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STATE OF ILLINOIS
Pollution Control Board

CITIZEN'S ENFORCEMENT CASE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MARK LILLY,)
)
 Complainant,)
)
 v.)
)
 CITY OF ROCK FALLS, IL,)
)
 Respondent.)

ORIGINAL

PCB 12-16

The self-represented complainant alleges the city of Rock Falls as violating Sections 9 (a) and (c) of the Illinois Environmental Protection Act (Act), and Sections 237.110 and 237.120 of Title 35 of the Illinois Administrative Code.

[415 ILCS 5/3.315]

"Person" means any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

Illinois Environmental Protection Act [415 ILCS 5/9]

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;

Section 3.165 of 415 ILCS 5: "Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

Section 3.115 of the Act (415 ILCS 5): "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.**

Section 3.385 of 415 ILCS 5: "Refuse" means waste.

Title 35, Section 237.110:

"It shall be the obligation of local governments as well as of the Environmental Protection Agency (Agency), to enforce by appropriate means the prohibitions of this Part."

Title 35, Section 237.120:

The following activities are not in violation of Section 9(c) of the Act (Ill. Rev. Stat. 1981, ch. 111 1/2, par. 1009(c)) or of this Part **unless they cause air pollution as defined in the Act**. Nothing in this Section shall exempt such activities from applicable local restrictions.

- a) The open burning of agricultural waste, but only:
 - 1) On the premises on which such waste is generated; and
 - 2) In areas other than restricted areas; and
 - 3) When atmospheric conditions will readily dissipate contaminants; and
 - 4) If such burning does not create a visibility hazard on roadways, railroad tracks or air fields; and
 - 5) More than 305 meters (1,000 feet) from residential or other populated areas; and
 - 6) When it can be affirmatively demonstrated that no economically reasonable alternative method of disposal is available.

- b) The open burning of **domicile waste**, but only:
 - 1) On the premises on which such waste is generated; and
 - 2) In areas other than **restricted areas**; and
 - 3) When atmospheric conditions will readily dissipate contaminants; and
 - 4) If such burning does not create a visibility hazard on roadways, railroad tracks or air fields.

- c) The open burning of **landscape waste**, but only:
 - 1) **On the premises on which such waste is generated; and**
 - 2) **When atmospheric conditions will readily dissipate contaminants; and**
 - 3) If such burning does not create a visibility hazard on roadways, railroad tracks or air fields; and
 - 4) **In those areas of the State which are not in the following prohibited areas:**
 - A) Municipalities having a population in excess of 2,500 according to the latest federal census.**
 - B) Municipalities of any size which adjoin a municipality having a population in excess of 2,500.**

- C) All municipalities wholly within 40 air miles (64.5 kilometers) of Meigs Field, Chicago, Illinois.
 - D) All municipalities wholly within 20 air miles (32.3 kilometers) of McKinley Bridge connecting St. Louis, Missouri and Venice, Illinois.
 - E) Rural areas 305 meters (1,000 feet) or less from a municipality in which open burning of landscape waste is prohibited.
- d) The setting of fires to combat or limit existing fires, when reasonably necessary in the judgment of the responsible government official.
 - e) ***The burning of fuels for legitimate campfire, recreational and cooking purposes***, or in domestic fireplaces, in areas where such burning is consistent with other laws, provided that no garbage shall be burned in such cases.
 - f) The burning of waste gases, provided that in the case of refineries all such flares shall be equipped with smokeless tips or comparable devices to reduce pollution.
 - g) Small open flames for heating tar, for welding, acetylene torches, highway safety flares and the like.

DOMICILE WASTE

Title 35, Section 237.101.

"Domicile Waste": Any refuse generated on single-family domiciliary property as a result of domiciliary activities. The term excludes landscape waste, garbage and trade waste.

Title 35, Section 237.101:

"Refuse": Any discarded matter; or any matter which is to be reduced in volume, or otherwise changed in chemical or physical properties, in order to facilitate its discard, removal or disposal.

Title 35, Section 237.101.

"Restricted Areas": The area within the boundaries of any "municipality" as defined in the Illinois Municipal Code (Ill. Rev. Stat. 1981, ch. 24, par. 1-1-2), plus a zone extending one mile beyond the boundaries of any such municipality having a population of 1,000 or more according to the latest federal census.

Illinois Municipal Code: (65 ILCS 5/1-1-2)

"Municipality" means a city, village, or incorporated town in the State of Illinois,...

OPEN BURNING OF DOMICILE WASTE/REFUSE RAMPANT IN ROCK FALLS

The photos below evidence the open-burning of domicile waste/refuse throughout Rock Falls. The goal of this burning is to facilitate disposal.



Note the brightly colored yellow and blue refuse in this photo. These are not naturally occurring colors, and indicate a man-made or manufactured item, possibly plastic. Are such materials safe to burn?

Shortly after ignition, the refuse above turned into the dangerous fireball below. Was an accelerant used?



Two other examples of the open incineration of refuse/domicile waste in Rock Falls appear below.



Dedicated fire-pits, the functional equivalent of burning barrels, dot the backyards of residences throughout Rock Falls. Note the various plastics.



The condition of the witches' pot above and the character of the ash in it suggest it is not being used for cooking. Many such mini-burn barrels exist throughout Rock Falls.



The stack of manufactured building materials above is heaped on top of previously burned refuse. Two days after capturing the above photo, the white, powdery pile below replaced the mound above.



Additional examples of burn-piles located in Rock Falls follow.





The two photos above are of the same burn site.

The above do not represent isolated incidences. Illegal burning is apparent throughout Rock Falls. It occurs daily, year round, day and night, by many.

VIOLATIONS ALLEGED

Section 237.120 (b):

The burning noted above satisfies the description of domicile waste and it is being openly burned in a restricted area, a municipality. This activity is banned under, Title 35, Section 237.120. The toxic chemicals released from burning much of this waste tends to cause air pollution as well.

Section 237.110:

The city of Rock Falls is obligated to enforce Section 237.120 prohibitions. This it is not doing because the open burning of domicile waste is rampant throughout the city.

415 ILCS 5/9(a):

By refusing to enforce the open burning prohibition outlined in Section 237.120, the city of Rock Falls is allowing the discharge of contaminants into the environment that tend to cause air pollution in violation of Board regulations. This transgresses 415 ILCS 9(a).

415 ILCS 5/9(c):

By denying its obligation to enforce Section 237.120, Rock Falls is allowing the open burning of refuse, which necessarily results in air pollution. Both violate 415 ILCS 5/9(c).

OPEN BURNING OF YARD WASTE IN ROCK FALLS VIOLATES EXEMPTION

Rock Falls currently permits, by ordinance, the year round burning of yard waste, from 10:00 a.m. until sunset. Several provisions of Title 35, Section 237.120, however, render the exemption allowing the open burning of landscape waste inapplicable to the city of Rock Falls.

Yard Waste Transported from other Property to be Burned

Landscape waste can only be burned on the property generating it. The following photo depicts one Rock Falls resident hauling waste from elsewhere to be burned on his property.



No yard waste of the type being unloaded is grown on this property.



This photo shows ignition.

Rock Falls is separated from Sterling by a short bridge between the Rock River. Sterling prohibits the open burning of yard waste. How much of Sterling's yard waste/refuse is being burned in Rock Falls? How many save money by trucking waste to Rock Falls where it can be freely burned causing the pollution to float back to Sterling? What good is it do for Sterling to ban such burning when Rock Falls does not?

Suitable Atmospheric Conditions?



This is the thick, dense, toxic smoke produced by the burning waste shown in the previous photo. The photo below depicts the smoke emitted by a typical pile of leaves being burned.



It is mind-boggling how atmospheric conditions could ever readily dissipate a toxic cloud such as shown above to a safe level in a residential area where homes are located only a few feet away. It is not uncommon for Rock Falls to be enveloped in a fog of noxious smoke caused by the simultaneous ignition of multiple fires. This happens year round to a greater or lesser extent.

Prohibited Areas

The open burning of landscape waste is prohibited in municipalities with a population in excess of 2,500. It is also forbidden in municipalities of any size adjoining a municipality having a population in excess of 2,500.

In 2009, according to, <http://factfinder.census.gov>, 9,268 people populated Rock Falls and 15,053 people inhabited Sterling. Under Section 237.120, then, the open burning of landscape waste is prohibited in Rock Falls because the population is too large.

This causes air pollution as defined in the Act

“Air pollution”, as defined in the Act, 415 ILCS 5/3.115, 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.

The following is EPA supplied information:

- **Leaf burning leads to air pollution, health problems, and fire hazards.**
- The open burning of leaves produces **particulate matter and hydrocarbons**, which contain toxic, irritant, and carcinogenic compounds. Leaf smoke also contains **carbon monoxide**.
- Smoke from leaf burning consists of tiny particles that contain **pollutants**. These particles can reach the deepest regions of the lung and remain there for years. Breathing **particulate matter** increases the chances of respiratory infection, reduces the volume of air inhaled and impairs the lungs' ability to use that air. Particulate matter inhalation can also trigger asthma attacks.
- **Hydrocarbons** can exist as both gases and solid particles. Because leaves are often moist and burn without proper air circulation, they often burn poorly, producing high levels of hydrocarbons. Some of these hydrocarbons cause eyes, nose, throat, and lung irritation. A substantial portion of the hydrocarbons in **leaf smoke consists of known carcinogens**.
- **Carbon monoxide** is a gas caused by incomplete combustion. Burning leaves ideally creates such emissions. Carbon monoxide reduces the oxygen supplied to body tissues. This imposes an increased health risk on children, the elderly, and those with heart disease and COPD.

Yard waste incineration indisputably causes air pollution. The Board acknowledges this by prohibiting it in certain areas of the State. With 9,268 inhabitants and unregulated burning year round, including the burning of refuse and “rec” fires, the air quality in this community is abhorrent.

The conclusion is that the open burning of landscape waste in Rock Falls causes air pollution as defined in the Act. It is of such a magnitude that it is injurious to health and necessarily produces a nuisance.



Is this lawful on city property?

VIOLATIONS ALLEGED

Section 237.120 (c):

The city of Rock Falls currently violates Section 237.120 (c) because:

- Yard waste is often transported from other property to be burned in Rock Falls.
- It is impossible for the dense, noxious smoke of yard waste to be dissipated to a safe level in a residential area with a population of over 9,000.
- Rock Falls is a prohibited area for the burning of landscape waste.
- This burning causes air pollution.

Section 237.110:

The city of Rock Falls is obligated to enforce Section 237.120(c) prohibitions. This it is not doing because the open burning of yard waste is rampant throughout the city despite Rock Falls being disqualified, for the above noted reasons, from exercising an exemption permitting the open-burning of yard waste under Section 237.120(c).

415 ILCS 5/9(a):

By refusing to enforce the open burning prohibition outlined in Section 237.120(c), the city of Rock Falls is disobeying Section 237.110. The city of Rock Falls is resultantly allowing the discharge of contaminants into the environment that tend to cause air pollution in violation of Board regulations. This transgresses 415 ILCS 9(a).

415 ILCS 5/9(c):

By allowing the open-burning of landscape waste in violation of the Section 237.120 exemption, and by permitting this waste to be incinerated unimpeded and unregulated by city officials, the city of Rock Falls encourages and implicitly condones the open burning of refuse by local residents. This is not an abstract allegation because it is in fact taking place. A violation of, 415 ILCS 5/9(c), of the Act, naturally follows.

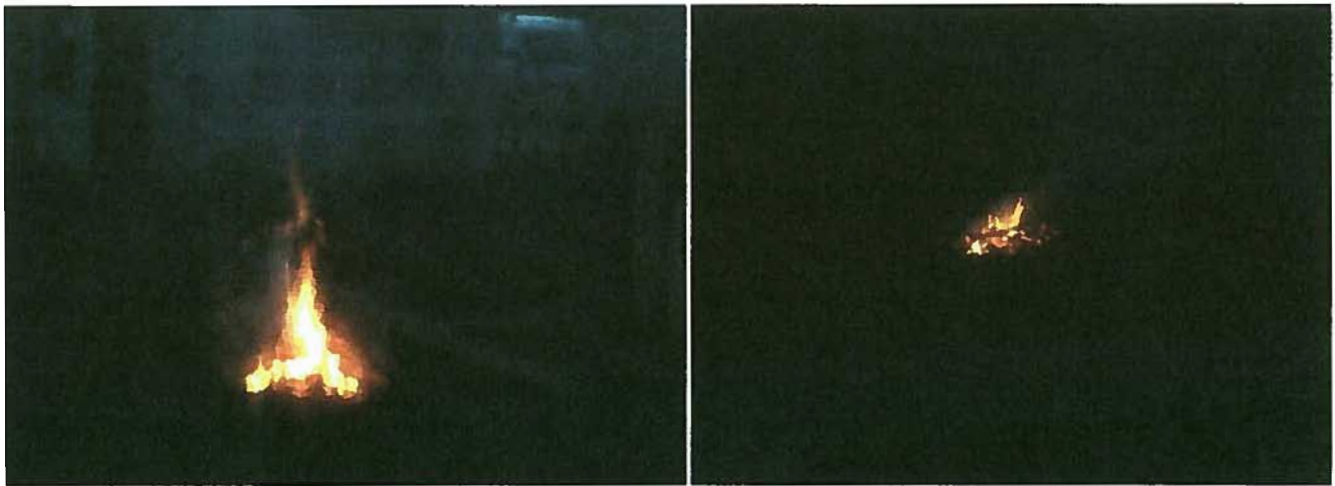
“REC” FIRES IN ROCK FALLS NOT EXEMPT FROM OPEN BURNING PROHIBITION

Title 35, Section 237.120

The following activities are not in violation of Section 9(c) of the Act ... or of this Part *unless they cause air pollution as defined in the Act.* ...

(e) *The burning of fuels for legitimate campfire, recreational and cooking purposes*, or in domestic fireplaces, in areas where such burning is consistent with other laws, provided that no garbage shall be burned in such cases.

No Rock Falls Ordinance permits recreational fires. Yet Rock Falls Police routinely permit the ignition of loosely defined “rec” fires, at night, throughout the city. Typical Rock Falls “rec” fires appear below.



Too late for burning yard waste, the dangerously high flame on the left is completely unattended, but passes muster as a “rec” fire in Rock Falls. This fireball continued well into the night, as shown on the right.



Set on city property, strewn with beer cans and fueled by an unknown substance.



What legitimate campfire fuels produces white ash?

A family setting appears absent from the “rec” fire scene in Rock Falls, as the only recreational activity taking place in most is the consumption of alcohol. Arguably unlawful substances, with the possible use of accelerants, fuel such fires. These infernos exceed the intended purpose of the campfire exemption and present a danger to the community.

It is inconsistent to allow “rec” fires in an area where the law prohibits the open-burning of yard waste and refuse, like Rock Falls. This is true even though the city refuses to recognize such prohibitions.

VIOLATIONS ALLEGED

Section 237.120 (e):

The current policy allowing “rec” fires in Rock Falls violates Section 237.120(e) because the fires being set under the guise of recreational fires exceeds the intended scope of the regulation allowing such an exemption. These fires are not being set in conjunction with legitimate campfires or associated recreational activities and/or cooking.

It is also inconsistent with the laws prohibiting the burning of refuse in any municipality to allow for the open-burning of unknown fuels and other illegal materials under the pretext of a “rec” fire. This is equally true in areas where the burning of yard waste is otherwise not permitted. The recreational fire exemption is essentially for rural areas.

Rock Falls “rec” fires violate Section 237.120(e).

Section 237.110:

The city of Rock Falls is not fulfilling its obligation to prohibit illegal burning by permitting “rec” fires. Rock Falls should be enforcing a ban on refuse and landscape waste incineration, so it should also be enforcing a prohibition on recreational fires.

415 ILCS 5/9(a):

By failing to enforce an obligation to prohibit recreational fires, the City of Rock Falls is tending to cause air pollution. This is caused by the release of contaminants from the burning of prohibited refuse and other dangerous, forbidden fuels.

415 ILCS 5/9(c):

Residents often throw beer cans and other refuse into the so called "rec" fires. Otherwise prohibited materials are often used to ignite and fuel these fires. Failure on the part of the city of Rock Falls to enforce a ban on this forbidden activity permits the open-burning of refuse in violation of the Act.

Rock Falls Burn Policies

The current burn policies in Rock Falls essentially permit open incineration of any item twenty-four hours a day without restriction. What is not allowed under the yard waste exception is permitted under the ruse of a "rec" fire. This conveniently allows Rock Falls and its residents to avoid any financial costs associated with the disposal of this waste. The cumulative effect of the burning in Rock Falls presents a serious health and environmental threat.

While Illinois Municipal Code allows communities such as Rock Falls to choose any means for disposal of refuse, garbage and ashes they desire, it does not exempt such municipalities from laws regulating the environment. The city of Rock Falls has virtually made a mockery of Illinois environmental laws by effectively circumventing regulations designed to protect the environment and the health and safety of its citizens.

It is appropriate for the city of Rock Falls to pay for the harm they are currently inflicting on the environment and unwilling, many-times disabled, citizens. To offset the harm inflicted by the above violations, the following relief is sought.

RELIEF SOUGHT

The complainant seeks the maximum civil penalty allowable under, 415 ILCS 5/42, consisting of a \$50,000 fine for each violation proved and an additional \$10,000 penalty for each day during which each violation continues.

Mark Lilly
508 Culver Street
Rock Falls, IL 61071
Phone: 815-626-1193

City of Rock Falls
603 W. 10th Street
Rock Falls, IL 61071
Phone: 815-622-1100

Mark Lilly 7/18/2011

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CERTIFICATE OF SERVICE

STATE OF ILLINOIS
Pollution Control Board

I, the undersigned, on oath or affirmation, state that on July 18, 2011,
I served the attached formal complaint and notice on the respondent by

X certified mail (attach copy of receipt if available,
otherwise you must file receipt later with Clerk)

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otherwise you must file receipt later with Clerk)

_____ messenger service (attach copy of receipt if available,
otherwise you must file receipt later with Clerk)

_____ personal service (attach affidavit if available,
otherwise you must file affidavit later with Clerk)

at the address below:

ORIGINAL

RESPONDENT'S ADDRESS:

Name City of Rock Falls - City Clerk

Street 603 W. 10th Street

City, state, zip code Rock Falls, IL 61071

(list each respondent's name and address if multiple respondents)

Mark Lilly
Complainant's signature

Street 508 Curver Street

City, state, zip code Rock Falls, IL 61071

Subscribed to and sworn before me

this 18th day

of July, 2011.

Sheree L. Morris
Notary Public



My commission expires: 10/20/14

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STATE OF ILLINOIS
Pollution Control Board

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NOTICE TO RESPONDENT

Please take notice that today I filed with the Clerk of the Illinois Pollution Control Board (Board) a formal complaint, a copy of which is served on you along with this notice. You may be required to attend a hearing on a date set by the Board.

Information about the formal complaint process before the Board is found in the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.*) and the Board's procedural rules (35 Ill. Adm. Code 101 and 103). These can be accessed at the Board's Web site (www.ipcb.state.il.us). The following is a summary of some of the most important points in the Act and the Board's procedural rules. It is provided for general informational purposes only and does not constitute legal advice or substitute for the provisions of any statute, rule, or regulation:

Board Accepting Formal Complaint for Hearing; Motions

The Board will not accept this formal complaint for hearing if the Board finds that it is either "duplicative" or "frivolous" within the meaning of Section 31(d) of the Act (415 ILCS 5/31(d)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202). "Duplicative" means that an identical or substantially similar case is already pending before the Board or in court. See 35 Ill. Adm. Code 103.212(a) and item 10 of the formal complaint.

"Frivolous" means that the formal complaint seeks relief that the Board does not have the authority to grant, or fails to state a cause of action upon which the Board can grant relief. For example, the Board has the authority to order a respondent to stop polluting and pay a civil penalty, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does not have the authority, however, to award attorney fees to a citizen complainant. See 35 Ill. Adm. Code 103.212(a) and items 5 and 9 of the formal complaint.

If you believe that this formal complaint is duplicative or frivolous, you may file a motion with the Board, within 30 days after the date you were served with the complaint, requesting that the Board not accept the complaint for hearing. The motion must state the facts supporting your belief that the complaint is duplicative or frivolous. Memoranda, affidavits, and any other relevant documents may accompany the motion. If you need more time than 30 days to file a motion alleging that the complaint is duplicative or frivolous, you must file a motion for an extension of time within 30 days after service of the complaint. A motion for an extension of time must state why you need more time and the amount of additional time you need. Timely filing a motion alleging that the complaint is duplicative or frivolous will stay the 60-day period for filing an answer to the complaint. See 35 Ill. Adm. Code 103.204, 103.212(b).

All motions filed with the Board's Clerk must include an original, nine copies, and proof of service on the other parties. Service may be made in person, by U.S. mail, or by messenger service. Mail service is presumed complete four days after mailing. See 35 Ill. Adm. Code 101.300(c), 101.302, 101.304.

If you do not respond to the Board within 30 days after the date on which the complaint was served on you, the Board may find that the complaint is not duplicative or frivolous and accept the case for hearing. The Board will then assign a hearing officer who will contact you to schedule times for telephone status conferences and for hearing. See 35 Ill. Adm. Code 103.212(a).

Answer to Complaint

You have the right to file an answer to this formal complaint within 60 days after you receive the complaint. If you timely file a motion alleging that the complaint is duplicative or frivolous, or a motion to strike, dismiss, or challenge the sufficiency of the complaint, then you may file an answer within 60 days after the Board rules on your motion. See 35 Ill. Adm. Code 101.506, 103.204(d), (e), 103.212(b).

The Board's procedural rules require the complainant to tell you as respondent that:

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. 35 Ill. Adm. Code 103.204(f).

Necessity of an Attorney

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. See 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless wish to have an attorney prepare an answer and any motions or briefs, and present a defense at hearing.

Costs

In defending against this formal complaint, you are responsible for your attorney fees, duplicating charges, travel expenses, witness fees, and any other costs that you or your attorney may incur. The Board requires no filing fee to file your answer or any other document with the Board. The Board will pay any hearing costs (e.g., hearing room rental, court reporting fees, hearing officer expenses).

If you have any questions, please contact the Clerk's Office at (312) 814-3629.



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