

ILLINOIS POLLUTION CONTROL BOARD

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

**RESPONSE TO COMPLAINANT'S FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Respondent, Village of Rankin, by and through Its attorney, Andrew C. Mudd, respectfully requests that the Board find for the Respondent and requests attorney's fees to be awarded against the Complainant and in support states as follows:

1. Respondent admits paragraph 1.
2. Respondent admits paragraph 2.
3. Respondent admits paragraph 3.
4. Respondent denies all allegations in paragraph 4 and alleges that the Complainant has provided insufficient evidence required under 415 ILCS 5/9(a) or (c) of Illinois Compiled Statutes. No evidence was offered outside of Complainant's self-serving statements. Further, Complainant's experts listed in Responses to Respondent's Interrogatories, who were not called at hearing, drafted a number of reports showing no contamination was present. See Respondent's exhibits entered May 1, 2018.
5. Respondent assumes that the second paragraph 4 is supposed to be paragraph 5 and denies all allegations contained therein. Complainant offered no credible testimony that there was any contamination to air, wildlife, or the public. Further, Complainant was provided months to obtain public comment as to any of these allegations and none were filed.
6. Respondent objects to the closing of the public facility as the Complainant has not provided a single piece of credible evidence that the Village has violated 415 ILCS 5/9(a) or (c). In fact, IEPA has stated numerous times that the yard waste site is being

maintained properly. The facility is supervised and maintained by the Village. The yard waste facility is locked, sorted, and operated in compliance with the laws of Illinois.

7. Respondent objects to paragraph 8 (misabeled 7) in so far as he seeks to use images that were not admitted during the hearing, have not been authenticated, are not originals, and lack any of the basic foundational requirements needed. Further, it states an unsupported legal conclusion rather than a factual recitation.
 - a. Respondent lacks sufficient knowledge to admit or deny the length of time Complainant has resided in the Village.
 - b. Complainant testified that the “dump site” (yard waste facility) is on the center-east of town. However, the location is on the western limit of the Village. See attached Exhibit A (area outlined in blue, fence in orange, drive way in purple).
 - c. Complainant’s allegations are unsupported by evidence. IEPA conducted a number of investigations, all of which were unfounded. The Village has placed signs at each entrance to the facility. Residents have to dump all yard waste outside of the facility. Village employees sort it and dispose of any non-conforming material into a dumpster located on the property. The facility is locked and has a dumpster next to it in order for non-conforming material to be disposed of properly. Lastly, the Village waits to do any controlled burning until the wind is blowing to the west in order to make sure no smoke blows towards the Village.
 - d. Complainant testified to this; however, the Complainant lacks any training or experience in any area as to provide competent or reliable testimony on any such allegation.
 - e. Complainant did relay these concerns and the IEPA who, in turn, conducted multiple inspections of the facility found no violations. Further, Complainant filed PCB 2014-112, a similar case against Mr. Warren and Mr. McAllister, in which this Board denied.
 - f. Respondent did not receive courtesy copies of the exact photos that were produced at trial. They also lack adequate foundation, were taken by the Complainant, and the hearing officer was given vague details as to when they were taken.
 - g. Respondent denies that the evidence at hearing provided any actual evidence required to prove air pollution or illegal open burning at the yard waste facility. The conclusion that any pollution was caused is speculation at best.
8. Complainant stated that the witnesses for the Village are not credible because they did not know when the fencing was installed. The Respondent knows that this Board

will give the appropriate weight to the testimony of Mr. McAllister as the head of the Public Works for the Village and Mr. Warren who is employed as environmental services director for Accolade Health Care. While Mr. Polchow's testimony can be reviewed and weighed by this Board and given credibility that you deem appropriate from the transcript.

a. There is no statutory provision that is provided that a yard waste site needs to be supervised twenty-four hours a day. Testimony by both Mr. Warren and Mr. McAllister is that it is a locked facility, marked by signs, residents are to drop off the yard waste, it is sifted through with non-conforming materials being placed in the onsite dumpster.

b. Illinois Administrative Code, Illinois Compiled Statutes (IEPA) provide for the standards that would govern this activity. The IEPA has inspected the site and has found it on every occasion to be conforming site with no violations present.

CONCLUSIONS OF LAW

Complainant then recites the statutory provision and presumes he has complied with his burden of proof. Complainant never responds to case cited during hearing, *People v. Joilet*, “[t]he mere occurrence of an outdoor fire is not sufficient to constitute a statutory violation.” 108 Ill. App.3d 197 at 204 (1982 3rd Dist.). Here as in *Joilet*, no evidence was shown that burning landscape waste is injurious to health or life. This court in *McIntyre v. Pollution Control Board* (1972), 8 Ill.App.3d 1026, made it clear that the Act is violated where the intent to institute open burning for the purpose of disposing of refuse must be shown before any statutory violation can be proved.

Complainant also omits to reading the entire statute in which it goes on to define open burning and air pollution. ‘Air Pollution’ is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property. 415 ILCS 5/3.115. ‘Open Burning’ is the combustion of any matter in the open or in an open dump. 415 ILCS 5/3.300. No evidence has been shown that containments have been released or that this is an open dump where refuse is burned.

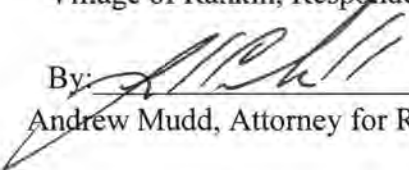
Under Sections (a) and (c), there has not been any showing of any contamination or harm to wildlife, animals, or humans. Complainant was allotted months to acquire public comment and not a single public comment was attached or provided to this Board. All of the IEPA reports and letter from the Illinois Attorney General’s office state the exact opposite. The Village has and continues to manage the facility in accordance with Illinois regulations and statutes regarding the disposal of yard waste.

CLOSING REMARKS

The record is insufficient to carry Complainant's burden to the only two remaining subsections 9 (a) and (c). Evidence provided by the Complainant was that he saw them burning trash and using accelerants. Where this site sits is the real issue. Mr. Polchow's delusions that he owns all of the railroad property is the issue. The fact that Mr. Polchow wants a nature walk through the railroad property is the issue. What is not the issue is the fact that the Village responsibly runs a yard waste disposal site, in strict compliance with the laws of the State of Illinois, for the benefit and safety of Its residents.

The transcript is clear. The Board is presented with the uncertain testimony of Mr. Polchow along with a number of photographs that there is no evidence of the Village intentionally burning materials not allowed for under statute. They have taken all reasonable steps to curtail anything but yard waste from entering the facility. The IEPA and Illinois Attorney General's office have found, every time Mr. Polchow has complained, that his allegations are unfounded. The Village would request that the Complaint be unfounded.

Village of Rankin, Respondent

By: 
Andrew Mudd, Attorney for Respondent

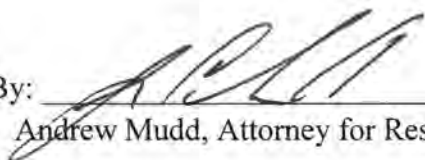
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PROOF OF SERVICE

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P.O. Box 19274, Springfield Illinois 62794.

I, Andrew C. Mudd do hereby certify that this Response was served upon the above by electronic mail and by depositing the same in the U.S. mail in Danville, Illinois, in a sealed envelope, with postage prepaid on September 25, 2018.

By: 
Andrew Mudd, Attorney for Respondent



(<http://www.co.vermilion.il.us/>)

Vermilion County GIS Parcel Mapping Application

Electronic Filing: Received, Clerk's Office 09/25/2018

