

ILLINOIS POLLUTION CONTROL BOARD

March 9, 2007

DALE L. STANHIBEL, )  
 )  
 Complainant, )  
 )  
 Vs. )  
 )  
 TOM HALAT d/b/a TOM'S ) PCB 07-17  
 VEGETABLE MARKET ) (Citizens Enforcement-Air, Noise)  
 )  
 Respondent. )  
 )  
 )  
 )  
 )

**ANSWER TO FORMAL COMPLAINT & AFFIRMATIVE DEFENSES**

NOW COMES, the Respondent, Tom Halat and Tom's Farm Market and Greenhouse, Inc., by and through it's attorneys, Franks, Gerkin & McKenna, P.C., and for his Answer to the Formal Complaint states as follows:

1. Respondent lacks knowledge sufficient to form a belief as to numbered paragraph one and therefore denies said paragraph and requires strict proof thereof.
2. Respondent lacks knowledge sufficient to form a belief as to numbered paragraph one and therefore denies said paragraph and requires strict proof thereof.
3. The portion of paragraph three which states aka-Tom's Vegetable Market is denied. The remaining portion of paragraph three is admitted.
4. Paragraph four is denied.
5. Paragraph five is denied.
6. Paragraph six is denied.
7. Paragraph seven is denied.
8. Paragraph eight it denied.
9. Paragraph nine is denied.
10. Paragraph ten is denied.

11. Paragraph eleven is denied.

WHEREFORE, the Respondent, Tom Halat hereby requests that the formal complaint in this matter be denied with any further or other relief that the Board deems just and equitable.

**AFFIRMATIVE DEFENSES**

NOW COMES, the Respondent, Tom Halat and Tom's Farm Market and Greenhouse, Inc., by and through it's attorneys, Franks, Gerkin & McKenna, P.C., and for his Affirmative Defenses as follows:

**I. Subject Matter Jurisdiction.**

12. Respondents obtained permits through the Illinois Department of Natural Resources/Illinois Conservation Police for all periods of time in which propane cannons were utilized on the property of Tom's Farm Market and Greenhouse, Inc.

13. 520 ILCS 5/2.37, which was first enacted in 1980, gives specific authority to the Illinois Department of Natural Resources and the Illinois Conversation Police to issue the permits specifying the means and methods by which wildlife may be removed.

14. The State of Illinois, through the Illinois Department of Natural Resources and the Illinois Conservation Police have permitted the use of propane cannons by Tom's Farm Market and Greenhouses, Inc., therefore, those agencies have utilized its specific authority to allow the cannons despite any possible conflict with the Pollution Control Act under 415 ILCS 5/24, which was originally adopted subsequent to 1988 and is a more general statute then 520 ILCS 5/2.37.

1. Therefore, the Illinois Pollution Control Board does not have subject matter jurisdiction over this issue.

**II. Preemption of Board Authority.**

1-4. Paragraphs one through four are re-alleged and are incorporated herein by reference.

2. Therefore, the Illinois Department of Natural Resources and the Illinois Conservation Police through 520 ILCS 2/2.37 preempts any authority by the Illinois Pollution Control Board over this issue.

WHEREFORE, the Respondent, Tom Halat and Tom's Farm Market and Greenhouse, Inc., hereby requests that Judgment enter in favor of the Respondents and against the Complainant with cost and any other or further relief that the Board deems just and equitable.

Respectfully Submitted,

Steven J. Greeley, Jr.

**VERIFICATION**

Tom Halat being first duly sworn on oath deposes and states that he is the Respondent in this case in the above-entitled cause; that he has read the above and foregoing Answer to Formal Complaint and Affirmative Defenses, by him subscribed, knows the contents thereof and the same are true.

Tom Halat

FRANKS, GERKIN & McKENNA, P.C.

Attorneys for Respondent

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