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MAR - 4 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

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

Complainant,)

v.)

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

Respondents.)

PCB No. 04-207
(Enforcement)

NOTICE OF FILING

TO: Ms. Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, 11-500
Chicago, IL 60601

Mr. Christopher Grant
Assistant Attorney General
Environmental Bureau
188 W. Randolph, 20th Floor
Chicago, IL 60601

Mr. Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
Chicago, IL 60601

PLEASE TAKE NOTICE that on March 4, 2005, we filed with the Clerk of the Illinois Pollution Control Board an original and eleven copies of **RESPONDENTS' RESPONSE TO COMPLAINANT'S MOTION TO STRIKE AFFIRMATIVE DEFENSES**, a copy of which is attached and herewith served upon you.



Attorney for Respondent

Mark A. LaRose
Clarissa C. Grayson
Attorney No. 37346
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THIS FILING IS SUBMITTED ON RECYCLED PAPER

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PEOPLE OF THE STATE OF ILLINOIS,)	
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EDWARD PRUIM, an individual, and)	
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)	
Respondents.)	

**RESPONDENTS' RESPONSE TO COMPLAINANT'S MOTION TO STRIKE
RESPONDENTS' SECOND AFFIRMATIVE DEFENSE**

This matter coming before the Illinois Pollution Control Board in Respondents' Response to Complainant's Motion to Strike Respondents' Second Affirmative Defense, Edward Pruum and Robert Pruum, Respondents, by and through their attorneys, LaRose & Bosco, Ltd., and in support thereof, state as follows:

1. Because Complainant has replied to Respondents' first affirmative defense, Respondents' present response, therefore, will only address Complainant's Motion to Strike Respondent's second affirmative defense.

2. Respondents' second affirmative defense states as follows:

"This Complaint is barred because Complainant has failed to state a claim for personal liability under the Act by failing to allege sufficient facts establishing that Respondent had personal involvement or active participation in the acts resulting in liability. Complainant has merely set forth allegations of Respondent's involvement and participation in the management of the corporation, which are insufficient to establish personal liability under the Act."

3. Complainant argues that Respondents' second affirmative defense is improper and legally insufficient because it attacks the legal sufficiency of the complaint and is nothing more than

a restatement of its Motion to Dismiss, which has already been denied by the Board.

4. Complainant's argument, however, misses the mark. The affirmative defense of failure to state a cause of action assumes only for the purpose of the defense that the allegations are true but are legally insufficient. Stratman v. Brent, 291 Ill.App.3d 123, 129, 683 N.E.2d 951, 955 (1997); 735 ILCS 5/2-619(a)(9). The defense of failure to state a cause of action may be raised at any time by motion, answer, or otherwise. 735 ILCS 5/2-619(d).

5. Alternatively, if Complainant's Motion to Strike Respondents' Second Affirmative Defense is granted by the Board, Respondents hereby request that the issues contained in its second affirmative defense be preserved and that Respondents be permitted to present evidence at trial concerning the second affirmative defense.

WHEREFORE, based on the foregoing, the parties respectfully request that the Board deny Complainant's Motion to Strike Respondent's Second Affirmative Defense and allow Respondents to present evidence at hearing in support thereof; or alternatively, that the Board order that the issues contained in Respondents' Second Affirmative Defense be preserved and that Respondents be permitted to present evidence in support thereof at hearing.

Respectfully Submitted,



One of Respondents' Attorneys

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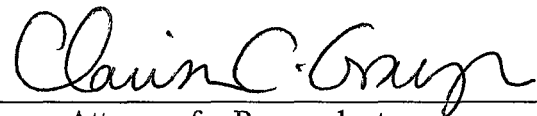
CERTIFICATE OF SERVICE

The undersigned, an attorney, on oath states that she caused to be served a copy of the foregoing **RESPONDENTS' RESPONSE TO COMPLAINANT'S MOTION TO STRIKE RESPONDENTS' SECOND AFFIRMATIVE DEFENSE** to the following parties of record, by hand delivery this 4th day of March, 2005:

Mr. Christopher Grant
Environmental Bureau
Assistant Attorney General
188 West Randolph Street, 20th Floor
Chicago, IL 60601

Mr. Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
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Ms. Dorothy Gunn, Clerk
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