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MAR 29 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

BARBARA STUART and RONALD)
STUART,)
Complainants,)
v.)
FRANKLIN FISHER and PHYLLIS)
FISHER,)
Respondents.)

No. PCB 02-164
Citizen Enforcement

To: Dorothy M. Gunn
Suite 11-500
100 W. Randolph St.
Chicago, IL 60601

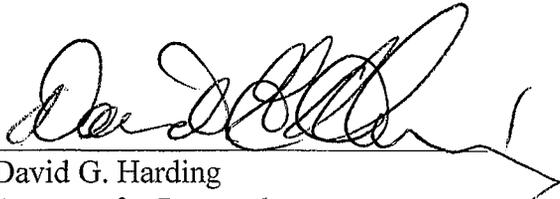
Barbara & Ronald Stuart
213 E. Corning Road
Beecher, IL 60401

Bradley P. Halloran
Suite 11-500
100 W. Randolph St.
Chicago, IL 60601

Bobby Petrunaro
14 W. Jefferson, Room 200
Joliet, IL 60432

NOTICE OF FILING

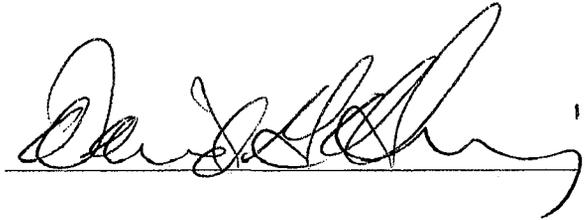
PLEASE TAKE NOTICE that I have, on March 29, 2004, filed with the Office of the Clerk of the Pollution Control Board the Respondent's Response to Motion to Leave to Supplement the Record, a copy of which is herewith served upon you.



David G. Harding
Attorney for Respondents
100 N. LaSalle St., Suite 1107
Chicago, IL 60602-3803
(312) 782-3039

CERTIFICATE OF SERVICE

I, David G. Harding, certify that on March 29, 2004, I served the attached Motion to Dismiss by delivery to Dorothy M. Gunn and Bradley P. Halloran at their address as shown above, and by pre-paid first class mail upon all others to whom directed to their addresses as shown above.



various writings, that Fisher is driving away wild animals. Here, the Stuarts complain that he is attracting them.

2. The photographs of the Stuarts' home are not particularly relevant and also lack foundation, as set forth above. The reference to sound measurements is to inadmissible material, alleged to have already existed, but wrongfully withheld by the Stuarts during the discovery process.

3. At the hearing, the Stuarts denied having received copies of the exhibits in question, but here they attach them and ask to submit new materials, apparently to the effect that the crows do not damage Fisher's crops. No foundation is given for the new materials and they do not, in any event, state what the Stuarts assert that they state. As to the loss of income question, Mrs. Stuart chose to do something that most experienced attorneys are loathe to attempt without a specific objective in mind – adverse examination of the opposing party during her case-in-chief. During that adverse examination of Franklin Fisher, she asked him about income from melons and comparative year-to-year incomes. Mrs. Stuart opened the door on income [Transcript pages 98-102] during her case in chief, and so waived the bar. To allow one party to follow a line of inquiry while barring the other from responding would be oppressive and patently unfair. Given the Stuarts' professed interest in fairness and honesty, this should not come as a surprise to them.

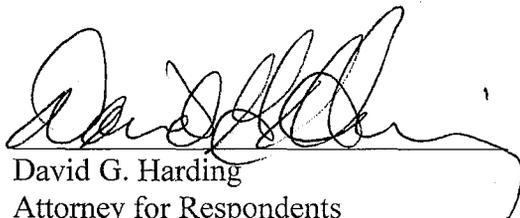
4. Objections to Interrogatories were resolved in due course. At no point has Respondent asserted that a propane cannon is a privileged work product. As to the accusation, Respondent's attorney will only say that he has always assumed that a Hearing Officer is the eyes and ears of the entire Board, and that he expects that the Board will be informed as to the conduct of all parties present, himself included.

5. At hearing, respondent stipulated to the admissibility of the "Map Board," with the exception of the brochure, and that objection extends, in the age of personal desk top publishing, even beyond foundation. It may sound glib, but it is undeniable that if

advertisements were reliable, those who buy advertised products would all be thin enough, rich enough and have way too many friends. Are the suggested alternatives effective? To answer that question would require information derived from a source not interested in making a profit from the sale of the product. Without that information, to assert that they are effective is no different from Ron Popeil's assertion that his spray paint resembles hair. Finally, even if advertisement were inherently reliable, the brochure states a number which it calls the decibel output, but fails to state from what distance that number is measured. Without distance from the sound source, as delineated in the testimony of the Complainants' own witness, Greg Zak, a raw decibel number is useless.

WHEREFORE, Respondent respectfully requests that Complainants' motion be denied.

Respectfully submitted,



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