future daily operation violations at Illinois landfill be limited to this penalty amount. However, the People maintain "that the harm resulting from the operational violations was temporary and minor when compared to the remaining Joint Violations." Br. at. 7-8.

Remaining CLC Only Violations (Counts XIV, XV, XVI, and XVII)

The People argue that the Board should allocate $4,700, of the $250,000 civil penalty, against CLC for the remaining CLC-only violations. Br. at 8-9. The People point out that the Board found CLC in violations for the following:

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On March 31, 1999, failure to use movable fencing to contain blowing litter (415 ILCS 5/21(d)(1) (2010)) (Count XIV), a recommended total of $500;
On March 31, 1999, and continued until April 22, 1999, operating the gas collection system without first notifying the Agency (415 ILCS 5/21(d)(1) (2010)) (Count XV), a recommended total of $2,200 (22 days at $100 per day);

On March 3, 1999, and July 22, 1999, failing to take corrective action when cracks greater than one inch developed, there was erosion, and ponding occurred (415 ILCS 5/21(d)(1) (2010)) (Count XVI): a recommended total of $1,000; and

On March 3, 1999, and July 22, 1999, improper on-site disposal of leachate (415 ILCS 5/21(d)(1) (2010)) (Count XVII) a recommended total of $1,000.

The People argue that this allocation of the civil penalty is consistent with the factors in Section 42(h) of the Act (415 ILCS 5/42(h) (2010)). The total recommended allocations as to all remaining CLC-only violations is $4,700. Br. at 9-10.

The People compare the violation in Count XIV to the one-day operating violations in Counts I, II, III, VI, and XII to justify the recommended imposition of a $500 penalty. The People assert that the remaining CLC-only violations are similar to the one-day operating violations. The People assert that the violations suggest that there is no "need to recover a significant economic benefit derived from the violations". Br. at 9. Further, the People assert that the durations of the violations were brief. *Id.* Finally, the People maintain that "[n]o permanent harm resulted from [the violations]", and that "the gravity of these violations do not compare to [the] gravity of the Joint Violations." *Id.*

Joint CLC and Pruims Violations (Counts V, IV, VII, VIII, IX, X, XVII, and XIX)[3]

The People argue that the Board should allocate $237,300 of the $250,000 civil penalty against CLC and the Pruims jointly and severally for the joint violations. The People state that the Third District directed the Board to apportion a separate penalty for the joint violations, "but did not require the Board to allocate a separate penalty for each of [sic] Count." Br. at 10. The People argue that these violations were the most serious and included permit violations, repeated failures to meet financial assurance requirements, and operating the facility well after capacity had been reached. *Id.* In support of the People's suggested allocation, the People specifically address the Section 42(h) factors.

[3] The People note that the Board subdivided the the Joint Counts into four categories: Significant Modification (Count V), Financial Assurance (Counts IV and XVII), Overheight (Counts VII, VIII, IX and X), and Closure Estimates (Count XIX)

Duration and Gravity (415 ILCS 42(h)(i) (2010)

The People note that the Board found that the Significant Modification violations were ongoing for 1,178 days. Br. at 10, citing Community Landfill/Pruims, slip op. at 55 (Aug. 20, 2009). The Overheight violations had continued until at least 2000 and the Financial Assurance violations continued for hundreds of days. Br. at 11, citing Community Landfill/Pruims, slip op. at 55 (Aug. 20, 2009). Thus, the People argue that the duration of these violations was extreme.

The People argue that all the joint violations have a high degree of gravity. Br. at 11. The People maintain that the failure to submit a permit application at a time when landfill regulations were being strengthened allowed CLC and the Pruims to continue under the old standards for years. *Id.* CLC and the Pruims were able to avoid the cost of updating the facility. *Id.* The People opine that these violations are very serious. As to the Overheight violations, the People maintain that CLC and the Pruims continued operation well after they knew the site should be shut down. *Id.*

Due Diligence (415 ILCS 5/42(h)(ii) (2010))

The People assert that all of the joint violations establish a lack of due diligence. Br. at 11. The People point out that the Board noted the delay in filing a required permit application and the financial benefit from that non-action. Br. at 11-12. Further the Board indicated that the overheight issue remains. *Id.*, citing Community Landfill/Pruims, slip op. at 55 (Aug. 20, 2009). The People maintain that CLC and the Pruims have taken no action to fix the overheight, which at the time of the hearing had remained for over 13 years. Br. at 12.

Economic Benefit (415 ILCS 5/42(h)(iii) (2010))

The People assert that all of the demonstrable economic benefit in this case occurred as a result of the joint violations. Br. at 12. The People note that the Board found that the failure to file a significant modification permit resulted in an economic benefit of $140,000, and the Board noted that the Overheight violations added to the economic benefit. *Id.*, citing Community Landfill/Pruims, slip op. at 55-56 (Aug. 20, 2009). The People argue that recovery of the economic benefit of noncompliance is necessary and appropriate. Br. at 12.

Deterrence, Prior Violations, Disclosure, and Environmental Projects (415 ILCS 5/42(h)(iv), (v), (vi) and (vii) (2010))

The People argue that only a significant penalty will serve to deter future violations of the Act and Board Regulations. Br. at 12. Further, the People note CLC has prior adjudicated violations, but is not aware of any against the Pruims. Br. at 13. The respondents did not self-disclose the violations and no environmental projects have taken place. *Id.*

Summary of the People's Arguments

The People characterize the joint violations as the "most serious" and emphasize the extreme duration of many of the violations and the "significant" economic benefits derived by the respondents through the violations. Br. at 10. The People point to various findings by the Board on the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2010)) to support their assertions. *Id.* at 10-13. The People assert in conclusion that "only a significant penalty, joint and several against Edward Pruim, Robert Pruim, and Community Landfill Company, will serve to deter future violations." *Id.* at 10-12. The People point out that the respondents continue to retain the economic benefit derived through non-compliance, and the joint violations were the only violations where a "clear, demonstrable economic benefit accrued to the Respondents." *Id.* at 13.

CLC AND THE PRUIMS ARGUMENTS

The respondents argue that apportionment of the $250,000 civil penalty should be as follows: 1) $100,000.00 against CLC for all of the CLC-only violations (Counts I, II, III, VI, XII, XIV, XV, XVI, and XVII); 2) $140,000.00 against CLC for all joint violations, (Counts V, VI, VII, IX, X, XIX, and XXI as to CLC) (Counts V, VI, VII, IX, X, XVII, and XIX as to the Pruims); and 3) $10,000.00 against CLC and the Pruims jointly and severally for all joint violations (Counts V, VI, VII, IX, X, XIX, and XXI as to CLC) (Counts V, VI, VII, IX, X, XVII, and XIX as to the Pruims). Resp. at 2.

CLC Daily Operations Violations (Counts I, II, III, VI, and XII) and CLC Only Violations (Counts XIV, IV, IVI, XVII)

The respondents recommend that the Board allocate $100,000 of the $250,000 civil penalty against CLC for the one-day operating violations. Resp. at 3. The respondents state they "have no issue with CLC being apportioned part of the penalty" based on the Daily operation violations. Resp. at 2. The respondents assert that the one-day operational violations were the most numerous findings of violations, and they assert that these violations "had a potential direct effect on the environment." Resp. at 2. The respondents argue that taken individually, the violations are "relatively minor in nature". *Id.* Respondents indicate that, due to the overall quantity of violations and the accompanying permit issues, the daily operation violations warrant far greater portion of the civil penalty than the *de minimus* amounts suggested by the People. Resp. at 2-3.

Joint CLC and Pruims Violations (Counts V, IV, VII, VIII, IX, X, XVII, and XIX)

The respondents recommend that the Board allocate $10,000 joint and several liability against CLC and the Pruims for the joint violations and $140,000 of the civil penalty for the joint violations against CLC alone. Initially, the respondents take issue with the People's grouping of the Joint Violations, arguing that the People infer that there are more violations than actually occurred. Resp. at 3. The respondents assert that four findings of violations (Counts VII, VIII,

IX, and X as to all respondents) result from one violation: landfill overheight. *Id.* The respondents opine that, "[t]herefore, the joint violations boil down to four, not eight violations: overheight, significant modification permit, financial assurance and closure estimates." *Id.*

The respondents then argue that the People attempt to weigh the penalty equally for the Joint Violations between CLC and the Pruims. However, respondents assert that the People's position is not supported by the record and the law. Resp. at 3. The respondents argue that as corporate officers the Pruims had very little to do with day-to-day operations and all the actions taken by the Pruims were actions of corporate officers. *Id.* The respondents assert that the Pruims, as individuals, and CLC did not have equal parts in the violations. *Id.* The respondents maintain that "CLC as a corporation, acting through its corporate officers was almost solely responsible for the joint violations." Resp. at 3-4. The respondents opine that it is not appropriate to apportion the full remaining penalty amount jointly and severally amongst CLC and the Pruims; rather CLC should be required to pay the bulk of the civil penalty. Resp. at 3-4.

The respondents also take issue with the People's "allegation that a penalty against CLC" would have little deterrent effect and thus a larger amount of the penalty should be apportioned jointly. Resp. at 4, citing Br. at 12. Respondents argue that this contrasts with the People's earlier position. Resp. at 4. This position is also not supported by the facts and law according to the respondents. *Id.* The respondents opine that the "principal reason for the issuance of a civil penalty" is to aid in the enforcement of the Act as well as deterrence. *Id.*, citing Metropolitan Sanitary District v. IPCB, 62 Ill. 2d 38 (1975). The respondents maintain that the effect of Robert Pruim's bankruptcy will establish that respondent's apportionment of the penalty is more appropriate and better meets the requirements of the Act. Resp. at 4.

Robert Pruim's Bankruptcy

The respondents bring to the Board's attention the ongoing bankruptcy proceedings of Robert Pruim and concede that the People have accurately stated the immediate legal aspects. However, respondents assert that the People have ignored the practical effect of the bankruptcy proceedings. The respondents maintain that the bankruptcy proceedings of Robert Pruim are relevant to the proceeding before the Board. *Id.* The respondents agree that under the Act and bankruptcy law, the Board can impose a monetary judgment against Robert Pruim; however any judgment against Robert Pruim "will not be enforceable." Resp. at 5. The respondents assert that the inability to enforce a judgment against Robert Pruim is "absolutely a factor when performing an analysis under" Section 42(b) of the Act (415 ILCS 5/42(h) (2010)). *Id.*

Section 42 (h) Factors

The respondents then conduct an analysis based on the statutory penalty factors of 145 ILCS 5/42(h), which further relies on the Robert Pruim bankruptcy filing and involuntary dissolution of CLC. Resp. at 7.

Duration and Gravity (415 ILCS 42(h)(i) (2010)

The respondent asserts that the Board found that the Overheight violation "may not have been as significant as initially reported". Resp. at 6, citing Community Landfill/Pruims, slip op. at 55 (Aug. 20, 2009). Further, respondents maintain that the late filing of a significant modification permit was due to a pending lease agreement and respondent did not "blatantly ignore the Act for years". Resp. at 6.

Due Diligence (415 ILCS 5/42(h)(ii) (2010))

The respondents note that the Board did find due diligence and that the Board found the factor neither weighs in favor or against the respondents. Resp. at 6, citing Community Landfill/Pruims, slip op. at 55 (Aug. 20, 2009). Respondents argue that the Board's conclusion should not change as there is not new evidence. Resp. at 6.

Economic Benefit (415 ILCS 5/42(h)(iii) (2010))

The respondents note that the Board conceded the economic benefit for the Overheight violations presented at hearing by the People might be incorrect. Resp. at 7, citing Community Landfill/Pruims, slip op. at 55 (Aug. 20, 2009). The respondents assert that this factor should weigh against apportionment of the penalty jointly and severally. Resp. at 7. The respondent maintains that any economic benefit achieved due to the violations "was not realized by respondents" as CLC is dissolved and Robert Pruim is bankrupt. *Id.*

The respondents opine that if the Board finds that an arbitrary or unreasonable hardship would result from the penalty, the Board is not required to issue a penalty as great as the economic benefit accrued. Resp. at 7. The respondents claim that a large joint and several penalty imposed n a bankrupt individual "is certainly an unreasonable economic hardship". *Id.* The respondents argue that this factor should weigh against an apportionment of a large portion of the civil penalty jointly and severally. *Id.*

Deterrence, Prior Violations, Disclosure, and Environmental Projects (415 ILCS 5/42(h)(iv), (v), (vi) and (vii) (2010))

The respondent asserts that the People seem to want the Board to ignore CLC dissolution on one hand, but to consider it when looking at deterrence. Resp. at 7. Respondent maintains that the People cannot have it both ways. *Id.* The respondents opine that "[f]rom a deterrence perspective, any future violators can see that an entire company has been wiped out, as well as one of the shareholders by failing to comply with the Act and that before any monetary penalty has been assessed." Resp. at 8.

Respondents argue that a large joint and several penalty will not be a deterrent but will "harm the chances of respondent" complying with the Act. Resp. at 8. Furthermore, the respondents assert that joint and several liability would have the practical effect of imposing the penalty solely on Edward Pruim. Resp. at 7-8. The respondents assert that: 1) "an arbitrary and

unreasonable hardship would result" (Resp. at 7); 2) the penalty would have little deterrent value because "any future violators can see that an entire company has been wiped out . . . before any monetary penalty has been assessed" (Resp. at 8); 3) "a large joint and several penalty will do nothing but harm the chances of the respondents voluntarily complying with the Act". *Id.*

Conclusion

The respondents conclude that "the Board should ascribe a practical amount for the penalty jointly and severally to the Pruims and CLC, with the remaining amounts to CLC for the Joint violations. Resp. at 9. The respondents maintain that this is a joint and several civil penalty of $10,000 against CLC and the Pruims, with the remaining $140,000 apportioned against CLC individually. *Id.*

PEOPLE'S REPLY

The People first take issue with respondent's claim that because of the bankruptcy any claim against Robert Pruim would be unenforceable. Reply at 2. The People note that while not able to collect the penalty during bankruptcy proceedings the civil penalty assessed would not be discharged and could be collected once the bankruptcy is closed. *Id.*

Next the People reiterate that the most serious violations were the joint violations. Reply Br. at 3. The People again pointed out that the only violations for which the record had quantified costs avoided through non-compliance were the Joint Violations, and that the respondents have retained those funds because the penalty has remained unpaid. *Id.* The People conclude that:

> A penalty allocation of less [than] 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, [the People's] recommendation that $237,300 be allocated to the Joint Violations conforms with the purpose of the Act by removing accrued economic benefit and addressing the duration and gravity of these serious violations. *Id.* at 3-4.

DISCUSSION

The Board will begin this discussion by addressing the effect of CLC's dissolution and Robert Pruim's bankruptcy on the Board's decision. Next, the Board will discuss the economic benefit accrued and the arguments that an arbitrary or unreasonable hardship exists. The Board will then describe the apportionment of the $250,000 civil penalty.

Effect of the Dissolution of CLC and Robert Pruim Personal Bankruptcy Filing.[4]

The respondents have argued that the dissolution could contribute to an arbitrary and unreasonable hardship; however, they have failed to show any legal effect such dissolution should have on apportionment of the civil penalty. There is nothing before the Board to indicate that the involuntary dissolution of CLC somehow constrains the Board in apportionment of civil liability as directed by the Court.

The situation is similar with regard to the bankruptcy filing of Robert Pruim. A review of case and federal statutory law indicates that the automatic stay provisions do not apply to this proceeding. *See generally*, In re Lenz Oil Service, Inc., 65 B.R. 292 (N.D. Ill. 1986); *see* 11 U.S.C. 362(a)(6) (2010) (prohibiting "any act to collect, assess, or recover a claim"); In re Industrial Salvage, Inc., 196 B.R. 784 (S.D. Ill. June 6, 1996) (action against the State as prosecutor); In re Mateer, No. 96-3301, 205 B.R. 915 (C.D. Ill. 1997) (action against the State as prosecutor); *see also* 11 U.S.C. 362(b)(4) (2010) (likely inapplicable exception to the automatic stay provision relative to "commencement or continuation of an action or proceeding").

Finally, whatever the effect of the bankruptcy of one party, there is no effect on the liability of any other party held jointly liable. That Robert Pruim has filed for bankruptcy has no direct effect on the liability of CLC or Edward Pruim. *See* Heim v. Herrick, 344 Ill. App. 3d 810, 800 N.E.2d 1244 (4th Dist. 2003); Klaff v. Wieboldt Stores, Inc., No. 84 C 0090, 1988 U.S. Dist. Lexis 14988 (Dec. 22, 1988).

The Board has examined the record, the arguments of the parties, and case law. The Board concludes that neither the involuntary dissolution of CLC nor the bankruptcy filing of Robert Pruim should affect the scope of the Board's apportionment of civil penalty.

Economic Benefits Accrued

The Act requires the Board to assess a civil penalty that is at least as great as the economic benefits accrued. Section 41(h) of the Act provides:

> In determining the appropriate civil penalty to be imposed . . . the Board shall ensure, in all cases, that the penalty is at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial hardship. 415 ILCS 5/42(h) (2010); *see also* 415 ILCS 5/42(h)(3) (2010).

In their analysis of the penalty apportionment, the respondents argue, "a large joint and several penalty imposed on a bankrupt individual is certainly an unreasonable economic

[4] The parties assert that CLC was involuntarily dissolved on May 10, 2010, and that Robert Pruim voluntary filed for Chapter 7 personal bankruptcy on October 27, 2011. *See* Br. at 3; Remand Resp. 4, 7; Reply at 2.

hardship." Resp. at 7. They further argue that if a penalty is uncollectable against Robert Pruim and CLC:

> then the sole burden to pay the penalty and comply with the Act in the future would rest on Edward Pruim. . . . In sbort, [the People's] proposal [to impose $237,300 of the penalty on CLC and the Pruims collectively] would amount to a single individual being responsible for the penalty that is meant to be shared between [sic] three respondents. Resp. at 8.

The Board finds that imposing a joint and several civil penalty against CLC and the Pruims collectively is not an arbitrary and unreasonable hardship. Furthermore, the economic benefit found to have accrued in this case is over $140,000, and that benefit was found for violations that the Pruims were liable for committing. Therefore, the Board must apportion jointly and severally at least the economic benefit that accrued.

Furthermore, the Board notes hardship is not a factor for consideration in assessing a penalty. *See* 415 ILCS 5/33(c) and 42(h) (2010). Rather, an affirmative finding of arbitrary or unreasonable hardship is a means for reducing a penalty below the statutorily prescribed minimum of the economic benefit from non-compliance. The Board is not convinced that sucb an arbitrary or unreasonable bardship exists in this case. The economic benefit was specifically accrued for violations which the respondents were found jointly and severally liable and include delayed compliance for financial assurance and permit applications.

Though respondents maintain that respondents did not "realize" an economic benefit as evidenced by CLC's dissolution and Robert Pruim's bankruptcy, the Board is not convinced. The facts of this case clearly establish that the decisions to delay significant modification permits and financial assurance resulted in $146,286 benefit for the respondents. Therefore, the Board will follow the tenets of Section 42(h) and impose a minimum joint and several penalty of $146,286 on the Pruims and CLC collectively due to the economic benefit that accrued to the respondents. The Board must apportion the remaining $105,714 of the civil penalty pursuant to the Court's directions.

Apportionment of Civil Penalty

The Board's findings from August 20, 2009, form the starting point for the present apportionment of liability. The Court's opinion and mandate did not affect the amount of the civil penalty. That penalty is $250,000. *See* Community Landfill Co., 2011 Ill. A (3d) 91026U at ¶ 7; Community Landfill/Pruim, slip op. at 58 (Aug. 20, 2009).

The parties have suggested apportionment of the penalty in dramatically different ways. The respondents would have the Board fine CLC a total of $240,000, including $100,000 for the daily management violations and $140,000 for the CLC only violations. The respondents ask that the Pruims be assessed a fine of $10,000. The People request that the fines be apportioned by count of the complaint. For Counts I, II, III, VI, and XII (Daily Management Violations), the People recommend an $8,000 against CLC. For Counts XIV, XV, XVI, and XVII (CLC only

violations), the People recommend $4,700. For the remaining counts, all of which are joint violations, the People recommend $237,300.

In addition to the parties' recommendations, the Board notes that it may be tempting to apportion liability among the various violations by dividing the penalty among the several counts on a *pro rata* basis. This would result in CLC alone bearing 52.9% of the liability and CLC and the Pruims jointly bearing 47.1%. Another simple apportionment would divide the penalty by the number of violations found, since many counts embraced multiple violations. The Board believes that these methods, however, would be contrary to the statutory scheme the Board must follow in assessing penalties. Such methods would fail to consider the factors in Section 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2010)). As the Board stated in IEPA v. Allen Barry, individually and Allen Barry, d/b/a Allen Barry Livestock, PCB 88-71 (May 10, 1990) no formula exists for the Board to rely on for penalty determinations and the Board must make those determinations on a case-by-case basis using the statutory factors. Barry, slip op. at 35.

The Board must carefully weigh the facts of a particular case in light of a number of statutory factors to assess a penalty. 415 ILCS 5/33(c) and 42(h) (2010). The Board finds that this would also apply to the present apportionment of penalty. The Board will not give the same weight to all violations. Many of the violations were transient, while others had an extended duration. The Board found that some violations were more significant than the others. The Board must apportion the penalty among the various counts in a way that relates to the number of violations, the duration of the violations, and the relative severity of the violations, as determined by consideration of the mandatory statutory factors. Further, the Board must consider any economic benefits derived through non-compliance when assessing a penalty. 415 ILCS 5/42(h)(7) (2010).

After considering the statutory factors, and reviewing the Board's August 20, 2009 opinion and order, the Board finds some merit to the People's arguments. Therefore, the Board will begin by apportioning the CLC only violations, using the $500 penalty for each violation that is prescribed for an administrative citation violation as the floor. After apportioning the CLC only violations, the Board will apportion the remaining civil penalty using the economic benefit accrued of $146, 286 as the floor.

CLC Only Violations

The Board found that CLC had violated the Act as set forth in the complaint on 18 counts, and nine of those findings were for violations that only CLC was responsible. The Board found that CLC was in violation as alleged in the compliant on each of the 18 counts. Community Landfill/Pruim, slip op. at 57-58 (Aug. 20, 2009). The Board will summarize the nine counts where CLC was found to have violated the Act and Board regulations below.

Count I Failure to adequately manage refuse and litter. The Board found violations of 415 ILCS 5/21(o)(1) on two separate dates: March 22, 1995 and May 22, 1995; the violation of 415 ILCS 5/21(o)(5) on two dates: March 22, 1995 and March 31, 1999; and the violations of 415 ILCS 5/21(o)(12) on seven dates: April 7, 1994, March 22, 1995, May 22, 1995, July 28,

1998, March 31, 1999, May 11, 1999, and July 20, 1999. Community Landfill/Pruim, slip op. at 14-20, 57 (Aug. 20, 2009). The violations of 415 ILCS 5/21(d)(2) would have occurred on each of the seven dates that the Agency observed the above violations. A total of 18 violations had occurred.

Count II Failure to prevent leachate flow. The Board found violations of each of 415 ILCS 5/21(d)(2), (o)(2), and (o)(3) on each of three separate dates: April 7, 1994, March 22, 1995, and May 22, 1995. Community Landfill/Pruim, slip op. at 14-16, 57 (Aug. 20, 2009). The violations of 415 ILCS 5/21(d)(2) would have occurred on each of the three dates that the Agency observed the above violations. A total of nine violations occurred.

Count III Failure to properly dispose of landscape waste. The Board found violations of 415 ILCS 5/22.22(c) on each of two separate dates: August 18, 1993 and, April 7, 1994,. Community Landfill/Pruim, slip op. at 4, 57 (Aug. 20, 2009). A total of two violations occurred.

Count VI Causing, threatening, or allowing water pollution. The Board found violations of 415 ILCS 5/12(a) and 21(d)(2). Community Landfill/Pruim, slip op. at 7,57 (Aug. 20, 2009). A total of one violations occurred.

Count XIII Causing or allowing the improper disposal of used tires. The Board found violations of 415 ILCS 5/55(b-1) on one date: July 28, 1998. Community Landfill/Pruim, slip op. at 5, 57 (Aug. 20, 2009). A total of one violation occurred.

Count XIV Failure to use movable fencing to prevent blowing litter in violation of permit. The Board found violations of 415 ILCS 5/21(d)(1) on March 31, 1999. Community Landfill/Pruim, slip op. at 7, 57 (Aug. 20, 2009). A total of one violation occurred.

Count XV Failure to notify the Agency before operation of a landfill gas collection system in violation of permit. The Board found violations of 415 ILCS 5/21(d)(1) on March 31, 1999, and CLC had operated the system for "at least a month" prior to March 31, 1999. Community Landfill/Pruim, slip op. at 5, 57 (Aug. 20, 2009). The August 20, 2009 opinion and order was silent as to when compliance occurred. *Id.* at 33-34, 52. A total of one violation occurred.

Count XVI Failure to take corrective action when cracks greater than one inch developed, there was erosion, and ponding occurred in violation of permit. The Board found violations of 415 ILCS 5/21(d)(1) on March 31, 1999. Community Landfill/Pruim, slip op. at 5, 57 (Aug. 20, 2009). A total of one violation occurred.

Count XVII Improper disposal of landfill leachate on-site in violation of permit. The Board found violations of 415 ILCS 5/21(d)(1) on two dates: March 31, 1999 and July 20, 1999. Community Landfill/Pruim, slip op. at 7,57 (Aug. 20, 2009). A total of two violations occurred.

Apportionment of Penalty to CLC only. The Board examined these nine counts using the Section 33(c) and 42(h) factors. *See generally*, Community Landfill/Pruim, slip op. at 50-56 (Aug. 20, 2009). The Board found that evidence of inadequate litter control and evidence of leachate seeps contributed to the fact that the landfill does not have "social or economic value." *Id.* at p. 51. The Board further found that the Agency denial of a permit should not have affected CLC's ability to comply with daily operational requirements. *Id.* at p. 52. CLC ultimately achieved compliance with the one-day operational violations. *Id.* CLC appears to have promptly corrected violations of daily operational requirements. *Id.* at p. 55. The Board also found that the evidence of water pollution was grave and weighed in aggravation. *Id.* at p. 55.

The General Assembly has determined that set penalties are appropriate for the specified violations in the context of an administrative citation. *See* 415 ILCS 5/31.1, 42(b)(4) and (b)(4-5). The prescribed penalty for specified landfill operational violations is $500. 415 ILCS 5/21(o) and 42(b)(4) (2010). As the Board indicated above, the Board agrees with the People that under the circumstances of this case, using the $500 statutory civil penalty for an administrative citation violation as guidance seems appropriate.

The Board notes that there are 36 separate violations[5] in these nine counts. Some of the violations are one-day only violations such as the daily management of litter at the landfill; while others have more substantial impact such as water pollution violations. Merely applying the $500 per violation penalty as suggested by the People would result in a penalty to CLC of $18,000 for the CLC only violations. However, the Board finds that some of the violations go beyond merely daily management violations for which an administrative citation might be appropriate. The multiple permit violations and potential for water pollution are more egregious and existed for a more substantial period of time. Further, to treat all violations as equal to administrative citations would not serve to deter future violations. Therefore, the Board will apportion $3,500 for water pollution violations in Counts II and VI as well as $3,500 for permit violations in Count XV.

The Board finds that the total civil penalty of $25,000 for violations by the landfill operator of management requirements is supported by the record. This apportionment takes into consideration that some of the violations were for extended periods and had the potential to cause substantial harm to the environment. Thus, the duration and gravity of certain violations serves to aggravate a penalty.

CLC and the Pruims Violations

Having found that $25,000 is an appropriate penalty apportionment for the nine counts that CLC was found to have violated separately, the Board now turns to the remaining $225,000 to be apportioned. The Board will summarize the eight counts for which the respondents are jointly and severally liable.

[5] The Board notes that the People calculated the number of violations in Counts I and II, but did not include daily violations of Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2010)). The Board counts separately each day of violations of Section 21(d)(2).

Count IV Failure to provide adequate financial assurance. The Board found violations of 415 ILCS 5/21(d)(2) and 21.1(a),which were ongoing for as long as three years. Community Landfill/Pruim, slip op. at 4, 10, 55, 57 (Aug. 20, 2009). A total of two violations occurred.

Count V Failure to timely file a request for a significant modification of permit. The Board found the violation of 415 ILCS 5/21(d)(2), which was ongoing for 1,178 days, including the filing of an application 22 months late. Community Landfill/Pruim, slip op. at 4, 10, 55, 57 (Aug. 20, 2009). One violation occurred.

Count VII By depositing waste above the permitted level, depositing refuse in unpermitted portions of a landfill; Count VIII By depositing waste above the permitted level, conducting a waste disposal operation without a permit; Count IX By depositing waste above the permitted level, causing or allowing open dumping; and Count X By depositing waste above the permitted level in violation of permit. The Board found violations of 415 ILCS 5/21(a), (d)(1), (o)(9), which were ongoing for an extended period that began no later than April 30, 1997, by the respondents' admissions, which was observed by Agency inspectors on March 5, 1997 and July 20, 1999, and continued through the time of the August 20, 2009 Board opinion and order. Community Landfill/Pruim, slip op. at 17, 22, 55, 57 (Aug. 20, 2009).

Count XIX (as to CLC)/Count XVII (as to the Pruims) Failure to timely obtain required increases in the amount of financial assurance in violation of permit. The Board found two violations of 415 ILCS 5/21(d)(1), which were ongoing for extended periods that began 90 days after October 24, 1996 (i.e., on January 22, 1997) and when the respondents began to operate the gas collection system before notifying the Agency (no later than March 31, 1999), and they continued until September 1, 1999. Community Landfill/Pruim, slip op. at 6, 8, 32-33, 57 (Aug. 20, 2009). Two violations occurred.

Count XXI Failure to timely provide a revised cost estimate for facility closure and post-closure care in violation of regulation and permit. The Board found a single violation of 415 ILCS 5/21(d)(2), which was ongoing for an extended period that began December 26, 1994 and continued until July 26, 1996. Community Landfill/Pruim, slip op. at 6, 11, 23, 49, 57 (Aug. 20, 2009). One violation occurred.

Apportionment of Civil Penalty Jointly and Severally. As indicated above, the Board finds that apportioning $25,000 to CLC alone is supported by this record. This leaves the remaining $225,000 to be assessed jointly and severally. The Board reminds that a starting point in assessing the civil penalty jointly and severally is the $146,286 minimum economic benefit that accrued to the respondents. The Board found that the time-adjusted economic benefits from non-compliance for failure to timely secure financial assurance was $72,336. Community Landfill/Pruim, slip op. at 56 (Aug. 20, 2009). The time-adjusted economic benefits from non-compliance for failure to timely seek and obtain a significant modification of permit was

$73,950. *Id.* As to the overheight violation, the Board made no finding on the economic benefit to respondents; however, the Board did find that some economic benefit did occur. *Id.* at 55-56.

With regard to other statutory factors the Board found that the failure to update financial assurance "constitute[d] a significant degree of interference with the protection of health and general welfare." Community Landfill/Pruim, slip op. at 51 (Aug. 20, 2009). Further evidence of leachate seeps and inadequate litter control, as well as the history of failing to update financial assurance, "establish[ed] that the source of the pollution does not currently have social and economic value." *Id.* The respondents attempted to obtain adequate financial assurance, but ultimately did so "over three years late." *Id.* at 55. With water pollution, the failure to seek a significant modification of permit, and the failure to make biennial cost revisions and update financial assurance, the Board found these were grave violations that weighed in aggravation of penalty. *Id.*

The duration of the violations was another factor weighted by the Board. For example, the over-height-related violations had not been addressed and continued through the time of final Board determination on August 20, 2009. Community Landfill/Pruim, slip op. at 52 (Aug. 20, 2009). The over-height-related violations existed in 2000 and remained through the time of Board determination, as the respondents continued to deny their existence. *Id.* at p. 55, 56. Further, the failure to timely file revised cost estimates lasted 579 days (December 26, 1994 through July 26, 1996), a significant duration. The violation was significant because the cost estimates for facility closure and post-closure care form the basis for determining adequate financial assurance.

The record amply supports the apportionment of the majority of the civil penalty jointly and severally. The only economic benefit quantified was to the joint violations. The duration and gravity of the joint violations is more substantial. Even the respondents advocate for a more substantial apportionment to the joint violations, although respondents would separate that total between the respondents. The apportionment of $225,000 jointly and severally will recoup the economic benefit accrued and add an additional $78,714, to account for the duration, gravity and to serve as a deterrent against future violations. Given the duration, gravity, economic benefit, and need for deterrence, the Board finds that apportioning $225,000 jointly and severally is supported by this record. Furthermore, the Board finds that apportioning $225,000 to be assessed jointly and severally is consistent with the Court's mandate, and the Environmental Protection Act.

CONCLUSION

In response to the Court's remand of the Board's August 20, 2009 opinion and order, the Board apportions the civil penalty of $250,000 between the violations that CLC only has committed and the violations committed by both CLC and the Pruims. The Board assesses $25,000 to CLC for those violations for which CLC alone is responsible. The Board assesses $225,000 to CLC and the Pruims jointly and severally for violations which respondents are responsible. The Board weighed the factors of Section 33(c) and 42(h) of the Act (415 ILCS

5/33(c) and 42(h) (2010)) to arrive at this apportionment. The Board finds that the apportionment of the $250,000 civil penalty is consistent with the Court's decision and the Act.

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

ORDER

1. The Board incorporates the August 20, 2009 opinion and order as if set forth in its entirety.

2. Community Landfill Company, Inc., individually, must pay a civil penalty of twenty five thousand dollars ($25,000) no later than May 7, 2012, which is the first business day after 30 days from the date of this order. Community Landfill Company, Inc. must may 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. Federal Employer Identification number must appear on the face of the certified check or money order.

3. Community Landfill Company, Inc., Edward Pruim, and Robert Pruim, jointly and severally, must pay a civil penalty of two hundred and twenty five thousand dollars ($225,000) no later than May 7, 2012, which is the first business day after 30 days from the date of this order. Community Landfill Company, Inc., Edward Pruim, and Robert Pruim, jointly and severally, must may 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, Community Landfill Company, Inc. Federal Employer Identification number, and Edward Pruim's and Robert Pruim's social security numbers must appear on the face of the certified check or money order.

4. Community Landfill Company, Inc., individually, and Community Landfill Company, Inc., Edward Pruim, and Robert Pruim, jointly and severally, must submit payment of the civil penalty to the following entity at the following address:

   Illinois Environmental Protection Agency
   Fiscal Services Division
   1021 North Grand Avenue East
   P.O. Box 19276
   Springfield, Illinois 62974-9276

5. Penalties unpaid within the prescribed time will accrue interest pursuant to Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2010)) at

the rate prescribed by Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).

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) (2010); *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 on April 5, 2012, by a vote of 5-0

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

Electronic Filing - Received, Clerk's Office, 05/15/2012

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 MEMORANDUM IN SUPPORT OF THEIR MOTION FOR RECONSIDERATION OF THE BOARD'S ORDER DATED APRIL 5, 2012,** 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 15th day of May, 2012, addressed as follows:

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/s/ Mark A. LaRose
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