

**IN THE ILLINOIS POLLUTION CONTROL BOARD**

**PEOPLE OF THE STATE OF ILLINOIS )**

**Complainant, )**

**v. )**

**Case No. 2020-008**

**John Kirby, an individual and )**

**Polly Kirby, an individual )**

**Respondents. )**

**ANSWER TO COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES**

NOW COMES, John Kirby and Polly Kirby, by their attorney, Eric Miskell, and in response to the Complaint of the State of Illinois, states as follows:

Count I

1. Respondent admits the allegations in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 18, 20, 21, 30, 31, 32, 33, and 34 as stated.
2. Respondent denies in their entirety the allegations in paragraphs 13 and 15 and demands strict proof thereof.
3. Respondent neither admits nor denies the allegations in paragraphs 24, 25, 27, 28, 30, and 31, as it states a legal conclusion for which an answer is not required. Should the Board require an answer, then said allegations are denied for which the Respondent demands strict proof thereof.
4. As to paragraph 14, the Respondents admit a fire was started to the north of the Debris field but denies that used and waste tires were intermingled with the piles of landscape Debris in that the tires were removed prior to the fire spreading to their prior location. The Tires were placed there by the agents of William Mucci, Debra Mucci d/b/a

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B&M Properties. (SEE COUNT I ALLEGATION NUMBER 20)

5. As to paragraph 16, the Respondents admit the Grand Ridge Fire Department responded to the waste fire at the site but deny they pumped a million gallons of waster over a two week period in that they were there for one (1) week.

6. As to paragraph 17, the Respondents deny that all of the listed agency were required to respond and deny that the Representative of IDOT estimated the size of the landscape debris as Respondents lack any first hand knowledge of the whom this representative is. Respondent, therefore, demand strict proof thereof.

7. As to paragraph 19, the Respondents admit landscape debris were burning on the site north of N 2725 Road on April 30, 2018. Respondent denies waste tires were burning in a pile of landscape debris as the tires were removed from the site prior to the fire spreading to the location that B&M Properties agents placed the tires in their former location. (SEE COUNT I ALLEGATION NUMBER 20)

8. As to paragraph 22, the Respondent admits the landscape debris was smoldering on May 7, 2018. The Kirby's advised the inspector that 342 used or waste tires had been removed from the site since April 23, 2018.

9. As to paragraph 23, The Respondents admit that tree stumps and waste wood remains on a portion of a site north of N 2725 Road, Ottawa, Illinois which, at all times relevant hereto was owned and operated by Pilkington North America, 300 - 20<sup>th</sup> Avenue, Ottawa, IL 61350. Phone: 815 433-8048.

10. As to paragraph 29, Respondents admit that landscape debris, used and waste tires were dumped and discarded at the site as waste and refuse as defined by the act as

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allowed by the agents of the Mucci Respondents. Respondent denies that any concrete, construction and demolition waste was dumped on the Site north of N 2725 Road, Ottawa, Illinois.

10. As to paragraph 26, Respondents admit the Mucci Respondents are the persons who caused or allowed the open dumping of any waste all of which existed prior to the ownership by land contract in the Kirby Respondents who never allowed or caused the open dumping of any waste upon the subject site.

11. As to paragraph 35, Jennifer Elkins of the US EPA, Region 5, Chicago Division, Heriberto Leon and Charlene Falco of the Illinois EPA and Pilkington North America, Inc. oversaw and conducted an ecological investigation of the subject site north of N 2725<sup>th</sup> Road, Ottawa, IL (OU3) for contaminant risk assessment and remediation of the site using the Superfund Alternative approach between the dates of 12/1/2003 to 9/24/2013, 9/29/2010 to 3/24/2016 and 9/17/2017 – 7/31/2018 regarding contamination to the soil and the St. Peter Sandstone aquifer. Neither the US EPA, IL EPA nor any other governmental entity ever contacted the Muccis or Kirbys regarding any alleged violations found during these investigations, remediation requested nor notice of any adverse impact upon the subject property by the Muccis or Kirbys.

12. As to paragraph 36, Respondent admits the Mucci Respondents caused and allowed the dumping and placing of landscape Debris, used and waste tires at the site and failed to remove the waste to a facility permitted to accept such waste. Respondent Kirby never caused or allowed the dumping and placing of landscape Debris, used and waste tires at the site and was removing and cleaning up the site on the dates in question to remove the waste to a facility permitted to accept such waste.

WHEREFORE, Respondent, John Kirby and Polly Kirby, individually prays the Board to dismiss them from this suit individually, to deny the requests of the people and for costs to be assessed against the Petitioner and for such other and further relief that may be had in the matter.

COUNT II

13. As to paragraphs 1-36. Respondent realleges and incorporates by this reference the answer it has propounded for paragraphs 1-36 of Count I as its answer to paragraph 1-36 of Count II.

14. Respondent neither admits nor denies the allegations in paragraphs 37, as it states a legal conclusion for which an answer is not required. Should the Board require an answer, then said allegations are denied for which the Respondent demands strict proof thereof.

15. As to paragraph 38, Respondent admits that the Mucci Respondents caused and allowed the disposal of materials at the site north of N 2725 Road, Ottawa, IL. Respondent deny that the Kirby Respondents caused and allowed the disposal of materials at the site north of N 2725 Road, Ottawa, IL in violation of 415 ILCS 21(p)(1).

WHEREFORE, Respondent, John Kirby and Polly Kirby, individually prays the Board to dismiss them from this suit individually, to deny the requests of the people and for costs to be assessed against the Petitioner and for such other and further relief that may be had in the matter.

COUNT III

16. As to paragraphs 1-36. Respondent realleges and incorporates by this reference the answer it has propounded for paragraphs 1-36 of Count I as its answer to paragraph 1-36 of Count II.

17. Respondent neither admits nor denies the allegations in the second paragraph 37, 38 and 40 as it states a legal conclusion for which an answer is not required. Should the Board require an answer, then said allegations are denied for which the Respondent demands strict proof thereof.

18. As to the second paragraph 39, Respondents Kirby admits that the were in the process of remodeling fixed building structures located south of the fire site located North of N 2725 Road, Ottawa, Illinois which caused a short term pile of remodeling debris to be located south of N 2725<sup>th</sup> Road, Ottawa, IL which as been removed since April 23, 2018.

WHEREFORE, Respondent, John Kirby and Polly Kirby, individually prays the Board to dismiss them from this suit individually, to deny the requests of the people and for costs to be assessed against the Petitioner and for such other and further relief that may be had in the matter.

Count IV

19. As to paragraphs 1-36. Respondent realleges and incorporates by this reference the answer it has propounded for paragraphs 1-36 of Count I as its answer to paragraph 1-36 of Count II.

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20. Respondent neither admits nor denies the allegations in the third paragraphs 37, 38 and paragraph 40 as they state a legal conclusion for which an answer is not required. Should the Board require an answer, then said allegations are denied for which the Respondent demands strict proof thereof.

21. As to the second paragraph 39, Respondents Kirby never caused or allowed the open dumping of any waste in a manner which resulted in open burning. (SEE COUNT I ALLEGATION 20)

22. As to the second paragraph 40, Respondents Kirby never caused or allowed the open dumping of any waste in a manner which resulted in open burning and therefore could not have violated 415 ILCS 5/21(p)(3).

WHEREFORE, Respondent, John Kirby and Polly Kirby, individually prays the Board to dismiss them from this suit individually, to deny the requests of the people and for costs to be assessed against the Petitioner and for such other and further relief that may be had in the matter.

#### COUNT V

23. Respondent realleges and incorporates by reference herein, its answer to the allegations of the People's paragraphs 1 through 13, and paragraphs 20, 22, and paragraphs 25 through 35 of Count I, as paragraphs 1 through 26 of this Count V.

24. Respondent neither admits nor denies the allegations in the paragraphs 27 and 28 as they state a legal conclusion for which an answer is not required. Should the Board require an answer, then said allegations are denied for which the Respondent demands

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strict proof thereof.

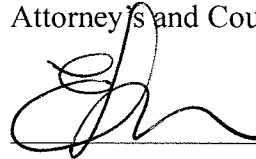
25. As to paragraph 29, Respondents Kirby never caused or allowed the open dumping of any used or waste tires in that the Respondent Mucci's agents caused and/or allowed the open dumping of more than 300 used or waste tires on the subject site of the fire located north of N 2725<sup>th</sup> Road, Ottawa, Illinois. (SEE COUNT I ALLEGATION 20)

22. As to the second paragraph 40, Respondents Kirby never caused or allowed the open dumping of any waste in a manner which resulted in open burning and therefore could not have violated 415 ILCS 5/21(p)(3).

Respectfully Submitted,

The Miskell Law Center, LLC

Attorney's and Counselors at Law



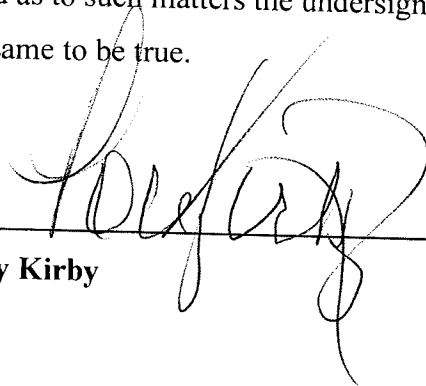
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Eric L. Miskell, Attorney

STATE OF ILLINOIS     )  
  )     SS  
COUNTY OF LASALLE    )

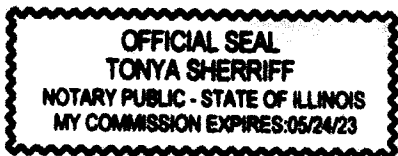
**CERTIFICATION**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that she is a Respondent in this matter and the statements set forth in this Answer to Complaint are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

  
\_\_\_\_\_  
Polly Kirby

Subscribed and Sworn to before me  
this 3 day of October, 2019.

  
\_\_\_\_\_  
NOTARY PUBLIC



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