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MAR - 4 2005

STATE OF ILLINOIS
Pollution Control Board

THE ILLINOIS POLLUTION CONTROL BOARD

PAUL and DONNA FREDRICKSON, husband and wife)	
)	
Complainants)	
)	
v.)	PCB 04-19
)	
Jeff Grelyak,)	
Respondent.)	

NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board Respondent's MOTION FOR SUMMARY JUDGMENT.

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have today served Respondent's Motion for Summary Judgment to the entities listed below by placing said documents in envelopes with proper postage affixed and by depositing said envelopes in a U.S. Postal Service receptacle in Springfield, Illinois. Said envelopes being addressed to the following:

Illinois Pollution Control Board
Attention: Clerk
100 W. Randolph Street
James R. Thompson Center
Suite 11-500
Chicago, Illinois 60601

Jeremy W. Shaw, Esq.
40 Brink Street
Crystal Lake, Illinois 60014

An additional "courtesy" copy of the document was included in the envelope addressed to the Clerk of the PCB, which copy is to be given to Hearing Officer Halloran.

Date: 2 March 2005



George W. Tinkham,
attorney for Respondent
ARDC reg. # 2836149
1119 S. 6th Street
Springfield, IL 62703
(217) 523-8300

THE ILLINOIS POLLUTION CONTROL BOARD


PAUL and DONNA FREDRICKSON,)	
husband and wife)	
Complainants)	
)	
v.)	PCB 04-19
)	
Jeff Grelyak,)	
Respondent.)	

AFFIDAVIT

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

I, Jeffrey S. Grelyak, to hereby affirm the following:

1. I am the Respondent in the above-captioned action before the Illinois Pollution Control Board with docket # PCB 04-19.
2. I prepared, read, and signed the foregoing Motion for Summary Judgment and know the facts asserted therein to be true and accurate.
3. I have operated the same off-road riding facility on my property (which facility is the subject of this action) since before 1 January 2000.
4. Further Affiant sayeth not.



Jeffrey S. Grelyak

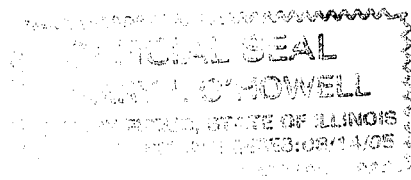
Affirmed before me, a notary public, this

28th day of February, 2005.



Notary Public

My commission expires: 8-14-05



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PAUL and DONNA FREDRICKSON,)
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Jeff Grelyak,)
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MOTION FOR SUMMARY JUDGMENT

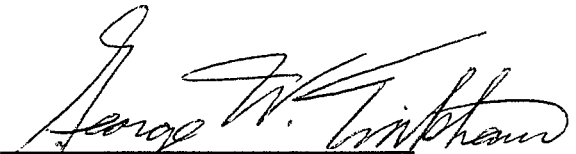
COMES NOW Respondent Jeffrey S. Grelyak by counsel and asks the Illinois Pollution Control Board to enter a summary judgment dismissing all elements of the complaint in this matter alleging that Respondent has created a nuisance by creating or allowing noise and air pollution to be emitted from his premises, which pollution interferes with the quiet enjoyment of Complainant's property. In support of this Motion, Respondent states the following:

1. Complainant admits in response #8 of Complainant's Response to Second Request to Admit (attached hereto as Exhibit B and expressly incorporated by reference) that "the noise complaint in this matter is not based on a numerical or empirical standard, but is based on nuisance."
2. Complainant admits in response #10 of Complainant's Response to Second Request to Admit that "the air pollution complaint in this matter is not based on a numerical or empirical standard, but is based on nuisance."
3. Complainant admits in response #1 of Exhibit B that Respondent's premises is used as an off-road riding facility.
4. The second sentence of Section 4.1(b) of the Illinois *Premises Liability Act* (740 ILCS 130/4.1(b)) states, in pertinent part: "An owner or operator of a off-road riding facility is not subject to any action for public or private nuisance...."
5. Although the first sentence of §4.1(b) makes reference to off-road riding facilities in existence on or before 1 January 2002, it is not clear whether that date is important for the second sentence. Even so, Respondent's off-road riding facility was in existence on, and prior to 1 January 2002. See Respondent's affidavit attached hereto as Exhibit C, item # 3. Note also that paragraph 7 of the Complaint, filed in this matter in August, 2003, admits "motorcycles and ATV's [sic] have been operating for several years." This necessarily means that Respondent's off-road riding facility was in existence more than one year prior to August, 2003.

6. Because Illinois law specifically prohibits actions for public or private nuisance for pollution generated at an off-road riding facility such as Respondent's facility and because the entire Complaint filed in this matter constitutes an "action for public or private nuisance," Respondent asks that Illinois Pollution Control Board enter a judgment in favor of Respondent and deny any and all relief requested by Complainant.

Respectfully submitted,
Jeffrey S. Grelyak, Respondent

Date: 2 March 2005

By: 
George W. Tinkham, his attorney
ARDC # 2836149

George W. Tinkham
1119 South 6th Street
Springfield, IL 62703
(217) 523-8300