

ORIGINAL

STATE OF ILLINOIS
POLLUTION CONTROL BOARD
100 W. RANDOLPH STREET, SUITE 11-500
CHICAGO, ILLINOIS 60601

RECEIVED
CLERK'S OFFICE

SEP 26 2003

STATE OF ILLINOIS
Pollution Control Board

NOTE: All items must be completed. If there is insufficient space to complete any item, additional sheets may be attached, specifying the number of the item you are completing. Once completed, you must file the original and nine copies with the Board.

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

PAUL AND DONNA FREDRICKSON,)
husband and wife)

Complainants)

v.)

PCB 4-19

JEFF GRELYAK,)

Respondent.)

PROOF OF SERVICE

TO: Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Bd.
James R. Thompson Center
Suite 11-500
100 W. Randolph Street
Chicago, IL 60601

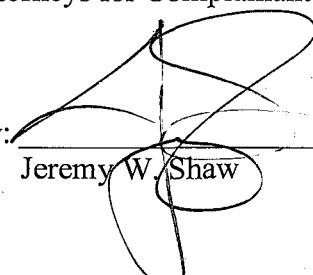
George W. Tinkham
Attorney for Respondent
423 W. Vine Street
Springfield, IL 62704

Jeff Grelyak
8919 Ferris Road
Harvard, IL 60033

Attached is a Response to Respondent's Motion to Dismiss.

Respectfully submitted,

MILITELLO, ZANCK & COEN, P.C.
Attorneys for Complainants

By: 
Jeremy W. Shaw

Jeremy W. Shaw
MILITELLO, ZANCK & COEN, P.C.
40 Brink Street
Crystal Lake, IL 60014
(815) 459-8800

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PAUL AND DONNA FREDRICKSON,)
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PCB 04-19

JEFF GRELYAK,)

Respondent.)

**RESPONSE TO RESPONDENT'S
MOTION TO DISMISS**

Complainants, PAUL AND DONNA FREDRICKSON, by and through their attorneys, MILITELLO, ZANCK & COEN, P.C., and in response to Respondent's Motion to Dismiss hereby state as follows:

1. Complainants deny the allegations in paragraph 1 of the Motion to Dismiss. The Complaint sets forth the frequency and duration of the use of ATV's/motorcycles upon the Respondent's property. Further, the ATVs/motorcycles have operated with such regularity on nearly every weekend between March and November, as stated in the Complaint, so as to render the statements of every single occurrence redundant.

2. Complainants deny the allegations in paragraph 2 of the Motion to Dismiss.

3. Complainants deny the allegations in paragraph 3 of the Motion to Dismiss.

4. Complainants deny the allegations in paragraph 4 of the Motion to Dismiss. 35 Ill. Adm. Code §101.100(b) states that "The Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent." 35 Ill. Adm. Code §103.204 speaks to pleading before the Illinois Pollution Control Board and, therefore, Respondent is in error to suggest that the IPCB should apply the Code of Civil Procedure. In addition, facts of Illinois complaints shall be liberally construed so as to do justice. Furthermore, Respondent has failed to file a proper motion to dismiss under the Rules of Civil Procedure in so far as he has failed to identify the applicable section upon which his motion is based.

5. Complainants deny the allegations in paragraph 5 of the Motion to Dismiss. "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. Complainants have sufficiently stated facts and occurrences so as to warrant a hearing before the Illinois Pollution Control Board and to request relief as stated in the Complaint, which the Board has the power and authority to grant.

Fredrickson v. Grelyak, PCB 04-19
Response to Respondent's Motion to Dismiss

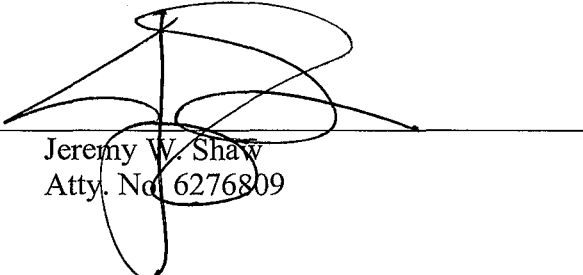
6. Furthermore, Complainants have based the Complaint on the form provided by the Illinois Pollution Control Board and provided all information that the document therein requests.

WHEREFORE, Complainants respectfully request that Respondent's Motion to Dismiss be denied and that the Board move to set a hearing date on all facts and allegations as set forth in the Formal Complaint as filed August 25, 2003 with the Clerk of the Illinois Pollution Control Board.

Respectfully submitted,

MILITELLO, ZANCK & COEN, P.C.,
Attorneys for Complainants

By: _____


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Atty. No. 6276809

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