

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

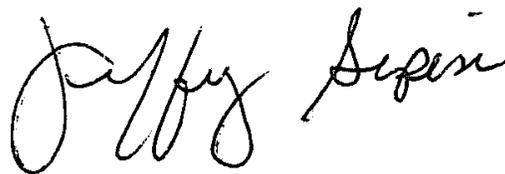
MATT GILL,)	
)	
Complainant,)	
)	
v.)	PCB 16-68
)	(Citizens Enforcement-Noise)
CHS INC. - CARROLLTON FARMERS)	
ELEVATOR)	
)	
Respondent.)	

NOTICE OF FILING

To: Carol Webb	Matt Gill
Hearing Officer	Complainant
Illinois Pollution Control Board	RR 1 Box 3
1021 North Grand Avenue East	Carrollton, IL 62016
P.O. Box 19274	Matt.Gill@illinois.gov
Springfield, Illinois 62794-9274	
Carol.Webb@illinois.gov	

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board, Respondent, CHS Inc.'s Motion for Production.

CHS Inc.



By: _____
Jeffery A. Sepesi
One of its attorneys

Dated: August 2, 2016

Jeffery A. Sepesi (ARDC No. 6230245)
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Electronic Filing - Received, Clerk's Office : 08/02/2016

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Respondent's Motion for Production

Respondent, CHS INC., by and through its attorney, JEFFERY A. SEPESI, files this Motion for Production seeking the Board to order Complainant, MATT GILL, to produce sound pressure level measurement documentation. In support, Respondent submits as follows:

1. On December 15, 2015, Complainant, Matt Gill, filed a Citizens Enforcement Complaint against CHS INC. ("CHS"). The Complaint alleges that CHS violated numeric noise provisions of the Board's noise rules at 35 Ill. Adm. Code Section 901.102(a) and 35 Ill. Adm. Code Section 901.102(b). The Complaint concerns noise allegedly emitted from fans at CHS's old ground pile storage unit and new flat storage building and alleged to have impacted Complainant's residence, all of which are located in Carrollton, Green County.

2. Specifically, the Complaint alleged that "the sound level significantly exceeds the octave band center frequency (hertz) at 500, 1000 and 2000 Hz ranges. Sound pressure level measurements were made using 35 Ill. Adm. Code Section 910. 105 as guidance in gathering data." (Complaint ¶ 6). It also purported that "[s]ound pressure

level measurements were made on three occasions between December 1, 2015 and December 10, 2015 during nighttime hours and were up to 14 dB over the limit specified at 35 Ill. Adm. Code Section 901.102(b).” (Complaint ¶ 7).

3. Although CHS requested that Mr. Gill provide documentation of the sound measurements alleged in the Complaint, to date, Mr. Gill has not provided CHS with any reports, data sheets or any other documentation of the sound pressure level measurements supporting the above noise level claims.

4. Board rules provide:

The hearing officer may, on his or her own motion or on the motion of any party, order the production of information that is relevant to the matter under consideration. The hearing officer will deny, limit or condition the production of information when necessary to prevent undue delay, undue expense, or harassment, or to protect materials from disclosure consistent with Sections 7 and 7.1 of the Act and 35 Ill. Adm. Code 130. (emphasis added)

35 Ill. Adm. Code §101.614

5. Documentation of Mr. Gill’s sound measurements is more than relevant to the matter under consideration. They are an absolute requirement for him to prevail in this action.

6. In its initial order in this matter, the Board stated that it “has held that with alleged violations of a *numeric* noise standard, sound measurements of the alleged property-line-noise-source are required and must be taken with ‘strict adherence to applicable measurement procedures.’” Matt Gill v. CHS Inc. - Carrollton Farmers Elevator, PCB 16-68, Order at 4 (January 11, 2016), citing Kasella v. TNT Logistics N. Am., PCB 06-1, slip op. at 2 (Sept. 1, 2005) (emphasis in original); *see also* 35 Ill. Adm. Code 900.103(b), 910.105.

7. The Board has further determined that is “therefore the complainant, or more typically its noise consultant, who must accurately measure sound emissions in a case of alleged numeric noise violations.” Kasella, slip op. at 3. (emphasis added).

8. In the absence of Mr. Gill’s sound measurement documentation, CHS has twice conducted its own sound studies to assess the sound level conditions in Carrollton. On both occasions, Mr. Gill denied requests by CHS to collect representative daytime and nighttime property-line-noise-source data at Mr. Gill’s property.

9. The burden of conducting sound measurement to determine compliance is not, however CHS’s, it is Mr. Gill’s. “It is the complainant in an enforcement action who has the burden of proof.” Charter Hall Homeowner’s Association v. Overland Transportation System, Inc., PCB 98-81, slip op. at 19 (Oct. 1, 1998); *see also* 35 Ill. Adm. Code 900.103(b), 910.105.

10. For Mr. Gill’s complaint to succeed, he must not only produce sound measurements showing a violation of the Board’s numeric noise provisions at his property, but this data, if it exists, must have been taken with “strict adherence to applicable measurement procedures.” Charter Hall, PCB 98-81, slip op. at 19 (complainants failed to establish a violation of the Board’s numeric sound limits because although sound measurements exceeded applicable nighttime numeric sound limits, complainant’s consultant failed to strictly comply with measurement procedures required under the Board’s noise rules).

11. Accordingly, this inquiry cannot commence until Mr. Gill provides his sound measurement information.

WHEREFORE, Respondent respectfully moves this Board for an order requiring

Mr. Gill to produce all documentation, whether electronic or tangible, of the sound measurements alleged in the Complaint, including any reports, data, calibration data, field logs, and any other materials concerning sound pressure level measurements, procedures and results taken by or on the behalf of Mr. Gill. Respondent further requests, should Mr. Gill fail to provide this information in a timely manner, that the Board dismiss the Complaint with prejudice.

Respectfully submitted,

CHS INC., Respondent

By: 

Jeffery A. Sepesi
One of its Attorneys

Dated: August 2, 2016

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Respondent, CHS Inc.'s Motion For Production was filed electronically on August 2, 2016 and that true copies were transmitted by electronic mail on August 1, 2016 to:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
Carol.Webb@illinois.gov

Matt Gill
Complainant
RR 1 Box 3
Carrollton, IL 62016
Matt.Gill@illinois.gov

A handwritten signature in black ink, appearing to read "Jeffery Sepesi". The signature is written in a cursive, flowing style.

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