

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MAREK KRUK)
)
 Complainant,)
)
 v.) PCB 2020-010
)
 NEW TRIER HIGH SCHOOL)
 DISTRICT NO. 203,)
)
 Respondent.)

ANSWER TO FORMAL COMPLAINT

NOW COMES, Respondent, New Trier High School District No. 203, by and through its attorneys, Robbins Schwartz, Nicholas, Lifton and Taylor, Ltd, and for its Answer to the Formal Complaint, states as follows:

1. Your Contact Information

Name: Marek Kruk
Street Address: 124 Woodland Ave
County: Cook
State: IL
Phone Number: (630) 747-4287

ANSWER: Upon information and belief, Respondent admits the allegations contained in this Paragraph.

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

Name:
Street Address:
County:
State:
Phone Number:

ANSWER: Upon information and belief, Respondent admits the allegations contained in this Paragraph.

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

Name: New Trier High School

Street Address: 385 Winnetka Ave
County: Cook
State: IL
Phone Number: (847) 446-7000

ANSWER: Respondent admits that the address and phone number contained in this Paragraph are accurate.

4. Describe the type of business or activity that you allege is causing or allowing pollution (e.g., manufacturing company, home repair shop) and give the address of the pollution source if different than the address above.

The main source of the noise pollution is New Trier High School's dust collector used for their wood shop. It is located on the school's campus at 385 Winnetka Ave, but the dust collector in question is in the west service dock facing the houses on Woodland Ave. The dust collector was placed in the newly built service dock in the fall of 2017 after a major renovation and has since been running every day of the week except Sunday. It runs Monday through Saturday between approximately 8:00 AM and 8:00 PM, sometimes for 4 or more hours continuously, multiple times per day. New Trier High School has also been scheduling after-school and summer wood shop activities which result in significant daily operation of the dust collector outside of normal school hours. The noise level emitted by the dust collector was measured in May and July of 2018 by Shiner Acoustics and was found to be in violation of EPA limits both times. The Shiner Acoustics report showing the measurements taken in front of our home is attached.

Also, not covered by the Shiner Acoustics report, there is additional loud noise generating equipment located in the service dock that often runs concurrently with the above-mentioned dust collector. Namely, a newly installed backup generator which runs every Friday for approximately 30 minutes and is much louder than the dust collector.

Furthermore, two new trash compactors were also placed in the service dock. These compactors operate during the daytime and nighttime and make loud banging noises when solid objects are thrown into them and then crushed. They are emptied several times a day starting at 7:00 AM. When emptied, these large metal compactors are picked up and dropped onto the concrete floor which creates an extremely startling slamming noise.

Another loud piece of equipment in the service dock is the school's new condenser/compressor that runs 24/7. There are also several new electrical cabinets that were placed on Woodland Ave, rooftop units, and other ventilation fans that are always running. In a more recent development, sporadic liquid O2 tank overpressure discharges are also adding to the daily noise.

ANSWER: Respondent admits the allegations contained in this Paragraph to the extent that there is a dust collector located at 385 Winnetka Ave and it was installed and is operated by Respondent. Further, Respondent admits that the dust collector was put on the service deck in the Fall of 2017. Respondent further admits that there are also two trash compactors near

the dust collector, an emergency generator and a condenser/compressor near the dust collector, all of which were installed by the Respondent. Respondent denies the remainder of the allegations contained in this Paragraph.

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

Noise levels coming from the school's dust collector are above allowable limits. The standards are administered by the Pollution Control Board and are set in the Illinois Administrative Code, Title 35, Subtitle H, Chapter 1, Sections 901 . I 02 (a) and (b). The dust collector was tested by Shiner Acoustics and was found to be in violation of Illinois daytime limits.

ANSWER: Respondent denies any violations of any standards set by the Pollution Control Board, the Illinois Administrative Code, or any other Illinois or Federal law or regulation.

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.

The dust collector emits a loud buzzing noise that creates strong vibrations felt in and around our home. We live across the street and the sound disturbs our family even when the windows and doors are closed.

The additional equipment adds banging, humming, and whirring noises to the already incessant buzzing from the dust collector.

ANSWER: Respondent admits the allegations contained in this Paragraph to the extent that Respondent does operate a dust collector which emits a noise. Respondent denies the remainder of the allegations contained in this Paragraph.

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 day if known).

The dust collector can be heard at any time, Monday through Saturday, from 8:00 AM to 8:00 PM. The total run time averages in excess of 4 hours per day and began in the fall of 201 7. The other loud equipment can be heard at any time.

ANSWER: Respondent admits the allegations contained in this Paragraph to the extent that Respondent does operate a dust collector. Respondent denies the remainder of the allegations contained in this Paragraph.

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.

All of my family members have been negatively affected by this noise. My job requires shift work, so I often have to get my sleep during the daytime. When the dust collector turns on, it wakes me up and leaves me mentally and physically exhausted. My wife is also experiencing headaches, anxiety, and chest pains. The noise causes frustration, aggravation, and stress for my entire family. Our enjoyment of life and property has diminished as we are unable to spend time outside when the dust collector is on, and we can't escape the noise vibrations while inside. There is also no relief from noise at night. The value of our home has significantly diminished as well. The dust collector and other noise generating equipment mentioned were installed after a major renovation to the school and were not present when we purchased our home.

ANSWER: Respondent denies the allegations contained in this Paragraph.

9. Describe the relief that you seek from the Board (e.g., an order requiring that 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).

We would like the Board to ensure that New Trier High School stops deliberately violating the law by continuing to expose my family to this excessive and harmful noise. New Trier High School should recognize the negative effects of operating this equipment above allowable limits and should finally prioritize the safety and wellbeing of my family over their own convenience. We made our request to bring the noise to pre-renovation levels known to the superintendent and principal of New Trier High School in person and over email in the Fall of 2017. After our many complaints, Shiner Acoustics was hired by the school in May of 2018 to preform noise testing, and their report confirmed that the dust collector was violating EPA limits. Yet New Trier High School has continued to operate this equipment without addressing the issue or even warning us of the excessive noise levels. Moreover, the school did not provide us with a copy of the Shiner Acoustics report until Spring of 2019, even though we have been asking for it since the tests were done the year prior. By deliberately withholding this information, the school chose to extend our exposure to the excessive noise levels while nothing meaningful was done to protect my family. For example, in the Fall of 2018, the school told us about their intent to build a wall around the dust collector, which made us wait for the construction of the wall while the dust collector ran daily, but no progress has been made since that time. We would like to make sure that New Trier High School immediately and completely addresses these noise issues, closely monitors their noise pollution going forward, and respects EPA's laws and regulations.

ANSWER: Respondent affirmatively states that it has been in contact with Complainant and has had discussions with Complainant regarding these allegations and Respondent states that it is actively making attempts to reduce the noise concerns alleged. The Respondent denies any violations of any standards set by the Pollution Control Board, the Illinois Administrative Code, or any other Illinois or Federal law or regulation. The Respondent further denies the remainder of the allegations contained in this Paragraph.

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).

N/A

ANSWER: Respondent lacks the knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph.

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 and I am not an attorney.

ANSWER: Upon information and belief, Respondent admits the allegations contained in this Paragraph.

WHEREFORE, the Respondent, New Trier High School District No. 203, respectfully requests this Board enter judgment in its favor and against Complainant and for any and all relief as this Board deems appropriate and just.

Affirmative Defenses

Affirmative Defense No. 1

1. The Respondent is a “local public entity” as defined by the Local Governmental and Governmental Employees Tort Immunity Act (“Act”). 745 ILCS 10/1-206.

2. “Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused.” 745 ILCS 10/2-201.

3. “A local public entity is not liable for an injury resulting from an act or omission

of its employee where the employee is not liable.” 745 ILCS 10/2-109.

4. To the extent the vague allegations of Complainant’s Complaint allege that any particular condition of the property resulted in an alleged injury, then pleading in the affirmative, and subject to the responsive pleadings contained in the Answer, such condition resulted from a discretionary decision by a Respondent employee, and thus the Respondent has absolute immunity pursuant to 745 ILCS 10/2-109 and 10/2-201.

Affirmative Defense No. 2

1. The Respondent is a “local public entity” as defined by the Local Governmental and Governmental Employees Tort Immunity Act (“Act”). 745 ILCS 10/1-206.

2. The Illinois Governmental and Governmental Employees Tort Immunity Act protects local public employees from liability for actions committed “in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct.” 745 ILCS 10/2-202.

3. Willful and wanton conduct is “a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property.”

4. The Respondent’s acts or omissions did not constitute willful or wanton conduct.

Affirmative Defense No. 3

1. There was in full force and effect, in the State of Illinois, at the time of the occurrence in question the following additional sections of the Tort Immunity Act, which provide as follows:

(a) Section 2-103. Failing to adopt or enforce. A local public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce

any law.

(b) Section 2-201. Determination of policy or exercise of discretion. Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused.

(c) Section 2-204. Acts or omissions of another person. Except as otherwise provided by statute, a public employee, as such and acting within the scope of his employment, is not liable for an injury caused by the act or omission of another person.

(d) Section 2-205. Adoption of enactment. A public employee is not liable for an injury caused by his adoption of, or failure to adopt, an enactment, or by his failure to enforce any law.

(e) Section 2-207. Failure to inspect. A public employee is not liable for an injury caused by his issuance, denial, suspension or revocation of or by his failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization where he is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

(f) Section 3-103. Adoption of a plan or design.

(a) A local public entity is not liable under this Article for an 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. The local public entity is liable, however, if after the execution of such plan or design it appears from its use that it has created a condition that it is not reasonably safe.


(b) A public employee is not liable under this Article for an injury caused by the adoption of a plan or design of a construction of, or an improvement to public property.

2. The aforementioned sections of the Tort Immunity Act immunize the Respondent and bar Complainant from recovery.

WHEREFORE, the Respondent, New Trier High School District No. 203, respectfully requests this Board enter judgment in its favor and against Complainant and for any and all relief as this Board deems appropriate and just.

Respectfully Submitted,

NEW TRIER HIGH SCHOOL DISTRICT
NO. 203

By: 
One of its Attorneys

Dated: October 18, 2019

Kenneth M. Florey (kflorey@robbins-schwartz.com)
Margaret L. MacNair (mmacnair@robbins-schwartz.com)
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312-332-7768 (fax)
Cook County No. 91219

STATE OF ILLINOIS)
)
COUNTY OF COOK)

AFFIDAVIT OF INSUFFICIENT KNOWLEDGE

David Conway, on oath deposes and states:

1. That he is the Director of Physical Plant Services of New Trier High School District No. 203.
2. That this answer contains certain statements of insufficient knowledge on which to base a belief as to the truth of the allegations contained in the complaint.
3. That those allegations of insufficient knowledge are, to the best of his knowledge and belief, true and correct.



David Conway

SUBSCRIBED AND SWORN to
before me this 18th day of October, 2019



Notary Public



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MAREK KRUK)	
)	
Plaintiff,)	
)	
v.)	PCB 2020-010
)	
NEW TRIER HIGH SCHOOL)	
DISTRICT NO. 203,)	
)	
Defendants.)	

NOTICE OF ELECTRONIC FILING

TO:

Marek Kruk
124 Woodland Ave
Winnetka, IL 60093
MarekKruk@hotmail.com

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board New Trier High School District No. 203's Answer to Complainant's Formal Complaint, a copy of which is herewith served upon you.

Respectfully Submitted,

NEW TRIER HIGH SCHOOL
DISTRICT NO. 200,

By: *Margaret L. MacNair*
One of Its Attorneys

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Cook County No. 91219

CERTIFICATE OF SERVICE

The undersigned, an attorney, deposes and states that on October 18, 2019, she served the foregoing New Trier High School District No. 203's Answer to Complainant's Formal Complaint upon the individuals listed below via first-class mail, proper postage prepaid, in the U.S. Mail at 55 W. Monroe Street, Chicago, Illinois 60603-5144 and via electronic mail.

By: Margaret L. MacNair
Margaret L. MacNair