

ILLINOIS POLLUTION CONTROL BOARD
January 19, 2023

MAREK KRUK,)
)
 Complainant,)
)
 v.) PCB 20-10
) (Citizens Enforcement – Noise)
 NEW TRIER HIGH SCHOOL DISTRICT NO.)
 203,)
)
 Respondent.)

HEARING OFFICER ORDER

On December 9, 2022, respondent New Trier High School District No. 203 (New Trier) filed a motion *in limine* (Mot.) and a motion to extend discovery. On December 23, 2022, complainant Marek Kruk (Kruk) filed his response to New Trier’s motion *in limine*. Kruk did not file a response to New Trier’s motion to extend discovery.

Abbreviated Procedural History

On April 7, 2022, the Board issued an order addressing, among other filed motions, New Trier’s motion for summary judgement. Kruk v. New Trier High School District No. 203, PCB 20-10, (April 7, 2022). The Board denied New Trier’s motion for summary judgement where it found that the noise reports submitted by New Trier, December 20, 2019, and March 1, 2021, were not conducted in “in strict adherence to Section 900.103(b) or 910.105” of 35 Ill. Adm. Code and therefore New Trier failed to carry its burden at the summary judgment stage. *Id.* at 10.¹ The Board also noted that Kruk alleged “that the measurements described in the March 2021 report were incorrectly conducted.” *Id.* The Board did find, however, that “Kruk may rely upon the pleadings to create a question of material fact”. *Id.* at 11.

New Trier’s Motion in Limine

New Trier cites to the Board’s opinion cited above and argues that “arguments or evidence in reliance on any sound measurement which were not conducted in adherence with the procedures set forth in Sections 900.103(b) and 910.105 should be barred, specifically including but not limited to the Shiner reports from August 15, 2018, July 15, 2019, and December 20, 2019” that are attached to its motion. Mot. at 2.

¹ The Board also referenced several reports in footnote 5, slip at 9, including reports dated August 15, 2018, November 18, 2019, December 20, 2019, June 24, 2020, and March 1, 2021, that were submitted with the pleadings.

Complainant's Response

Kruk argues that New Trier's motion must be denied and that the reports attached to his Response to Respondent's Interrogatories, exhibits 1-3 "must not be barred from this case". Resp. at 2. Apparently, the exhibits Kruk is referring to is Shiner Report dated July 15, 2019 (Exhibit 1); Shiner Report dated December 20, 2019 (Exhibit 2); and Shiner Report dated August 15, 2018 (Exhibit 3). Resp. 1-2.

Discussion and Ruling

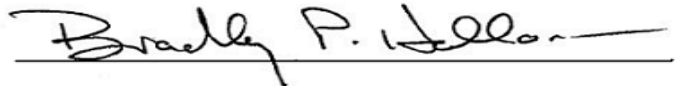
This matter is in the discovery stage and in pertinent part, Section 101.616(a) of the Board's procedural rules states that [a]ll relevant information and information calculated to lead to relevant information is discoverable..."

When the Board ruled New Trier failed to meet its burden based on the submitted Shiner reports, it was ruling on New Trier's motion for summary judgement. Kruk may find that the reports New Trier seeks to bar may lead to discoverable information. To bar the reports at this stage is premature. New Trier may renew its motion *in limine* once depositions have concluded and a prehearing briefing schedule is in place.

It is noted that the Board did not preclude additional testing conducted in strict adherence to Section 900.103(b) or 910.105. 35 Ill. Adm. Code 900.103(b) and 910.105.

New Trier's motion *in limine* is denied. New Trier's motion to extend discovery will be discussed at the telephonic status conference scheduled for January 23, 2023, at 10:30 a.m.

IT IS SO ORDERED.



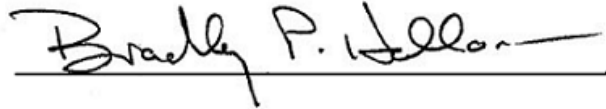
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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed on January 19, 2023, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was e-mailed to the following on January 19, 2023:

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