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*Original
Dorothy Gunn*

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY 03 2004

BARBARA STUART)
And RONALD STUART)

Complainants)

FRANKLIN FISHER and)
PHYLISS FISHER)

Respondents)

PCB 02-164
Citizen Enforcement

STATE OF ILLINOIS
Pollution Control Board
Noise

NOTICE OF FILING

PLEASE TAKE NOTICE THAT ON April 30, 2004, The complainants, Ronald Stuart and Barbara Stuart filed with the Office of the Clerk of the Illinois Pollution Control Board, an original and ten copies of the attached "Brief of Barbara Stuart and Ronald Stuart" a copy which is served upon you.

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Barbara Stuart , Complainant

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MAY 03 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

RONALD STUART and)
BARBARA STUART)

Complainant,)

v.)

FRANK FISHER and PHYLLIS FISHER)

Respondent.)

PCB 02-164
Citizens Enforcement NOISE

BRIEF OF

**RONALD STUART and BARBARA STUART
Complainants**

Ronald Stuart and Barbara Stuart, files this brief with the Illinois Pollution Control Board, (Board) in support of their complaint against Frank Fisher and Phyllis Fisher.

Ronald Stuart and Barbara Stuart request that the Illinois Pollution Control Board issue the following order:

1. A cease and desist order prohibiting Frank Fisher and Phyllis Fisher, from continuing to violate Illinois regulations related to noise emanating onto another persons property. Specifically using any propane cannons on their property.
- 2 Request Frank Fisher and Phyllis Fisher, to use an alternative method for bird control. Specifically non auditory devices, causing emissions of noise onto another person property.
3. Provide stipulated penalties in the event Frank Fisher and Phyllis Fisher fail to comply with an order of the Illinois Pollution Control Board.
4. Require Frank Fisher and Phyllis Fisher to post a Performance Bond to ensure that respondent complies with any order of this Board.
5. Require Frank Fisher and Phyllis Fisher to immediately implement the provisions set forth in the attached remedial action plan.

THIS FILING IS SUBMITTED ON RECYCLED PAPER

PCB 02-164

FACTS Frank Fisher changed his farm operation from soybean and corn in 1999 into truck farming. In 2000 he allegedly lost some watermelon crop to crows. On 8-8-01 he began using 2 gas fired propane cannons at 5:15 in the morning. Ronald Stuart already outside with his dog heard the first shots emitting from the cannons, and so was his dog. She bolted for the locked gate, forced her body through the locked gate, and headed for cover under a desk in the sunroom. Within minutes our next door neighbor Karen comes over frantic, about what she and Ron think are gunshot sounds. Our two boys are awoken by the sounds. Ron takes Sam to the Veterinarian, knowing she was seriously injured. 16 hours later euthanasia was elected for humane reasons. When Ronald approached Frank Fishers farm that same evening, Ron was told by Mr. Fisher he would not stop using the cannons. Ron explained how upset our neighbors were a few days later and still Mr. Fisher said No, the cannons would stay. Mr. Fisher is one of 5 produce growers within an 8 miles radius. He testified he is the only farmer who uses cannons because of the crows and his watermelon damage in 2000. He testified the profits go to his Nephew Michael Witvoet, his niece and their family who work the farm. "It's a family thing, he only gives them the do's and don'ts". Still Mr. Fisher cannot prove any type of monetary gains with using the cannons for the past three summers, he claims not to keep records, and states at the hearing "The proof is in the pudding", regarding his gains. The Witvoet family lives in Cedar lake, Indiana. They obviously don't have to put up with the noise all day long, as we do. However, Mr. Fisher also stated during testimony the cannons are not turned off while the farm hands are picking the produce. He states they are 20 to 30 feet away from the device and not bothered. Many attempts were made through the local officials to stop the noise, with no success. Most farmers around here don't know what a propane cannon is, and neither do the public officials. Farmers simply do not use these devices in and around this area. My son Michael has a seneural neural hearing loss diagnosed in 1999. Even when Frank knew this information well back into the time of completing our Discovery, he still continues to use these noisy outdated pieces of noise equipment. The cannons start running Late June until Late October or Early November. When in operation they start at 5:30 a.m. until the sun goes down. They fire a blast similar to a shotgun going off at least every minute on the minute. We are losing neighbors to this noise. The Collina family who lived west of us for years, were tired of keeping their little girl Danielle indoors, this little girl of 3 (in 2001) was hiding indoors thinking a man was shooting her. They moved in September of 2002. The next owners lasted 13 months, because they were afraid the cannons would spook their horse, like ours were. This is a very dangerous situation in which to be in. During four months out of the year we subjected to physical as well as emotional hardships, the cannons interferes with our recreational activities and our ability to just relax outside to breathe fresh air. We have similar problems indoors. Our pets are nervous, often panting, pacing and clinging to people in fear. Windows are always closed. Our area changed from an area of serenity and solace, a well established area is now an area similar next to a firing range . It wasn't only Ron and me upset it was many people in this area. Finally we decided to turn to the pollution Control Board for some help . No one not even the USDA, WS, NRCS, or the DNR claim they have control over propane cannons. Then who is responsible for the negative impact they have on citizens.

THESE DOCUMENTS HAVE BEEN FILED ON RECYLED PAPER

PCB-02-164

STATEMENT

We the complainants moved into our home at 213 E. Corning Rd. on June 24, 1999. Our Western property line is 2/10 mile from the Eastern property line of Frank Fisher at 13 W. Corning Road. It was an area of serenity and solace.

The Citizens Enforcement/Noise case PCB-02-164 presents testimony before the Board of 6 witnesses. Four of whom reside within 2/10th of a mile to under 3/4 of a mile from the Respondents, Frank Fisher and Phyllis Fisher, located at 13 W. Corning Rd. There is one witness, James O'Neil of Oak Forest, Illinois who has visited our home at 213 E. Corning Rd frequently, since the day we moved in on June 24, 1999. Our last witness is Gregory Zak, sound expert of "Noise Sollutions by Greg Zak".

AREA First I would like the Board to know about the area we live in. the block of Corning Road is approximately 1.2 miles long beginning at Route One going east to a crossroad named Cottage Grove. (Maps of the area are on Complainants exhibit number two). The area consists of 22 homes, all residential resident's who work outside the home. These particular homes sit on parcels starting at one to ten acres. There are 3 farms, one 10 , 80 and 109 acres, all having home/residents on their farmland. With the exception of Frank Fisher who has two homes, one being his daughter's Julie Barton. The ages of the home start around 20 years to over 100 years of age. There are two homes under 8 years of age belong to the Peterson Farm on the S/W section of Corning Road and Cottage Drive. Looking at the map one can see there are some vacant sections of land. These are either owned or rented by other farmers to grow crops, and have no homes on them. Industrial zoning is prohibited in this area. There is one grandfathered Industrial zoning at the JDS Union Electronic part distribution

building. There are two homes which set in front of this business. Also two years ago a horse stable was built in our area, which is indicated on the map. There is a Church with a cemetery. And plans are in the making for another church on a 6 acre parcel of land to be built directly across from the Fisher Farm, with the possibility of a small school.

Contrary to what the Respondent thinks, I do not own or operate a kennel of any sort.

We learned in 2002 that this area is filled with Coccidiaosis, a microscopic parasite, coming from poultry. This can and has killed many puppies. For that reason alone I will never have a kennel as I once had dreamed of. The risk is not worth taking.

AMBIENT READINGS When Greg Zak came to my home on August 8th, 2002 he took ambient readings of the area near my home. He observed the area, at around 12:00 noon on that weekday. He saw very little if any traffic on Corning Road. Could not hear sounds coming from Rt. 1 (Dixie Hwy) west of our house. He said in his report the area is one of a rural residential area which is very quiet. Even with the winds being around 20 m.p.h. he measured ambient readings in the average range of 43.5 dBa. Greg said on a normal day with low to no winds the reading would be in the range of 33 to 37 decibels. On this day we discussed how I was using the Radio Shack meter to which he sold me in July of 2002. I showed him where I was taking the measurements from the cannons so as to avoid any reflective sound. He thought the area in which I took the readings was a good place. Greg Zak's testimony at the hearing is on [TR 196 thru 251] This includes Direct Examination and Cross examination by Mr. Harding, respondent's attorney. I will include Greg's testimony at the end of this statement.

LOG SHEET It was in July, August of 2002 that I recorded propane cannon sounds.

On the (**Complainants exhibit 4**) On page one of the Log of Cannon Sounds, I explained the equipment used, the date and time of measurements as well as the weather conditions.

For some reason I stored this information in the computer, even though I had the 8 mm. Tapes. The camcorder (**also used by my children that spring and summer**) was not picking up the video portion on the 8 mm tape. This I discovered after taking it to a photo lab to transfer the readings onto a VHS tape. It wasn't until February of 2004 that the log sheet was copied from the computer.

BAD TIME In November my husband Ronald Stuart's identical twin brother Donald Stuart, became very ill, he was diagnosed of having Gall Bladder related Pancreatitis, within 48 hours he was in ICU, fighting for his life. Already in renal failure, and on a ventilator, we had him transferred to Rush St. Lukes Hospital in Chicago. Where Ron and I kept day and night vigils beside him. On December 2nd at 2:05 a.m. Donald died of Septic Shock. No one realizes the relationship there is when your spouse is the other half of an identical twin. It's like you have lost a husband. It was like he lost himself. We were doing our best then and now as I write this. Contact was made with Mr. Halloran regarding the December 2nd tele conference which had to be cancelled. Mr. Harding was made aware of the request for an extension of time due to Donald's death in December. There was a teleconference in Feb. 2004, as well as another one the day before the March 9th, 2004 hearing date. During the Feb. 5th teleconference I explained to Mr. Halloran we were still under an enormous amount of emotional stress because of our losses. Mr. Harding was in on this conversation and still asked Ron during cross examination "how is your brother doing" [TR 130 19-24] We were very distraught by that question. I am not seeking sympathy from the board, trust me we have had an overwhelming amount of support from friends. I am just offering a factual reasons why

important responsibilities were not attempted at this time.

It was after the Feb. 5th teleconference I knew spoke to Greg Zak informed him of me making a log sheet of the cannon readings I had in the computer to present to the Board. He thought it would be an attempt worth doing. It took days to compile these readings. Mr. Halloran took the information as an offer of proof.

HEARING At the hearing testimony was presented by we the Complainants, Barbara Stuart and Ronald Stuart. Ronald testified how on the first day, August 8, 2001 at 5:15 a.m. Frank Fisher began using his two propane cannons, a tragedy occurred. Our dog already sensitive to thunder, guns, and firework, became frightened by the blasts of “gunshot like” sounds of the cannons was outside with Ron. Samantha, (dog) ran for the locked gate, forced herself through it and went into the opened door to the sunroom. She hid under the desk. Our neighbor Karen Cancialosi came running over asking who was setting off fireworks, or firing a gun at this time in the morning. Ron said he didn’t know. Karen left for work. Sammy was taken to the veterinarian, xrays confirmed 3 compressed vertebrae. She was paralyzed in the back legs. By 7 p.m. Ron located the source of noise. At 9:00 our dog was to be euthanized because of no hope for survival. Ronald states he went to Fishers Farm told him of the dog dieing. But Frank Fisher said he would continue to use the propane cannons because crows were pecking holes in his watermelon. It was always the same reply from Mr. Fisher, No. Ron tells of how his horse last year was spooked from the noise. He tells of how two of our neighbors west of us sold their homes. One in the summer of 2002 , and then the new owner sold in October of 2003. The last owner sold because he owned a stallion and the horse was fidgety with the cannons going off. Most horses don’t like the sounds of guns. More of Ron’s testimony is on pages **TR 108 – 150**

Barbara Stuart goes on to give a Narrative testimony along with cross examination by Mr. Harding. **TR 108 –195** Barbara Stuart tells how the cannons have stopped her from sleeping early hours in the morning, forcing her to sleep in the basement. How she is concerned about the health and well being of her family. Many of whom complain of not being able to sleep or entertain outdoors. She herself does not garden if the cannons are blasting. She stopped swimming in her pool. Entertaining friends because of the loud intrusive, embarrassing sound. She found herself to be distracted, and annoyed by the sounds, often causing Migraine headaches. Kept windows shut to buffer the sounds from her dogs who would pant, pace the floor, and be in distress because they were frightened by the sounds. She feels the cannons interfere with the quality of her life and are a major nuisance to everyone in her area. She explains or tries to explain Michael Stuart, her son's sensoral neural hearing problems and how he experiences pain in his ears. She explained how the States Attorney was notified by Michaels Otorlaryngologist Dr. Battista to intervene regarding Michael's hearing problems. A second letter was sent to the States attorney of Will County in September of 2002 informing them Michaels hearing loss had worsened. See health records, letters, medical diagnosis (**Complainant Group Exhibit one**). Again no action was taken regarding the letters of a medical Expert.

Michael Stuart, son of Ron and Barbara Stuart testified how his life was before and after the cannons. He remains indoors, does not go outside with the cannons blasting. The blasting of the cannons cause him ear pain. The remainder of his testimony is on **TR 25-51**

Jim O'Neil a resident of Oak Forest, Ill. Testifies as to what this area was like before and after the start of the cannons. He tells of bringing his nephew to our home in July

of 2002. Jim felt uncomfortable being outdoors when the cannons were operating and felt like he should duck when he heard the shots ring out. Orion, his 8 year old nephew was frightened so badly he went indoors instead of swimming. The remainder of his testimony is on **TR 80-84**

Jerome Grossman a witness and neighbor who lives approximately ½ mile from the Fisher Farm. Jerome is a well known Glass blowing artist. He moved in to this area on Corning Rd. in 1993. He complained of windows rattling when the cannons would sound off. Found it very hard to concentrate blowing glass because he was distracted by the repeating impulsive sounds of the cannons. He stopped enjoying his ten acres of property that was peaceful and quiet. He experienced a great change in his lifestyle and quality of life on his property while the cannons were operating. There is much more interesting testimony given by Mr. Grossman on page **(TR 52 to 80]**

THE RESPONDENTS TESTIMONY: By error I, Barbara Stuart called Frank Fisher as my witness. Never had I been to a hearing, or court, I did not know I should have called him for cross examination. I think. Even so this proved to be by far a very interesting testimony. Frank testifies he moved away from the farm until he was divorced. It was not until his father passed in 1992 that he became Chief farmer at 13 W. Corning Rd. In the year 1999 Frank changed the farm operation from the typical soybean and corn farming operation to one of Truck Farming (produce). In the year 2000 he tried growing Watermelons, had problems with crows “pecking” at them. So he bought from a produce farmer who was retiring 2 used Scare a way 3 gas fired propane cannons. On August 8, 2001 he begins using them. Changing this area from one of contentment to

that of a firing range, summer after summer. I asked Mr. Fisher if he could prove on paper the benefit of using these cannons? And any proof the cannons are working and bring him in a profit. The answer to the question asked of Mr. Fisher was “he has no records” because he keeps no records. He claims the proof is “in the pudding”. So basically there is no evidence that warrants the reliability of these cannons, or shows he has a better crop turnout. We thought it was odd he didn’t at least keep some kind of records for 2003 for this hearing. Then Frank Fisher goes on to tell us he is only the “Chief Farmer of the operation. His nephew Michael Witvoet, and his niece, their children and a boyfriend of one of his nieces children receive the rewards from the farming operation. Frank says he basically gives them the do’s and don’ts of the farming operation. The nephew and niece have a residence in Cedar Lake, Indiana. (They don’t have to live with this annoying, terrifying device) I asked if Mr. Fisher turned off the cannons while the farm hands were picking the crops to which he said “oh no”. He went on to say they did the picking 20 to 30 feet away from these cannons and were not bothered by the noise. He and his daughter who live on the premises of the farm in separate housing are not bothered by the cannon sounds. Michael Witvoet, a witness for Frank Fisher cancelled to be a witness the day of the hearing. I then asked Mr. Fisher if he knew of anyone in a 25 mile radius who uses propane cannons, he answered no. I asked if he knew of any produce farmers in this area. During Discovery he said no. At the hearing he said “Oh sure I do”. And stated none of them use cannons. Crows only seem to attack the watermelons, and no one but him grow watermelons. (NOT TRUE) What was really strange was how he explained at the hearing “crows don’t just hone in on one watermelon, they peck this one and that one, and then you can’t sell them”. On

the Judge Mathis tape, Frank says the same thing, makes a motion with his hand showing the size of the hole (quarter coin). However, at the hearing Mr. Harding his attorney shows these color pictures of some watermelons that don't quite fit the description of the type of damage crows do. In the pictures which we have never seen to this day, are no indications of crows being around, where, or when they were taken. We were given copy machine copies of the evidence. I asked if possibly a fox or other animal could do this? No was the answer. Note: Racoons, fox and other animals do indeed consume and destroy watermelon. The holes they leave are similar to those pictures.

Overview: Mr. Fisher basically is telling us the cannons operate with the farm crew consisting of 6 people, 20 to 30 feet away. He says he changed the farming operation from the usual farming to truck farming, growing produce in 1999. He knew the area on Corning Road was established and the majority of the homes on Corning Road were already built with residents living in them. He uses a device on his farm to deter crows that no one but him seems to be in conflict with. Even though there are 4 or 5 other produce growers in the area. He knows of the problems the cannons have caused to we the complainants, and our neighbors. It was all documented in the March 24, 2002 formal complaint to the Board. But still without any reservation continues to use these devices. Never once having to contact a specialist in bird control to seek an alternative to the disturbing cannons, or turning to the USDA for advice. He has only tried pie tins and scarecrows and that was in the year 2000. His complete transcript in on pages [TR84-98]

PUBLIC COMMENTS There are two residents who submitted written testimony concerning their lifestyle changes when the cannons are in use. **PC #3** is Wayne Genis, a

very concerned and unhappy neighbor about the noise. Was to be a witness but had to work. **PC#4** is from David Pillotto, a long time friend who can explain how the cannons have affected us, and our neighbors in this once quiet and serene area. The second P.C of a neighbor (family member) is from David Stuart our son, now away at school. David's testimony I think needs to be read. Of all my children he was greatly taken back by the cannon sounds. Losing sleep, inability to read or study outside. Embarrassment to entertain friends, or even be alone outdoors to simply relax in the sun, was a pleasure taken away from him when the cannons were blasting. **He is P.C. # 6** He suffers from a serious anxiety disorder, this noise is detrimental to his health. There are also two other Public Comments. Phil Novak and Lee Deutsch.

After many many attempts to notify local officials nothing was ever solved. Neighbors were complaining about their children being in fear and not wanting to come outside, like Danielle the little 3 year old who lived next door to us. They sold their home in August of 2002. One reason was the fear her children had to experience each summer because of the cannons. Danielle thought a man was outside waiting to shoot her. Many neighbors like us were awoken every morning to the blasts.

PETITION A neighborhood petition was started all but two residents close to us signed it. The other two were on vacation. We only went ½ mile from Fishers property line.

(public comment #6) We heard several people complaining of losing sleep, shutting their windows, their dogs not wanting to go outdoors. Some having frightened children not wanting to be outside. Most were reluctant to file a complaint, because in most instances in our area, nothing is ever solved by our public officials. Mr. Genis who wrote a written Testimony has a great deal to tell of how he and his son live. They are the

closest to the Fisher Property with the exception of the Hayes family. **See P.C. #3** Our area changed that summer and for the next two summers, all the way up until Halloween when Frank Fisher finally stops using the cannons.

OTHER CONTACTS We need to let the Board know that we the respondents, made every attempt to try and seek help to solve this noise problem. We contacted the Will County Sheriff's Department, the local Township Officials, The DNR, WS, USDA. There was never any success or solution. No one claims responsibility for these cannons.

DURATION TIME The cannons are Scare away 3, sold by Reed Joseph International. According to the description of this cannon, they emit 130 decibels of sound. Higher than the sound of a 12 gauge shotgun. The cannons when operating will sound off a blast about every minute, sometimes less. Frank Fishers uses them from 5 a.m. until around 9 p.m. when the sun goes down. There is an example of the cannon in Complainants Group Exhibit #5. Also for the interest of the Board you can see an example of the actual cannon on the "Judge Mathis Tape" **(Hearing Officer Exhibit #1)** It would be a great benefit to the board to view the entire 12 minute tape of the Small Claims case we filed with Will County that was turned over to the Judge Mathis Show for trial purposes. The cannons during 2001 started on 8-8-01 through Oct 31, 2001. The year of 2002 was by far the worst year, they started the end of June and ended November 2, 2002. For some strange reason Frank only used the cannon during August, thru October of 2003, and rarely. It was nice for us who wanted to go outdoors, but still there was the unpredictability of when they would start up again.

THE TESTIMONY OF SOUND EXPERT, GREG ZAK.

Our last and final witness was our sound expert. [TR 196-252]Greg Zak gave testimony regarding the investigation of the area we live in. He conducted ambient readings as stated earlier. In the year 1979 Greg was involved in a gas-fired propane cannon case. His first. He tells of the manner in which he took measurements of an earlier model of a propane cannon which was the source of a noise complaint. He found the cannons to be louder than a 12 gauge shotgun. These two particular cases, the 1979 one and ours are very, very similar. Being the type of rural location with residential homes, the almost exact distance between the complainant and respondent. The sound measurements which Greg took in 1979 were a distance of ¼ mile (1320 ft.) from the cannons. The measurements were 53 through a series of numbers to 59. Note: Our home is approximately 1100 feet from our west property line to Fishers East property line. The cannon in 1979 was measured at a distance of 30 feet and the sound levels were 105 to 106 dBa , the cannon was called a Thunderbird scare-away. The cannon in which Frank Fisher uses emits 130 decibels according to the information given by Reed-Joseph International. Mr. Zak points out that Mr. Grossman who lives farther from Frank Fisher actually experiences the same problems as we do at a greater distance. Mr. Zak best describes the sound of the cannons like that of a backfire, blowout from a tire, hammer blows, or gun fire. He further states there are no tall buildings around that would lessen the amount of sound. Note: “The overgrown trees which sit on the old railroad tracks” Mr. Harding keeps referring to will not act as a sound barrier. There must be a thick forest setting to buffer noise. If the board questions this comment, Mr. Zak has agreed to

answer the question. But I think he said it best "It's (our) a very scarcely built up area, very, very open and so you would not really have any building effect there." Mr. Zak discussed the reliability of the meter I purchased from him in July of 2002. That of which I still have. If it pleases the Board I can return it to Greg Zak. When I showed the offer of proof log sheet of cannon measurements Greg was very confident they were accurate, because of the similarity between the 1979 case and ours. He also says that the 1979 Coffman case regarding propane cannons and our complaint "are very, very, very, similar". For the full benefit of Greg's testimony and the cross examination from Mr. Harding it may be best for the Board to review the text in it's entirety. I am just giving you some highlights of his testimony.

Complainants will not ask the Board to imagine being in our position and living under these peace shattering nuisances and unreasonable interference's of our lives and others. You will realize what life has been like after reading the transcripts. What we will ask is that the Board bring Frank Fisher into compliance with the laws and regulations of Illinois. To implement our request we ask the Board to issue the orders specified in the remedial action plan.

CLOSING COMMENT

In closing the Complainants wish to reiterate that 3 consecutive years from late June until the 1st of November our once peaceful and beautiful area has been turned into an area similar to a firing range. Nearly every day, sunup to sundown, minute after minute, 14 hours a day, practically 7 days a week is enough. Yes Frank Fisher used his cannons less, still less is unacceptable to us. There is no reason in this day and age to use such

outdated devices in our already stressed environment. This is not the year 1979. These cannons also cast out liquid propane into the atmosphere. Without a doubt there are better alternatives to propane cannons, which are rarely used anymore. We urge the Illinois Pollution Control Board to do all in their power to return normal , happy lives to the people on Corning Road.

Thank you for all your time and concern in this matter. I am eternally grateful after so many years of searching for someone, anyone to listen to me about this cannon issue. And to Mr. Halloran thank you so much for your patience with me on the day of the hearing.

Respectfully submitted,

By:  4-30-04
Barbara Stuart

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Dated: April 30, 2004

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ARGUMENT

“In a time of such turmoil throughout our nation, one has to think about our basic rights. The rights that we fight for such as freedom, peace of mind and domestic tranquility are the true values in our lives”.

1. Frank Fisher has been using gas-fired propane cannons since 8-8-01. These cannons cause an enormous amount of both physical and emotion harm to our family as well as to our neighbors. We have been deprived to opportunity to enjoy the months beginning from late June until the last days of October for three consecutive years. Even though Frank Fisher has been aware of the disruption of our lives, still he continues to use these devices. Since the day the complaint was filed with the Illinois Pollution Control Board, March 24 2002, he has known our son Michael 14, has a deteriorating hearing condition. Nothing caused by the cannons, but the type of sound emitting onto our property interferes with Michaels hearing. By this we mean he experiences pain in his ears when the cannons go off, as testified at the hearing. Two letters written by the Otolarynologist , Dr. Battista, have been sent to the Will County States Attorney notifying them of Michael senseural neural hearing loss. Still two years later nothing is done to intervene on Michaels behalf. Michael’s hearing worsened in September of 2002. Frank Fisher claims we are bringing up Michaels hearing problems now because of the lost small claims case in 2001 on the Judge Mathis Show. Our son begged us not to mention his hearing problem on national television, we abided by his wish. Sleep depravation to our family is another health issue when the cannons are in operation. We have had episodes when our horse is spooked by the sounds of the cannons while riding them. **The issue:** If the person who produces the noise that is offensive

and harmful to our family and an injury occurs to a family member then who is held responsible for the injuries. I ask this question because of **the liability** involved in using a device such as this. Many insurance companies will not pay for damages for the insured if the responsibility falls upon another individual.

2. Frank Fisher became the Chief farmer at 13. W. Corning Road in 1992 after his father died. He continued growing the soybean and corn as many Illinois farmers do. In the year 1999 he decided to change the farming operation to Truck Farming. In 2000 he began growing watermelons, and experienced one year of crow damage to his watermelons. So Frank purchases two used Scare a Way 3 propane cannons. In 2001 he begins using these cannons. Asked if he tried any other bird deterrent techniques to which he answered yes, pie tins and scarecrows. It appears that Frank is the only produce farmer in North Eastern Will County using such a device.

Frank admits he knows of no one around this area using them, including the other 4 produce growers, Vos, Bultema and others. But for some reason there is only a problem with crows when he grows watermelons. At the Hearing we were shown color photos of watermelon allegedly devoured by crows. We were never given the opportunity to view the photos, but do know that our area is over populated with Raccoon, and fox, which are capable of doing such extreme damage. We do not know where these photos were taken at, the date, or what animal did this to these melons.

The issue: How do you know for certain a crow did this damage in the photos. In the past Frank has said: crows don't hone in on one watermelon, they just go from melon to melon and peck each one. He clearly shows this on the Judge Mathis tape.

3 . The area in which Frank Fisher operates the propane cannons is well established.

Homes existing here are between the ages of 20 to over 100 years old. 80% are residential tax payers, the rest of the area consists of 3 working farms with homes.

When I refer to "area", I am talking about Corning Rd. Starting on Dixie Hwy.

Going eastward up to Cottage Grove. A length of 1.3 miles. There are two newer homes under 8 years of age, built on the Peterson farm at the eastern end of Corning

Rd. There is one Church, one cemetery, and a new Horse Stable built two years

ago, within a ½ mile from Frank Fishers farm. One small business exists, an

Electronic parts distribution business having two homes directly in front of the

business. And a 6 acre parcel **directly** across from Frank Fisher is designated for

another Church to be built there soon, with the possibility of a school. **Issue:** Do

propane cannons really belong in an area such as ours? When Frank started the

Truck farming operation in 1999 he knew there were little if any changes on

Corning Road. **Issue:** Is it right to allow one person, one farmer, to use propane

cannons around people who have made major investments in their homes many

years before he even returned to farming? This is not a question of "what came

first the chicken or the egg". It's a question of Right or Wrong.

4. The cannons in which Frank Fisher uses emit noise beyond the boundaries of our

property line and other property lines farther than ours. Jerome Grossman testified

when he was working at his glass shop on his property, his windows rattled with the

blasts from the cannons. He too had problems concentrating with the cannon noise.

Worse than that though, is this talented man, rated number four in the U.S. as a

Glassblowing artist is denied the concentration much needed to complete his art

work which is his livelihood. Mr. Grossman began working out of his shop ½ mile from the Fisher farm in 1993. This was seven years before Frank Fisher changed the status of his farm operation to truck farming and eight years before Mr. Fisher began using this cannon device. This noise unreasonably interferes with the enjoyment of our lives, and others. The sounds are too close to relax, sleep in the early hours of the morning, enjoy the outdoors, swim, garden or entertain and carry on a conversation without the distraction of the cannon noise. We feel a violation has been made in reference to Sec. 24 (415 ILC5/23 and 24. **Issue** Have our rights been violated. If so, then what can the Board do to help us?

5. What is the value of our happiness, enjoyment of our property, our family's health and well being, our peace of mind, our enjoyment of friends coming to our house, the investment of our property, what is all this worth? It's priceless, we learned that on December 2nd of 2003. Life is too short, too valuable to have to spend so many months out of the year miserable. **Issue:** If one person only, in an area **is allowed** to disrupt and take away any of these assets we hold close to our hearts, and value so dearly, then what kind of a world are we really living in?

6. **Issue:** Just how effective are these propane cannons to deter crows and other birds.

All this information is available in print in Complaints Exhibits as offer of proof #5, and # 2.

- A. Joseph M. Rogus; District Wildlife Biologist, IDNS, Wilmington, Illinois. Wrote a letter to me, Barbara Stuart stating "In recent years many new products have become available on the market, some of which can be more effective than the LP Gas Cannon in frightening birds.
- B. University of Vermont (USDA extension program) Vegetable and Berry News, April 1, 2001. Vern Grunbinger states "Birds quickly get accustomed to units that are stationary, shoot at regular intervals or fire rapidly. Unfortunately neighbors never get used to gas fired propane cannons". "Netting is the best way to ensure crop protection.
- C. Cornell University (USDA extension program. "Netting is the most effective method for control bird damage". "Propane cannons are effective for short term control".
- D. U.S. Fish and Wildlife Services, Springfield, Illinois. Ron Ogden states "Since birds are known to easily habituate to exploders, it is best to move the exploders during the scaring operation and/or combine their use with other scare devices.
- E. William H. Clay USDA-APHIS-WS- Article A NATIONAL PERSPECTIVE ON WILDLIFE SERVICES ROLE IN THE MANAGEMENT OF BLACKBIRD-HUMAN CONFLICTS. States " Birds tend to adapt to frightening devices, therefore it is usually best to include the use of multiple type of equipment.

Note: Frank Fisher does not move his cannons, "ever". He also uses no other devices along with the cannons. Still he gives no evidence on paper with statistics or financial records indicating the cannons really worked for him to show monetary gains on the sale of watermelons. What do we have to go on for evidence that the cannons did indeed work? Even if they did work as he claims in his testimony and states "The proof was in the pudding" regarding his profits. Would it not benefit our area for Frank to put some of those profits into an investment of a more environmentally quieter and safer alternative for deterring crows from his watermelons? After all it is the responsibility of all mankind to protect our environment from any kind of pollution. Noise is pollution. His nephew Michael Witvoet receives the benefits of the farming operation. However Michael and his family also benefit by not living by the cannons as we and our neighbors have had to for the past three years. Also I really find it hard to believe no one is bothered by a propane cannon that puts out 130 decibels of sound when they are only 20 or 30 feet away from that cannon.

7. The effects which loud, negative sound has on the human ear . Many articles are given to the Board regarding the issues, and facts surrounding the human ear and hearing. In these articles is information regarding the physical as well as the psychological effects of sound on the human being. These articles have been written by the best of the best in the field of sound experts, and psychologists. Such writers as Alice Sutter who has presented many research studies and facts to the E.P.A. regarding the adverse effects of noise. Also are "Hearing" publications by world renown Arline Bronzaft . The information is factual, informative and shows clinical research. They are listed under **Complainant Group Exhibit 2 and 5.**

Issue: There is undoubtedly enough of clinical proof to show the effects sounds have on people both physically and emotionally. Noise is harmful to the environment and to man.

THIS FILING WAS SUBMITTED ON RECYCLED PAPER

PCB-02-164

REQUESTED REMEDIAL ACTION

Barbara Stuart and Ronald Stuart, Complainants, seeks an order from the Illinois Pollution Control Board mandating that:

1. Frank Fisher and Phyllis Fisher, Respondents shall immediately Cease and Desist from all future violations of the Illinois Environmental Protection Act, Board

Regulations and Board orders including, but not limited to:

A. Causing or allowing the emission of sound onto Barbara Stuart and Ronald Stuart's, Complainant's property that violates the prohibition of noise pollution of 35 ILL Admin Code: 900.102, by unreasonably interfering with Complainant's enjoyment of life or with his or her's conduct of any lawful business or activity.

II. Within 60 days after the Board's order, Frank Fisher and Phyllis Fisher, respondents shall implement the provisions set forth in this remedial action plan.

A. Prohibit the use of any gas-fired propane cannon, presently used, newly Acquired, used or purchased new, for use on their truck farming operation

B. Prohibit the use of any auditory devices used for deterring birds, and or wildlife that can be heard beyond the property lines of the Complainants.

C. Contact the nearest Wildlife Control Specialist from the USDA/APHIS Wildlife service for information concerning alternatives to propane cannons and other loud auditory devices. The Illinois Department of

Natural Resources office in Wilmington, Illinois can offer alternatives to loud bird deterrent devices.

D. Prohibit the use of any loud speaker, stress call bird control devices.

III. In the event Frank Fisher or Phyllis Fisher, modifies his/her method of operation of their truck farming operation in order to evade any Illinois Pollution Control Board Order, but still engages in an agricultural operation at his 13 W. Corning Rd site, that cause emissions of noise in violation of Illinois Pollution Regulations, we ask the Board the provisions above be mandated in order to protect Barbara Stuart, and Ronald Stuart Complainant's, and the Corning Road Residents from noise emissions.

IV. Complainants feel the construction of an effective Wildlife Damage control, or Bird Damage Control method must be under the supervision of a qualified Wildlife Damage control specialist, to assure compliance with regulations. To that end the respondent must retain a qualified Wildlife Damage Control expert within 30 days of the Board's order.

The Wildlife Control Expert shall certify that the changes as outlined in item 2 of this remedial action plan have been properly satisfied to implement operational changes as addressed in items A through D, and a good faith effort has been made by Frank Fisher to implement those operational changes in items A thru D.

V. Within 30 days of the Board's order Respondent shall post a \$10,000.00 performance bond or the like payable to the State of Illinois Environmental Protection Trust Fund, The

Bond is to assure the timely completion and the Certification ,of any noise controlling Device/s or material for bird damage control methods. As recommended by a qualified Wildlife Control specialist retained by Frank Fisher for his operational truck farming facility located at 13 W. Corning Road. Failure to implement all of the above shall result in forfeiture of the Bond or the like.

THIS FILING WAS SUBMITTED ON RECYCLED PAPER

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PCB-02-164

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CLERK'S OFFICE

MAY 03 2004

STATE OF ILLINOIS
Pollution Control Board

CERTIFICATE OF SERVICE

We, Barbara Stuart and Ronald Stuart complainants, first being duly sworn, states than a copy of the Brief and a copy of the Notice of Filing was mailed to the Respondents Attorney, David Harding, and those listed below on April 30, 2004 by Certified mail.

Bradley Halloran
Hearing Officer
100 W. Randolph
Ste 11-500
Chicago, Il 60401

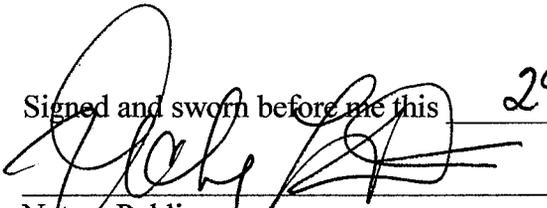
Dorothy Gunn, Clerk
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David Harding
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Chicago, Illinois
60402

Bobby Petrungarro
Will County States
Attorney Office
14 W. Jefferson St.
Joliet, Illinois 60432


Ronald Stuart


Barbara Stuart

Signed and sworn before me this 29 April, 2004

Notary Public

SEAL

