

THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

PAUL and DONNA FREDRICKSON,
husband and wife

Complainants

v.

Jeff Grelyak,

Respondent.

PCB 04-19

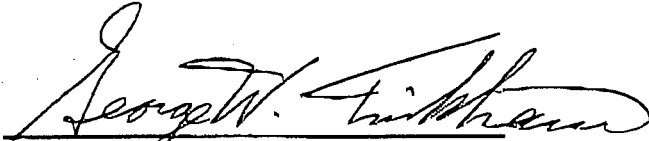
STATE OF ILLINOIS
Pollution Control Board

SEP 17 2003

NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the following:

1. my appearance as attorney for Respondent Jeffrey S. Grelyak,
2. Motion to Dismiss on behalf of Respondent Jeffrey S. Grelyak,
3. Motion for Leave to File Instanter.



George W. Tinkham
attorney for Respondent
ARDC reg. # 2836149
423 W. Vine Street
Springfield, IL 62704
(217) 753-2737

9/17/03

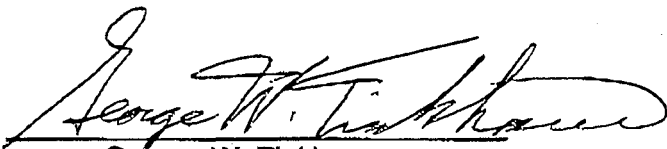
THE ILLINOIS POLLUTION CONTROL BOARD

PAUL and DONNA FREDRICKSON, husband and wife)	
)	
Complainants)	
)	
v.)	PCB 04-19
)	
Jeff Grelyak,)	
Respondent.)	

MOTION FOR LEAVE TO FILE *INSTANTER*

COMES NOW Respondent Jeffrey S. Grelyak by counsel and asks the Illinois Pollution Control Board to allow the filing of his Motion to Dismiss *instanter*. In support of this Motion, Respondent states that he received the Complaint initiating this proceeding on or about 18 August 2003. Although Respondent believes the U.S. Postal Service will post mark the envelopes containing said Motion with today's date, he is not certain that will happen. If the envelopes have a later date, Respondent would like his Motion to Dismiss to be accepted. Furthermore, a facsimile copy of the Motion to Dismiss has been sent telephonically to the Clerk of the Board pursuant to authorization of Bradley Halloran, the hearing officer assigned to this case. Respondent asks that the telefax copy be accepted and considered by the Board until such time as the hard copies arrive by mail.

A telefax copy of an affidavit by Respondent supporting this Motion is attached.



George W. Tinkham,
attorney for Respondent
ARDC reg. # 2836149
423 W. Vine Street
Springfield, IL 62704
(217) 753-2737

THE ILLINOIS POLLUTION CONTROL BOARD

PAUL and DONNA FREDRICKSON,)	
husband and wife)	
)	
Complainants)	
)	
v.)	PCB 04-19
)	
Jeff Grelyak,)	
)	
Respondent.)	

MOTION TO DISMISS

Comes now, George W. Tinkham attorney for Respondent Jeffrey Grelyak, and moves the Illinois Pollution Control Board to dismiss the Complaint, in whole or in part, in this matter for the following reasons:

1. The Complaint does not state the time or dates on which the alleged pollution occurred. Without this essential information, Respondent is unable to determine what activities and conditions were taking place on or near his property that might tend to affect the environment.
2. The Complaint fails to identify what law prohibits the alleged noise pollution. Reference is made to "Title 35, Subtitle II, Chapter J, Part 900.102 / Title 35, Subtitle H, Chapter I, Part 900.102(a)." This citation is incomplete because it does not indicate whether the provisions allegedly violated are statutory (i.e., part of the Illinois Compiled Statutes) or regulatory (i.e., found in the Illinois Administrative Code). Unless Respondent is informed of what laws he has supposedly violated, he cannot answer or defend against charges made against him.
3. Although the Complaint does state which statute (§9(a) of the Illinois Environmental Protection Act) Respondent allegedly violated by causing air pollution, the Complaint does not state how Respondent may have caused a violation. §9(a) prohibits air pollution which violates "regulations or standards adopted by the Board under this Act..." Nowhere in the Complaint is there an indication of which specific regulations or standards have been violated.
4. Illinois is a "fact-pleading" state. A complaint must state facts sufficient to bring its claims within the scope of the cause of action asserted. Vernon v. Schuster, 179 Ill.2d 338, 688 N.E.2d 1172 (1997). §101.100(b) of the Board's General Rules (35 Ill. Adm. Code 101.100(b)) states that "the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent." Because the Illinois Supreme Court has ruled that a complaint must state sufficient facts to support the claims made, Respondent respectfully asks this Board to do likewise. In this matter, Complainants have not alleged sufficient facts to support a finding of impermissible air- or noise pollution.

Fredrickson v. Grelyak, PCB 04-19
Motion to Dismiss

- 2-

5. A complaint so devoid of discernible facts as that of Complainants should be considered frivolous and without merit.

NOW THEREFORE, Respondent requests that the Illinois Pollution Control Board dismiss the complaint in this matter and close this proceeding.

Respectfully submitted,

Jeffrey S. Grelyak

By:


George W. Tinkham, his attorney

Date: 17 September 2003

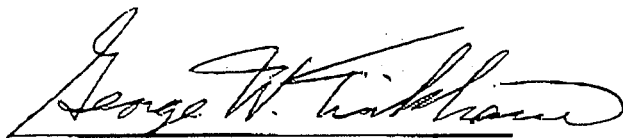
George W. Tinkham
attorney for Respondent
ARDC reg. # 2836149
423 W. Vine Street
Springfield, IL 62704
(217) 753-2737

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PAUL and DONNA FREDRICKSON, husband and wife)	
)	
Complainants)	
)	
v.)	PCB 04-19
)	
Jeff Grelyak,)	
Respondent.)	

APPEARANCE

I hereby file my appearance in this proceeding, on behalf of Jeffrey Grelyak, Respondent.



George W. Tinkham
attorney for Respondent
ARDC reg. # 2836149
423 W. Vine Street
Springfield, IL 62704
(217) 753-2737

THE ILLINOIS POLLUTION CONTROL BOARD

PAUL and DONNA FREDRICKSON, husband and wife)	
)	
Complainants)	
)	
v.)	PCB 04-19
)	
Jeff Grelyak,)	
Respondent.)	

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have today served the attached Appearance, Motion to Dismiss, Motion for Leave to File *Instanter*, and Notice of Filing to the persons listed below by the methods indicated:

1. Illinois Pollution Control Board by telefax and by mail,
2. Complainants by mail, and
3. Jeremy W. Shaw, Esq., attorney for Complainants.

The signed original and nine duplicate copies were mailed to the Board by placing said documents in an envelope with proper postage affixed and by giving said envelope to a Postal Service employee at a post office in Springfield, Illinois. Said envelope being addressed to:

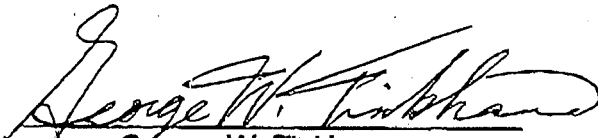
Illinois Pollution Control Board
 Attention: Clerk
 100 W. Randolph Street
 James R. Thompson Center
 Suite 11-500
 Chicago, Illinois 60601

Likewise the other copies were placed in envelopes with proper postage affixed and mailed at a US post office in Springfield, Illinois. Those envelopes were addressed to:

PAUL and DONNA FREDRICKSON
 8915 Ferris Road
 Harvard, Illinois 60033

Jeremy W. Shaw, Esq.
 40 Brink Street
 Crystal Lake, Illinois 60014

Date: 17 September 2003



George W. Tinkham,
 attorney for Respondent
 ARDC reg. # 2836149
 423 W. Vine Street
 Springfield, IL 62704
 (217) 753-2737