

ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS  
Pollution Control Board

GARY L. POLCHOW,	)	
	)	
Complainant,	)	
	)	
vs.	)	PCB 15-157
	)	(Citizens Enforcement Air Water
VILLAGE OF RANKIN,	)	
	)	
Respondent.	)	

 ORIGINAL

MOTION TO DISMISS

NOW COMES the Respondent, Village of Rankin, by and through their attorney, Curtis A. Anderson, and moves the Illinois Pollution Control Board to dismiss Complainant's Complaint for failure to state a cause of action, and in support of said Motion, Respondent states as follows:

1. Paragraph 4 of the Complaint alleges that the Village of Rankin operates a general public dump, wherein contaminants are mixed in with yard waste and that the yard waste is not sorted prior to being burned, and it is implied that contaminants then enter the air and/or ground.

The Village of Rankin does not operate a general dump site; rather, there is a small area where residents of Rankin can dispose of landscaping waste outside of the enclosed area. Once a sufficient amount of landscaping waste accumulates, it is sorted by a Village employee to remove all items that are not landscaping waste and what remains is moved into an enclosed area and burned under the supervision of a Village employee. Burning of landscaping waste may occur two to four times a year.

Paragraph 4 of the Complaint does not plead any facts that support the conclusion

that the Village operates a general public dump. The Complaint attaches numerous pictures, however, those pictures do not show the area to be a general dump, rather, the pictures show landscaping waste. Any pictures of landscaping waste outside of the enclosed area would not have been sorted to remove any non-landscaping material.

Therefore, Paragraph 4 is not a factually supported allegation but is an attempt to remove or overcome the protection provided in 415 ILCS 5/9 that allows units of local government to burn landscaping waste. Therefore, Paragraph 4 fails to plead sufficient facts to state a cause of action.

2. Paragraph 5 of the Complaint should be a listing of specific sections of the Environmental Protection Act, Board Regulations, a Board Order or permit that may have been or is being violated. Specifically, the Complainant alleges violations of 415 ILCS 5/3.115, 3.270, 9(a), 9(c) and 9(f).

Sections 5/3.115 and 3.270 simply define air pollution and landscape waste and, as such, are definition sections and cannot be violated and should be stricken or dismissed.

415 ILCS 5/9(a), (c), and (f) sets forth acts that are prohibited in regard to air pollution. 9(a) prohibits discharge or emission of any contaminant so as to cause or tend to cause air pollution. The Complaint does not allege what the contaminants are, if any, and the Complaint does not allege that the air is polluted in any manner. Rather, Complainant states "breakdown (unnatural by fire), which is not sufficient to plead a cause of action under Section 9(a). Therefore, this allegation should be stricken or dismissed.

9(c) prohibits the open burning of refuse or waste. The Complaint alleges, but does not plead, facts which would support that the Village is burning refuse or waste. Waste is

defined as garbage, sludge or other discarded material, and the Complaint does not allege any waste is being burned, and the pictures do not show any waste or refuse. Therefore, this allegation should be stricken as it does not support a cause of action.

9(f) deals with the use and burning of used oil and requires the oil meet standards for virgin oil or refined oil. The Complaint in Paragraphs 5 and 6 does not allege the burning of any kind of oil. Therefore, this allegation should be stricken as it does not support a cause of action under Section 9(f).

3. The Complainant's answer to Paragraph 6 is not responsive, as he does not specifically state what form or forms of pollution are occurring. There are references to smoke and rain water, which implies air and water pollution, however, smoke and water without further allegations, do not allege any type of air or water pollution. Complainant's pictures do not show any chemicals, oil, gas, plastic or rubber being present, let alone being intentionally burned. Therefore, Paragraph 6 should be stricken as it does not plead sufficient facts to state a cause of action.

4. Complainant's answer to Paragraph 7 is not responsive and contains no dates, but only a vague statement of two times a week for two years. What two years? There are no allegations that any of the burning is causing any type of pollution. Rather, the Complainant indicates this matter should be "investigated and cleaned up". The Complainant does not approve how the burn area looks and that it should be a nature walk, and none of those statements or allegations create a cause of action for pollution and, this Paragraph should be stricken for being non-responsive and for failure to state a cause of action.

5. In Paragraph 8, the Complainant, in describing the bad effects, states that this

activity is a “menace to public health, wildlife and homes whose property values are deteriorating”. These are general unsubstantiated claims with no facts pled in support of the allegations. In what way is a controlled burn of landscaping waste a menace? Has anyone in the area been getting sick? Is there problems with the wildlife? Rather, the Complainant sees smoke and deems it a menace, but he cannot support this conclusion with any factual pleadings.

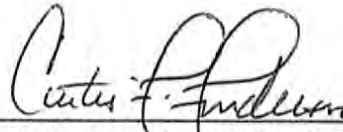
6. Paragraph 6 of the Complaint requires the complaining person to describe the type of pollution that may be occurring and to establish they have a cause of action. The Complaint fails to describe any pollution but refers to smoke from burning waste and that chemicals, gas, oil and rubber are mixed in with the landscape waste. However, the pictures used to support this allegation do not provide that support. The landscape waste is sorted prior to burning, and the Complainant has not pled any facts to show chemicals, rubber and other non-landscaping material are being intentionally burned, rather, the Complainant assumes there are items other than landscaping material that is not being sorted out.

The Complainant has failed to plead any facts which could possibly overcome the provision of 415 ILCS 5/9, which allows the burning of landscaping waste at sites provided and supervised by any unit of local government and, therefore, the Complaint does not state a cause of action for any type of pollution. The Complainant must overcome the exception for the burning of landscape waste by a unit of local government, as set forth in 415 ILCS 5/9 and, to do so, would have to plead facts that the Village is intentionally burning other non-landscaping waste. Even if the Village by mistake occasionally burned non-landscape waste, it would not support a cause of action, as it would have to be intentional.

7. The Respondent attaches to this Motion a Memorandum of Law in support of

its Motion to Dismiss.

WHEREFORE, the Respondent requests that the Complaint of Gary Polchow be dismissed for failure to state a cause of action and for any further relief that the Board or Hearing Officer deems necessary and proper.



Curtis A. Anderson, Attorney for  
The Village of Rankin

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Motion to Dismiss, Memorandum in Support of the Village of Rankin's Motion to Dismiss Complaint and Verification by mailing a copy of the same upon the following persons:

Gary L. Polchow  
319 N. Guthrie Ave.  
Rankin, IL 60960

Pollution Control Board, Attn: Clerk  
100 W. Randolph St.  
James R. Thompson Ctr., Ste. 11-500  
Chicago, IL 60601-3218

Dated: August 4, 2015



CURTIS A. ANDERSON

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ILLINOIS POLLUTION CONTROL BOARD

GARY L. POLCHOW, )  
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 Complainant, )  
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 vs. ) PCB 15-157  
 ) (Citizens Enforcement Air Water  
 VILLAGE OF RANKIN, )  
 )  
 Respondent. )

**MEMORANDUM IN SUPPORT OF THE VILLAGE OF RANKIN'S  
MOTION TO DISMISS COMPLAINT**

NOW COMES the Respondent, Village of Rankin, by and through their attorney, Curtis A. Anderson, and submits this Memorandum of Law in support of its Motion to Dismiss.

1. 735 ILCS 5/2-612 states that if a pleading is insufficient in substance or form, the Court can order a fuller or more particular statement. 735 ILCS 5/2-615 allows the Court to strike a portion of the pleadings if insufficient in law, or dismiss the action, or that a pleading be made more definite and certain.

2. Motions to Dismiss for failure to state a cause of action admits that all well-pled facts are true, but does not admit conclusions of law or factual conclusions that are unsupported by allegations of specific facts. Vincent v. Williams, (App.1 Dist. 1996) 216 Ill.Dec.13, 279 Ill.App.3d 1, 644 NE.2d 650.

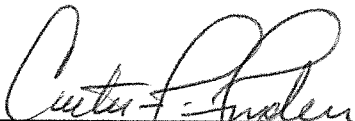
3. Illinois remains a fact pleading jurisdiction and, as such, a person must allege sufficient facts in a complaint which, if proved, would entitle the party to relief. Hough v. Kalousek, (App.1 Dist. 1996) 216 Ill.Dec. 373, 279 Ill.App.3d 855, 665 N.E.2d 433.

4. People v. Joliet Ry. Equipment Co., (App.3d 1982) 63 Ill.Dec. 842, 108 Ill.App.3d 197, 438 N.E.2d 1205, held that the mere occurrence of outdoor fire is not sufficient to constitute statutory violation of the prohibition of open burning. In other words, the outdoor burning must be intentional, rather than accidental.

5. It has also been held that compliance with the regulations of the Pollution Control Board is a prima facie defense to a charge of violation of the Act, but not necessarily a complete defense. Lloyd A. Fry Roofing Co. v. Pollution Control Board (App.1d 1974), 20 Ill.App.3d 301, 314 N.E.2d 350, certiorari denied 95 S.Ct. 1438, 420 U.S. 996, 43 L.Ed.2d 679.

6. In this case, the Village of Rankin has the protection under Illinois law (415 ILCS 5/9) that allows for the burning of landscape waste by a unit of local government. The Complainant does not address this issue and does not plead any facts that would support a conclusion that the Village of Rankin is violating the protections afforded by this exception. Further, the Complaint's pleadings must plead facts that the Village is burning non-landscaping waste. Merely pleading conclusions that are not supported by factual allegations does not support a cause of action. The Complaint would have to plead facts that the Village is intentionally burning non-landscape waste. Even the occasional burning of a non-landscape waste item would not be sufficient to state a cause of action.

WHEREFORE, for the reasons set forth in the Respondent's Motion to Dismiss and Memorandum of Law in support of the Motion, this Board should dismiss the Complaint for failure to state a cause of action.

  
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CURTIS A. ANDERSON, Attorney for the  
Village of Rankin

ILLINOIS POLLUTION CONTROL BOARD

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	)	(Citizens Enforcement Air Water
VILLAGE OF RANKIN,	)	
	)	
Respondent.	)	

VERIFICATION

STATE OF ILLINOIS )  
 ) SS:  
 COUNTY OF VERMILION )

CURTIS A. ANDERSON, having been first duly sworn upon oath, deposes and states that he has read the Motion to Dismiss and Memorandum of Law in Support of Motion to Dismiss, and the same is true and complete to the best of his knowledge, information and belief, except as to those items specifically stated.

  
 \_\_\_\_\_  
 CURTIS A. ANDERSON

SUBSCRIBED AND SWORN to before me, a Notary Public, this 4<sup>th</sup> day of July, 2015.

  
 \_\_\_\_\_  
 Notary Public

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STATE OF ILLINOIS  
Pollution Control Board

August 4, 2015



ORIGINAL

Pollution Control Board, Attn: Clerk  
100 W. Randolph St.  
James R. Thompson Ctr., Ste. 11-500  
Chicago, IL 60601-3218

Re: Gary L. Polchow vs. Village of Rankin  
PCB 15-157 (Citizens Enforcement-Air, Water)

Dear Clerk of the Illinois Pollution Control Board:

Please find enclosed the original and three copies of my Motion to Dismiss, Memorandum in Support of the Village of Rankin's Motion to Dismiss Complaint and Verification in regard to the above-entitled case. I understand a filing fee is not required.

I assume I will hear from the Pollution Control Board regarding further hearings and procedures.

Sincerely,

  
Curtis A. Anderson

CAA\jrl

Enclosures