

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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OCT 18 2004

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.)

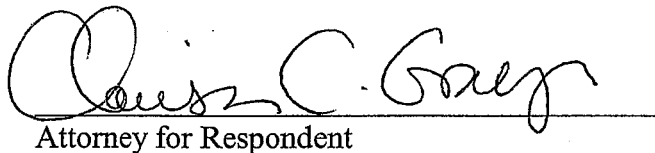
PCB No. 04-207
(Enforcement)

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

PLEASE TAKE NOTICE that on October 18, 2004, we filed with the Clerk of the Illinois Pollution Control Board an original and nine copies of **RESPONDENTS EDWARD PRUIM AND ROBERT PRUIMS' AMENDED MOTION FOR LEAVE TO FILE A REPLY**, a copy of which is attached and herewith served upon you.



Attorney for Respondent

Mark A. LaRose
Clarissa C. Grayson
Attorney No. 37346
LaRose & Bosco, Ltd.
200 N. LaSalle Street
Chicago, IL 60601
(312) 642-4414
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RESPONDENTS EDWARD PRUIM AND ROBERT PRUIMS' AMENDED MOTION FOR LEAVE TO FILE THE ATTACHED REPLY

RESPONDENTS, EDWARD PRUIM and ROBERT PRUIM, by and through their attorneys LAROSE & BOSCO, LTD. hereby move the Board for leave to file the attached reply (Exhibit A) and in support thereof, state as follows:

1. On September 10, 2004, Respondents filed a motion to dismiss the complaint filed by the People of the State of Illinois in the above matter.
2. Pursuant to Board rule Section 101.500(d), Complainant's response was to be filed on September 24, 2004. During a telephonic status conference on September 30, 2004, over Respondents' objection, Hearing Officer Bradley Halloran granted Complainant's oral motion to file its response late, on October 4, 2004.
3. During the telephonic status conference, Hearing Officer Halloran indicated that there was a possibility that the Board could consider Respondents' motion to dismiss as early as Thursday, October 7, 2004. At the direction of Hearing Officer Halloran, Respondents filed a

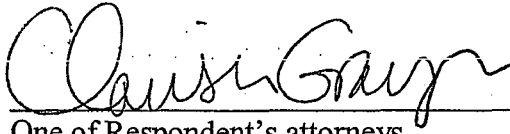
Motion for Leave to File a Reply on October 5, 2004 without actually filing the Reply itself. (See Exhibit B).

4. On Wednesday, October 13, 2004, counsel for Respondents contacted Hearing Officer Halloran to determine when a ruling on the motion for leave to file a reply would be forthcoming. At that time, Hearing Officer Halloran directed counsel to file its reply for consideration.

5. Respondents hereby file the attached reply pursuant to 35 Ill. Adm. Code 101.500(e) which permits the filing of a reply if material prejudice would result.

WHEREFORE, Respondents EDWARD PRUIM and ROBERT PRUIM respectfully request that the Board grant them leave to file the attached reply in the above matter.

Respectfully submitted,



One of Respondent's attorneys

Mark A. LaRose
Clarissa C. Grayson
LAROSE & BOSCO, LTD.
200 North LaSalle Street
Chicago, IL 60601
(312) 642-4414
Fax (312) 642-0434
Attorney No. 37346

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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 Complainant,)
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 vs.) PCB No. 04-207
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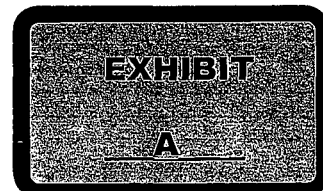
**RESPONDENTS EDWARD PRUIM AND ROBERT PRUIM'S REPLY TO
COMPLAINANT'S RESPONSE TO RESPONDENTS' MOTION TO DISMISS
COMPLAINT**

Respondents, EDWARD PRUIM and ROBERT PRUIM, (referred to collectively as "Respondents" or "the Pruims", or individually as "Edward Pruum" or "Robert Pruum") by and through their attorneys, LAROSE & BOSCO, LTD., and in reply to the People of the State of Illinois' ("People" or "Complainant") response to Respondents' Motion to Dismiss, state as follows:

I. Standard for Filing a Reply Brief

The right to file a Reply brief in the Illinois Pollution Control Board ("Board") is not absolute and will be permitted by the Board only upon a showing that its purpose is to prevent material prejudice. 35 Ill. Adm. Code 101.500(e). In the present matter, material prejudice would result if the Board adopts the proposed legal standards as set forth by Complainant in its Response to Respondents' Motion to Dismiss.

THIS FILING IS SUBMITTED ON RECYCLED PAPER



II. Argument

In its Response to Respondents' Motion to Dismiss, Complainant urges the Board to determine that simply because the Morris Community Landfill is located in the Third Appellate District, the Board should not consider any other cases from outside that district. (People's Response Brief, pp. 4 and 5). Complainant cites absolutely no legal authority for this proposition for the clear reason that there is none. Complainant bases its argument on its "belief" that this is appropriate. (People's Response Brief, p. 4). Complainant has provided no support for its "belief" that the Board is bound by a Third Appellate District decision and that it should not consider case law from other districts.

Complainant is arguing that the Pollution Control Board should **only** consider a Third District case because of the location of the landfill. What this means practically is that Complainant is attempting to see to it that the Board consider only People v. C.J.R. Processing, Inc., 269 Ill.App.3d 1013, 647 N.E.2d 1035 (3rd Dist. 1995), and **ignore** the only other two Illinois cases to address the issue of officer liability, both of which were decided this year: People v. Agro, Inc., 345 Ill.App.3d 1011, 803 N.E.2d 1007 (2nd Dist. 2004) and People v. Tang, 346 Ill.App.3d 277, 805 N.E.2d 243 (1st Dist. 2004).

It is important to note that in the event this matter is heard by the Third District Appellate Court, even that court would not be required to follow its almost ten year old decision in People v. C.J.R. Processing, Inc. and ignore the recent developments in its sister courts. No appellate court in Illinois is "inescapably bound by [its] previous decisions." Schramer v. Tiger Athletic Association of Aurora, 2004 WL 2029938, *2 (Ill.App.2 Dist.). Courts are not required to "blindly follow" its own precedents. Id., citing In re Application of County Treasurer, 292 Ill.App.3d 31, 315, 685 N.E.2d 656 (1997).

The primary issue in C.J.R. Processing, Inc., at its time a case of first impression in Illinois, was whether a corporate officer could be held individually liable for a corporation's violations of the Illinois Environmental Protection Act ("the Act") when he or she is personally involved or actively participates in those violations. 269 Ill.App.3d 1013, 1015, 647 N.E.2d 1035, 1037. The court held that corporate officers could be held liable and while finding that this particular officer was liable, concluded only that the complaint "adequately alleged [the officer's] personal involvement or active participation in the activities which caused the violations." 169 Ill.App.3d at 1018, 647 N.E.2d at 1038. All that C.J.R. really stands for is the proposition that a corporate officer could be held liable. Id.

Both before and after C.J.R. was decided by the Third District in 1995, numerous federal cases addressed the same issue in far greater depth than C.J.R.. As discussed in detail in Respondents' Motion to Dismiss, those cases include: U.S. v. Bestfoods, 524 U.S. 62, 72 (1998), Arst v. Pipefitters, 25 F.3d 417, 421 (7th Cir.) and Browning-Ferris, Inc. v. Ter Maat, 195 F.3d 953, 958 (7th Cir. 1999). Without rearguing the merits of those cases, it is important to note that the Illinois courts, in the First and Second District, recently took up where the Third District left off. The cases People v. Tang, 346 Ill.App. 3d 277, 805 N.E.2d 243 (1st Dist. 2004) and People v. Agro, 345 Ill.App.3d 1011, 803 N.E.2d 1007 (2nd Dist. 2004) both analyzed in detail existing case law, including People v. C.J.R. Processing, Inc., 269 Ill.App.3d 1013, 647 N.E.2d 1035 (3rd Dist. 1995). The First District in People v. Tang determined that the plaintiff must allege facts establishing that the corporate officer had personal involvement or active participation in the acts resulting in liability, not just that he had personal involvement or active participation in the management of the corporation. People v. Tang, 346 Ill.App. 3d 277, 289, 805 N.E.2d 243, 253-54 (1st Dist. 2004). The Second District in People v. Agro found "instructive" the decision Browning-Ferris, Inc. v. Ter

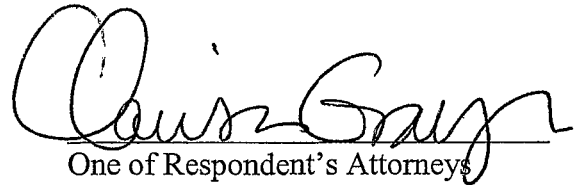
Maat, where the Seventh Circuit held that personal liability would attach where an officer personally operated a landfill rather than merely directed the business of the corporation. People v. Agpro, Inc., 345 Ill.App.3d 1011, 1028, 803 N.E.2d 1007, 1019 (2nd Dist. 2004); *citing* Browning-Ferris, Inc. v. Ter Maat, 195 F.3d 853, 956 (7th Cir. 1999).

III. Conclusion

Contrary to what Complainant “believes”, the Board is not bound by a Third District decision simply because that is the district where the landfill is located. Complainant has cited absolutely no legal authority in support of its “belief”. The Board can and should consider the First and Second District decisions People v. Tang, 346 Ill.App. 3d 277, 805 N.E.2d 243 (1st Dist. 2004) and People v. Agpro, Inc., 345 Ill.App.3d 1011, 1028, 803 N.E.2d 1007, 1019 (2nd Dist. 2004).

WHEREFORE, Respondents Edward Pruim and Robert Pruim respectfully request that the Board grant its Motion for Leave to File a Reply in the present matter, consider the attached reply and grant Respondents’ Motion to Dismiss.

Respectfully Submitted,


One of Respondent’s Attorneys

Mark A. LaRose
Clarissa C. Grayson
LaRose & Bosco, Ltd.
200 North LaSalle Street, Suite 2810
Chicago, IL 60601
(313) 642-4414
Atty No. 37346

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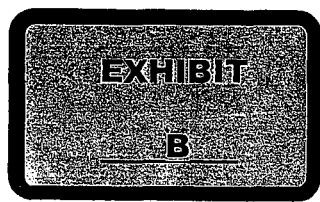
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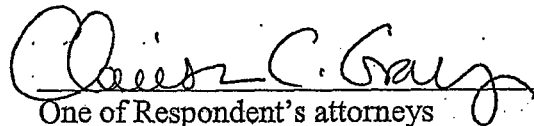


4. While Respondents only received the Complainant's response yesterday, October 4, 2004, they would like to reserve the right to file a reply prior to the Board's considering their motion to dismiss.

5. While Respondents have not yet had the opportunity to fully review Complainant's response, Respondents are filing the current motion for leave to file a reply in order to protect their right to do so prior to the next Board hearing currently scheduled for October 7, 2004.

WHEREFORE, Respondents EDWARD PRUIM and ROBERT PRUIM respectfully request that the Board grant them leave to file a reply in the above matter, if they choose to do so, on or before October 18, 2004.

Respectfully submitted,


One of Respondent's attorneys

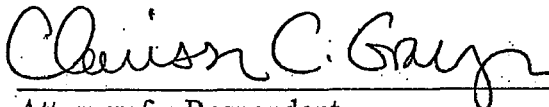
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Fax (312) 642-0434
Attorney No. 37346

CERTIFICATE OF SERVICE

The undersigned, an attorney, on oath states that she caused to be served a copy of the foregoing **RESPONDENTS EDWARD PRUIM AND ROBERT PRIUIM'S MOTION FOR LEAVE TO FILE A REPLY** to the following parties of record, by placing same in the U.S. Mail, postage prepaid this 5TH day of October, 2004:

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
Chicago, IL 60601



Attorney for Respondent

Mark A. LaRose
Clarissa C. Grayson
Attorney No. 37346
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