

ILLINOIS POLLUTION CONTROL BOARD

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

COMPLAINANT'S RESPONSE TO MOTION TO DISMISS

NOW COMES Complainant, Gary Polchow, by his attorney, William P. Drew III, and he responds, as follows:

- 1) That Mr. Gary Polchow (Complainant) filed his Formal Complaint on or about October 27, 2015.
- 2) That Complainant filed his complaint ("Complaint") Pro Se.
- 3) That Complainant is now represented by attorney William P. Drew III.
- 4) That paragraph 4 of the Complaint states a well grounded factual basis naming the entity ("Rankin General Public Dump") and impermissible environmental activity ("the public burning of unwanted plastic items, components, contaminants, accelerants mixed in with yard waste with no sorting out") and that Aarron Warren and Sean McCallister of the Village of Rankin have been permitting activity and engaging in the burning of said impermissible items as part of the burning of yard waste on a repeated occasion without sorting out the unpermitted items, which is causing air pollution in violation of Illinois law as set forth in paragraph 5 of the Complainant's complaint. Furthermore, Complainant alleges that the remains from the burning

of the impermissible items, upon periodic natural rainfall, thereon become pollutant runoff into the nearby creek and water tributaries.

5) That Complainant properly further alleges that these air and water pollutants, as alleged, are a “menace to public health and wildlife, nearby homes...” and are a menace to public health and wildlife; and, such are deteriorating the ground soil and water with said illegal pollutants and contaminants; and, that such is polluting the clean and free air necessary for life’s breathing by the people and wildlife, and, causing further noxious odors and nuisances to the same.

6) That Complainant seeks to have the Pollution Control Board cease these improper burning practices of the Village and to properly clean up the pollutants caused by these improper activities.

7) That under Illinois law, all well pleaded facts and appropriate inference thereto are accepted as true.

8) That Complainant has set forth a well-pleaded complaint, stating a proper cause of action herein.

9) That Complainant has properly pled more than just the burning of yard waste as contended in respondent’s Motion to Dismiss.

10) That the photos attached as part of Complainant’s Complaint show unsorted and impermissible plastics, large tree trunks, and other impermissible items in the yard waste dump, which said impermissible debris constitutes pollutants when in violation of Illinois law as set forth in the Complaint.

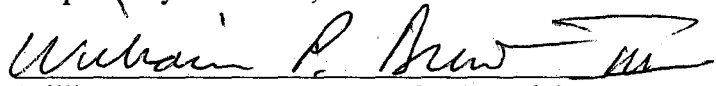
11) When a court rules on a Section 2-619 motion to dismiss, it must interpret all pleadings and supporting documents in the light most favorable to the non-moving party. *In re Chicago Flood Litigation*, 176 Ill.2d 179, 189 (1997).

12) Construing the pleadings and documentation in a light most favorable to the non-movant Complainant, the Court should deny to motion to dismiss as being premature.

13) Complainant contends that factual issues are best determined in motions for summary judgment after the parties have engaged in discovery.

WHEREFORE, the Complainant respectfully requests this Honorable Court to deny the Respondent's Motion to Dismiss; or, alternatively, to allow the Complaint to be amended or for any and other further relief as the Court deems fair and appropriate.

Respectfully submitted,


William P. Drew III, Attorney for Complainant

CERTIFICATE OF SERVICE

Certificate and Affidavit of delivery by regular mail I, William P. Drew III, an attorney, certify that I served a copy of the foregoing COMPLAINANT'S RESPONSE TO MOTION TO DISMISS to the below-named persons on January 29, 2016, before 5:00PM by electronic case filing to such persons of record electronically; and by regular mail to the below named persons at the US Mail pick up at 16626 West 159th Street – Suite 704; Lockport, Illinois 60441.

Curtis A. Anderson P.C.
7 East Harrison Street
Danville, Illinois 61832

Pollution Control Board, Attn: Clerk
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218

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