

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PAUL CHRISTIAN PRATAPAS,

Complainant,

v.

LISLE TOWNSHIP ROAD DISTRICT,

Respondent.

Case No. PCB 2023-013

(Citizens Enforcement - Water)

Hearing Officer: Bradley P. Halloran

**RESPONDENT, LISLE TOWNSHIP ROAD DISTRICT'S, ANSWER TO
COMPLAINANT'S AMENDED FORMAL COMPLAINT**

NOW COMES the Respondent, LISLE TOWNSHIP ROAD DISTRICT, by and through its attorneys, ANCEL GLINK, P.C., pursuant to 35 Ill. Adm. Code 101.500 and for its Answer to Complainant's Amended Formal Complaint. In support thereof, Respondent states as follows:

1. Your Contact Information

Name: Paul Christian Pratapas
Street Address: 1330 E. Chicago Ave, #110
Naperville
County: DuPage
State: IL
Phone Number: (630) 696-2843

ANSWER: Respondent is without sufficient information to admit or deny the allegations in Paragraph 1.

2. Place where you can be contacted during normal business hours (if different from above)

Name: _____
Street Address: _____
County: _____
State: _____
Phone Number: (____) _____

ANSWER: Respondent is without sufficient information to admit or deny the allegations in Paragraph 2.

3. Name and address of the respondent (alleged polluter)

Name: Village of Lisle Highway Department
Street Address: 4719 Indiana Ave.
Lisle
County: DuPage
State: Illinois
Phone Number: (630) 964-0057

ANSWER: Respondent denies the name of the alleged polluter. The correct legal entity is “Lisle Township Road District” not the Village of Lisle Highway Department. Respondent admits the allegations as to the address, county, state and phone number.

4. Describe the type of business or activity that you allege is causing or allowing the pollution.

Village of Lisle Highway Department: Ed Young Commissioner Sidewalk and curb replacement program

Pollution located off Chicago Avenue in Naperville, IL throughout neighborhoods at intersections with Westmoreland Dr. and Concord Rd. including but not limited to Jane Ave., Millcreek Ln., and Millcreek Ct.

ANSWER: Respondent denies the allegations in Paragraph 4.

5. List specific sections of the Environmental Protection Act, Board regulations, Board order, or permit that you allege have been or are being violated.

The Clean Water Act
40 CFR 450.21(e)(1)
415 ILCS 5.12(a)
35 Ill. Adm. Code 304.141(b)

ANSWER: Respondent denies the allegations in Paragraph 5.

6. Describe the type of pollution that you allege (e.g. air, odor, noise, water, sewer back-ups, hazardous waste) and the location of the alleged pollution. Be as specific as you reasonably can in describing the alleged pollution.

Toxic concrete washout water and slurry which is prohibited from making contact with soil and migrating to surface waters or into the ground water. As photographed, it is being buried in the holes for a curb segment before they pour it. Same thing occurred with the space next to curb segment where the asphalt was removed. Looked like the yellow stone which goes under asphalt was placed on

top of the washout after it dried enough to be stable. As photographed. Rinse water also being left in the road. One worker even wiped their tool clean in someone's front yard on the grass.

ANSWER: Respondent denies the allegations in Paragraph 6.

7. Describe the duration and frequency of the alleged pollution. Be as specific as you reasonably can about when you first noticed the alleged pollution, how frequently it occurs, and whether it is still continuing (include seasons of the year, dates, and times of the day if known).

Photographed : June 30, 2022 at 12:56pm

Photographed : July 1, 2022 at 10:15am

Photographed : July 7, 2022 at 2:40pm

These are ongoing programs. I witnessed them wash out in front of my parents' house sometime in 2019 as part of the sidewalk replacement program.

ANSWER: Respondent denies the allegations in Paragraph 7.

8. Describe any bad effects that you believe the alleged pollution has or has had on human health, on plant or animal life, on the environment, on the enjoyment of life or property, or on any lawful business or activity.

The toxic washout has been poured in front of private residences without notification of the dangers to children and pets. The washout can be seen already running down the curbside gutter towards the inlet which drains to The DuPage River, a Water of The United States posing a risk to plant and animal life. As well as the water quality of the river and ground water.

ANSWER: Respondent denies the allegations in Paragraph 8.

9. Describe the relief that you seek from the Board (e.g., an order requiring that the respondent stop polluting, take pollution abatement measures, perform a cleanup, reimburse cleanup costs, change its operation, or pay a civil penalty (note that the Board cannot order the respondent to pay your attorney fees or any out-of-pocket expenses that you incur by pursuing an enforcement action)).

I am requesting The Village of Lisle Highway Department immediately stop polluting and change their operations to include BMP measures required by The EPA to maintain compliance with The Clean Water Act. Specially, stop washing out concrete trucks in the street, holes, and in the curbside gutter while operating their sidewalk and curb replacement programs. Or any other activity which includes pouring concrete.

ANSWER: Respondent denies the allegations in Paragraph 9.

10. Identify any identical or substantially similar case you know of brought before the Board or in another forum against this respondent for the same alleged pollution (note that you need not include any complaints made to the Illinois environmental Protection Agency or any unit of local government.

No identical or substantially similar cases have been brought to The Board which I am aware of.

ANSWER: Respondent denies the allegations in Paragraph 10.

11. State whether you are representing (a) yourself as an individual or (b) your unincorporated sole proprietorship. Also state whether you are an attorney and, if so, whether you are licensed and registered to practice law in Illinois. (Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. Also, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, an individual who is not an attorney is allowed to represent (a) himself or herself as an individual or (b) his or her unincorporated sole proprietorship, though the individual may prefer having attorney representation.)

I am representing myself as an individual.

ANSWER: Respondent admits the allegations in Paragraph 11.

WHEREFORE, Respondent, LISLE TOWNSHIP ROAD DISTRICT”), prays that the Illinois Pollution Control Board deny the allegations of the Amended Formal Complaint and enter judgment in favor of the Respondent.

AFFIRMATIVE DEFENSES

1. Respondent, LISLE TOWNSHIP ROAD DISTRICT, asserts pursuant to 745 ILCS 10/3-102, it is immune for any claim for injury in that the Respondent had no actual or constructive notice of the existence of the alleged pollution referenced in the Amended Formal Complaint.

2. Respondent, LISLE TOWNSHIP ROAD DISTRICT, asserts pursuant to 745 ILCS 10/2-105, it is not liable for any injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than its own, to determine

whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.

3. Respondent, LISLE TOWNSHIP ROAD DISTRICT, asserts pursuant to 745 ILCS 10/3-108, it is not liable for an injury caused by a failure to supervise an activity on or the use of any public property unless the employee or the local public entity has a duty to provide supervision imposed by common law, statute, ordinance, code or regulation and the local public entity or public employee is guilty of willful and wanton conduct in its failure to provide supervision proximately causing such injury.

4. Respondent, LISLE TOWNSHIP ROAD DISTRICT, asserts pursuant to 745 ILCS 10/2-109, is not liable for an injury resulting from an act or omission of its employee where the employee is not liable.

5. Respondent, LISLE TOWNSHIP ROAD DISTRICT, asserts pursuant to 745 ILCS 10/3-103, it is not liable for injury caused by the adoption of a plan or design of a construction of, or an improvement to public property where the plan or design has been approved in advance of the construction or improvement by the legislative body of such entity or by some other body or employee exercising discretionary authority to give such approval or where such plan or design is prepared in conformity with standards previously so approved.

6. Respondent, LISLE TOWNSHIP ROAD DISTRICT, asserts pursuant to 745 ILCS 10/3-105, it and its employees are not liable for any injury caused by the effect of weather conditions as such on the use of streets, highways, alleys, sidewalks, or other public ways, places or the ways adjoining any of the foregoing. The effect of weather conditions as such includes, but is not limited to, wind, rain, flood, hail, ice or snow. *Id.*

7. Respondent, LISLE TOWNSHIP ROAD DISTRICT, asserts pursuant to 745 ILCS 10/2-103, it is not liable for any injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.

8. Respondent, LISLE TOWNSHIP ROAD DISTRICT, asserts pursuant to 745 ILCS 10/2-202, it and its employees are not liable for their act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct.

WHEREFORE, Respondent is entitled to immunity and judgement should be entered in its favor.

Dated: November 21, 2022

Respectfully Submitted,

LISLE TOWNSHIP ROAD DISTRICT

/s/ David S. Silverman
One of the Attorneys for Respondent,
Lisle Township Road District

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CERTIFICATE OF SERVICE

TO: Don A. Brown
Clerk of the Board
Illinois Pollution Control Board
60 E. Van Buren Street, Ste. 630
Chicago, IL 60605
Don.Brown@illinois.gov

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
60 E. Van Buren Street, Ste. 630
Chicago, IL 60605
Brad.Halloran@illinois.gov

Paul Pratapas
1330 E. Chicago Ave., #110
Naperville, IL
paulpratapas@gmail.com

The undersigned, an attorney, certify that I served **LISLE TOWNSHIP ROAD DISTRICT'S, ANSWER TO COMPLAINANT'S AMENDED FORMAL COMPLAINT AND AFFIRMATIVE DEFENSES** by emailing a copy of same to the parties listed above on the 21st day of November 2022, before 5:00 p.m.

ANCEL GLINK, P.C.

By: /s/ David S. Silverman
One of the Attorneys for Respondent

[x] Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument 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 he/she verily believes same to be true.

David S. Silverman (dsilverman@ancelglink.com)
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Megan A. Mack (mmack@ancelglink.com)
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