

ILLINOIS POLLUTION CONTROL BOARD

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

**COMPLAINANT’S FINDINGS OF FACT
AND CONCLUSIONS OF LAW WITH CLOSING ARGUMENT**

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

COMPLAINANT’S FINDINGS OF FACT

- 1) That Mr. Gary Polchow (Complainant) filed his Formal Complaint on or about February 9, 2015. (See, Complainant’s Complaint).

- 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 against the Respondent alleges 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.

4) That Complainant properly further alleges in his complaint 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.

5) That Complainant complaint 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.

6) 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. (See, Complainant’s Exhibits).

7) Complainant gave credible testimony at the hearing to the following facts in support of his Complaint:

A). Complainant has lived in the Village of Rankin for the past 19 years. (T.12).

B). Complainant testified that the Rankin dump site is in the center of the town on the east side. (T. 13).

C). Complainant testified that he had been going out to the dump site area during the years 2012, 2013, 2014 and 2015, and even thereafter, and witnessed Rankin employees pushing debris mixed in with yard waste, not sorting nothing and then burn all of the mixed waste (including rubber shoes, aerosol cans, cans and plastics) thereby polluting the air and, ground and nearby waterways. (T. 14-16).

D). Complainant testified that from the burning of the waste pollution polluted the airways harming humans, wildlife and nature, and that such was done on regular basis. (T. 18-21).

E). Complainant reported these serious environmental concerns to the public works superintendent, Sean McCallister, and the Village President, Aaron Warren, and he testified that they did respond to his complaints or correct the wrongful polluting. (T.23;25).

F). Complainant's admitted Exhibits A, B, C are photos of the dump site with refuse mixed in with yard waste, and these photos support the Complaint against Respondent and establish the illegal acts of pollutions by Respondent.

G). Complainant's overall testimony regarding the photos was that these photos were taken by him on the relevant dates testified that buttress an ongoing lack of supervision of the dump site and failure to separate improper plastics and refuse contaminant waste from allowed landscape waste thereby causing the illegal air pollution generated by Respondent upon burning the mixed waste. (T.27-53); Exhibits A, B and C.

8) Respondents witnesses did not sufficiently rebut the credible proofs of evidence presented by the Complainant, as follows:

A). Respondent's evidence was not credible based upon witness Sean McAllister testified that he did not know when the fence went up to enclose the fire pit, but he believes sometime in 2011; (T.68-69). Whereas Respondent's witness Mayor Aaron Warren testified that the fence was up for about 18 years. (T.84). This testimony is conflicting and therefore not credible.

B). Respondent does not have anyone supervising the dump site on a full-time basis to avoid debris from being brought to the dump site. (T.71-72; 92).

C). Respondent does not have any procedural manuals, EPA guidelines or any logs of the burnings with respect to its operations and as such factual inferences can be made that the Complaint of improper practices and failures of pollution control at the dump site are credible and true. (T.74-76).

COMPLAINANT'S CONCLUSIONS AT LAW

1) That the Respondent violated sections 9(a) and 9(c) of the statutory Act (415 ILCS 9(a) and 9(c), as set forth below:

Sec.9. Acts prohibited. No person shall:

(a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act.

(c) Cause or allow the open burning of refuse, conduct any salvage

operation by open burning, or cause or allow the burning of any refuse in any chamber not specifically designed for the purpose and approved by the Agency pursuant to regulations adopted by the Board under this Act; except that the Board may adopt regulations permitting open burning of refuse in certain cases upon a finding that no harm will result from such burning, or that any alternative method of disposing of such refuse would create a safety hazard so extreme as to justify the pollution that would result from such burning.

2) That the Complainant has met his burden of proving his Complaint against the Respondent.

CLOSING ARGUMENT

Any complaint of pollution can not be taken lightly. The subject complaint is against a municipality that is formed for the good of the People. Complainant has shown by credible testimony and direct factual evidence of photographs that the Respondent has not been acting for the good of the People by polluting the environment by the fire pit burning of unwanted plastic items, components, contaminants, accelerants mixed in with yard waste with no sorting out of this improper waste during the fire pit burning of what the Respondent claims is only yard waste. Respondent on the other hand has not shown credible evidence of regulating and supervising the public dump site in a manner that complies with modern regulatory standards of using procedural manuals, IEPA guidelines and log books that track the operations and burnings at the site. Without the aforesaid regulatory operations of the Respondent, the Complainant asks this Honorable Court to grant in full Complainant's Complaint, and that the Court should further act by fashioning a penalty both for injunctive relief curbing the wrongful polluting operations of the Respondent and for civil monetary penalties to deter further wrongdoing.

To quote one of our great environmentalists, Rachel Carson, the Complainant concludes with the following:

"Only within the 20th Century has biological thought been focused on ecology, or the relation of the living creature to its environment. Awareness of ecological relationships is — or should be — the basis of modern conservation programs, for it is useless to attempt to preserve a living species unless the kind of land or water it requires is also preserved. So delicately interwoven are the relationships that when we disturb one thread of the community fabric we alter it all — perhaps almost imperceptibly, perhaps so drastically that destruction follows."

Essay on the Biological Sciences, in: Good Reading (1958)”

– **Rachel Carson**

In sum, the Complainant states that Respondent’s operations at the Rankin dump site are not performed with the kind of awareness or with the necessary preservation of the environment to avoid unwarranted pollution, and, as such, these acts violated the State of Illinois laws and threaten the public welfare and well-being.

WHEREFORE, the Complainant respectfully requests this Honorable Court to rule in favor of the Complainant and against the Respondent and to order appropriate penalties consistent with the law and facts of the case.

Respectfully submitted,



William P. Drew III, Attorney for Complainant

CERTIFICATE OF SERVICE

Certificate and Affidavit of delivery by mail I, William P. Drew III, an attorney, certify that I served a copy of the foregoing COMPLAINANT’S FINDINGDS OF FACT, CONCLUSIONS OF LAW AND CLOSING ARGUMENT to the below-named persons on August 30, 2018 before 6:00PM by electronic case filing to such persons of record electronically

Carol Webb, Hearing Officer; Illinois Pollution Control Board; Carol.Webb@illinois.gov
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