BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Doug and Geri Boyer, Complainants, v. MRB Development, LLC d/b/a Copper Fire; Renae Eichholz; and Mark Eichholz, Respondents.	PCB 22-9 (Enforcement)

COMPLAINANTS' POST-HEARING CLOSING REPLY BRIEF

INTRODUCTION

As set forth in Complainants' Post-Hearing Closing Brief, Respondents are creating unreasonable and unlawful noise pollution. The evidence demonstrates Respondents have unreasonably interfered with Complainants' enjoyment of life for over six years. Respondents violated Section 24 of the Act and 35 Ill. Adm. Code 900.102, have refused to turn down the music at Copper Fire to a lawful level, and therefore this Board must order them to stop creating a nuisance. In the interest of time, Complainants are not going to restate or repeat their Closing Brief. Complainants trust the Board will review their Closing Brief, this Reply, the transcripts, and all the evidence in this case.

Respondents' Post-Hearing Closing Brief ("Respondents' Brief") fails to address arguments raised in Complainants' Closing Brief, or any of the case law cited by Complainants. Respondents Brief also has numerous misstatements of fact and law and fails to address the evidence presented at the final hearing. In an effort to condense this Reply and not repeat

arguments fully addressed in Complainants' Closing Brief, Complainants address each misstatement of fact and law in an outline fashion with the goal of simplifying this Reply.

ARGUMENT

I. RESPONDENTS' MISSTATEMENTS OF FACTS

A. Respondents wrongly claim "it was established that the noise level in Complainant's loft never exceeds 39 decibels" and [i]t is undisputed that the noise level in Complainants' loft does not exceed 39 decibels." (Respondents' Brief, at 1, 5.)

While it is true when Mike Biffignani did his sound studies the average sound levels in Complainants' loft was 38 to 39 decibels, (Ex. C-22, Fig. 3), this evidence does not indisputably show the noise level in Complainants' loft ***never*** exceeds 39 decibels. The evidence only establishes on the days the sound studies were conducted the average noise levels did not exceed 39 decibels.

Notably, Mr. Biffignani's sound measurements are average sound levels, meaning the peak level noise was louder. (Ex. C-22; Ex. C-23.) Additionally, the time period at issue for this action is not just one night, but the noise pollution coming from Copper Fire for the last six years. Complainants testified in detail about the noise from Copper Fire inside their loft and the impact, including the type of band at Copper Fire could vary, it's not always the exact same music, and some music comes through clearer. (Day 1 Tr., at 116:9-15.) Indeed, Renae Eichholz admits at least for a period of time Copper Fire "was . . . more like the Wild West" conceding there were times the music was too loud, and likely exceeding the 39 decibels measured by Mr. Biffignani. (Day 2 Tr., at 229:23-230:1.)

B. Respondents assert "[n]o evidence was produced at trial showing that the sound level in Complainants' loft was above 39 decibels at any time." (Respondents' Brief, at 11).

As described in Section A above, the sound levels from the music at Copper Fire fluctuates based on who is performing, but the evidence at the final hearing definitively establishes Respondents have continually caused an ongoing nuisance for six years.

C. Respondents only discuss Geri Boyer, but there are two Respondents and more witnesses and evidence than Geri Boyer.

Respondents' brief fixates on Geri Boyer and claims this whole case is because Geri is complaining. Respondents are so focused on trying to paint Geri as an apparition or phantom, they failed to address her actual testimony, or the other evidence and testimony presented at the final hearing. While there is certainly a pained history between Geri Boyer and Renae Eichholz, this case is about the nuisance being cause by Copper Fire.

Complainants will not reiterate each piece of evidence and testimony ignored by Respondents. However, it is notable there is no discussion of Doug Boyer, a named Complainant, and the impact the noise has had on him. Respondents also ignored the testimony from Becca Boyer confirming Copper Fire is causing a nuisance and the numerous reviews of Copper Fire complaining about the noise level where Renae Eichholz admits the sound from Copper Fire travels "uncontrollably" and has been a "beast to control." Complainants direct the Board to the Facts Section of their Post-Hearing Closing Brief, which lays out a full and fair description of the evidence in this matter, and conclusively establishes Respondents are causing an unlawful nuisance. (Complainants' Post-Hearing Closing Brief, at 2-17.)

D. Respondents misconstrue Doug Boyer's testimony.

Respondents 19-page brief is nearly devoid of any mention of Doug Boyer. In one of the limited instances where Respondents acknowledge Doug Boyer, Respondents state Doug Boyer

admitted, referencing the noise from Copper Fire, "it's not to the point where it's distracting from a regular conversation" seemingly trying to say Geri is lying and "is one of the most sensitive persons to sound in the state of Illinois." (Respondents' Brief, at 3.) Respondents misconstrue Doug's testimony and cherry-pick half a sentence without the necessary surrounding context. Here is the necessary context which speaks for itself:

> Q: Are you able to have a normal conversation in your home at any of the times when bands are playing.
>
> **A: Again, during the week, it's there, but it's not to the point where it's distracting from regular conversation. But certainly on the weekends.**

(Day 1 Tr. 215:7-13.)

E. Respondents improperly assert summary judgment was entered in their favor finding the noise emission standards established in 35 Ill. Adm. Code Section 901.102 were not violated.

Respondents claim, "Summary Judgment was granted in Respondents' favor that the noise emission standards established in 35 Ill. Adm. Code 901.102 were not violated." (Respondents' Brief, at 1, 10.) This is untrue. There was never a finding the noise emission standards in 35 Ill. Adm. Code 901.102 were not violated by Respondents. While the Board has certainly read the order it wrote, as a reminder, on summary judgment the Board found Complainants' expert did not strictly comply with the Board's noise measurement requirements, and therefore Complainants could not establish a violation of the Board's noise emission standards. There was, however, no determination the emission standards were not violated. Indeed, in a case like this, where the noise pollution is occurring inside the Boyers' residence, the Board's emission standards are not applicable, since Section 910.105(a)(1) requires measurements of outdoor noise, which is not at issue in this case.

F. Respondents misconstrue the evidence when they claim they installed sound panels against the wall. (Respondents' Brief, at 6, 16).

Respondents claim they installed sound panels against the wall. It appears they are trying to imply sound paneling was installed along the wall Copper Fire shares with Complainants to try to claim Respondents tried to remediate the nuisance from Copper Fire. Respondents' alleged support is testimony from Renae Eichholz stating Mark Eichholz put up some sound panels on the wall on the mezzanine level of Copper Fire. The undisputed evidence is no sound panels have been installed against the wall Copper Fire shares with Complainants. (Day 2 Tr., at 121:17-123:21.) Instead, Renae Eicholz claims she looked up how much sound paneling would cost and never installed sound paneling. *Id.* Respondents have not remediated and are still causing a nuisance.

G. Respondents misstate Copper Fire's live music schedule.

In an effort to try to minimize the scope, nature, and impact of the nuisance on Complainants, Respondents state "[t]he undisputed evidence is Copper Fire has live music for three hours on Wednesday, three hours on Thursday, three hours on Friday, and six hours on Saturday and three hours on Sunday." (Respondents' Brief, at 4.) It is unclear how this could be undisputed when Renae Eichholz testified this is the typical current schedule for live music. However, it is also undisputed this was and is not always the schedule. This case is about a nuisance continuing for the last six years, and the schedule for live music has changed. In fact, live music sometimes started as early as 11:00 AM and went until midnight. (*See* Complainants' Post-Hearing Closing Brief, at 5.)

H. Respondents improperly claim Complainants failed to recognize the impact of the COVID-19 pandemic.

Respondents assert "[t]here is no recognition by Complainants that COVID shut down bars and restaurants for substantial periods during this timeframe." (Respondents' Brief, at 5) This

appears to be an effort to paint Complainants in a bad light. When determining an appropriate and adequate penalty, Complainants explicitly noted their estimate removed a year for the COVID-19 pandemic. (Complainants' Post-Hearing Closing Brief, at 31.)

I. Respondents inaccurately summarized Chief Eiskant's testimony about the noise level at Copper Fire.

According to Respondents, "Chief Eiskant has not noticed a difference in noise levels between Copper Fire and the other restaurant/bars on Main Street in downtown Belleville." (Respondents' Brief, at 8.) When asked if there was a significant difference on noise levels between Copper Fire and other restaurants and bars, the Chief said "some [bars] might be lessor noise." (Day 1 Tr., at 132:18-19.) The Chief stated other businesses are "pretty similar" but admitted "there's a little bit of difference between each one." (Day 1 Tr., at 139:3-9.) Chief Eiskant also did not know if any of the other businesses had residences attached to them with people who live there. (Day 1 Tr., at 139:14-140:8.) There was also additional evidence at the final hearing establishing Copper Fire is different from any other bars or restaurants in downtown Belleville, including testimony from Renae Eichholz. (*See* Complainants' Post-Hearing Closing Brief, at 12-13, 26-27.)

J. Respondents' misstatement asserting all the bars offer loud live music.

Respondents claim other "bars offer live music and the music is loud." (Respondents' Brief, at 8.) The evidence at the final hearing, however, established Copper Fire is not like other bars and restaurants on Main Street. For example, while Bennie's Pizza sometimes has live performers, Renae Eichholz admitted Bennie's does not have big bands like Copper Fire. (Day 2 Tr., at 183:16-23.) Renae Eichholz also testified Margaritas has not had any live music in three years. (Day 2 Tr., at 187:4-6). Also, Tavern on Main only has single musicians play outside on the patio. (Day 2 Tr., at 189:5-13.) And Big Daddy's does not have live music. (Day 2 Tr., at 190:13-

18.) Copper Fire is the only bar and restaurant with large live bands and loud music directly adjacent to a residential space.

K. Respondents mistakenly characterize the hearing room as "a silent room."

Respondents claim since the hearing room on day 2 was 46 decibels, 39 decibels therefore cannot be a nuisance. (Respondents' Brief, at 11.) Respondents' argument is nonsensical as sound levels in the hearing room are irrelevant. Respondents fail to recognize the differences between the hearing room and the ambient noise levels measured inside Complainants' loft. The Boyer loft is much quieter than the hearing room. (Day 2 Tr., at 54:15-17.)

Mr. Biffignani measured the ambient sound level inside the Boyers' loft at 29 or 30 decibels making the loft a "very quiet living space" and ideal for sleep. (Day 2 Tr., at 19:2-12; Ex. C-22, Fig. 3, at pg. 5-6.) When live music is playing at Copper Fire, the average decibel level inside Complainants' loft increases to 38 to 39 decibels. (Ex. C-22, Fig. 3.) This 10-decibel increase is perceived as twice as loud. (Day 2 Tr., at 30:22-23.) Further, regardless of decibel level, Mr. Biffignani testified repetitive and continuous noise for a long duration impacts the ability to tolerate the noise. (Day 2 Tr., at 39:17-40:6.) Therefore, due to the nature of the live music from Copper Fire, and based on the record before the Board, Respondents are causing a nuisance.

II. RESPONDENTS' MISSTATEMENTS OF LAW

A. Respondents mistakenly claim the Board "can rule on this objective fact alone that a maximum sound level of 39 decibels cannot constitute unreasonable interference with life." (Respondents' Brief, at 1.)

The Act states "[n]o person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any business activity, so as to violate any regulation or standard adopted by the Board under this Act." 415 ILCS 5/24. Section 900.102 of the Board's regulations provides, in relevant part, no person shall cause or allow emission of

sound beyond the boundaries of his property "so as to cause noise pollution . . . ." 35 Ill. Admin. Code 900.102. Noise pollution is defined as "the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity." 35 Ill. Admin. Code 900.101.

The Board determines if noise emissions constitute a nuisance by first determining whether the noise constitutes interference with the enjoyment of life, and second by analyzing whether the interference is unreasonable. *Fiser v. Henry's Double K, LLC.*, PCB 18-084, slip op. at 7 (Jan. 21, 2021). To determine the second prong, whether the interference is unreasonable, the statutory scheme sets forth the Section 33(c) factors. Therefore, the Board cannot determine "on this objective fact alone that a maximum sound level of 39 decibels cannot constitute unreasonable interference with life" because there is an established statutory scheme, and specific factors enumerated in 33(c) the Board must consider.

B. Respondents are wrong in claiming 39 decibels cannot constitute a nuisance.

Respondents assert objectively 39 decibels cannot constitute a nuisance. (Respondents' Brief, at 10.) Even accepting Respondents misstatement "that the noise level in Complainants' loft does not exceed 39 decibels" as true (it is not), the evidence presented at the final hearing establishes Respondents are causing a nuisance.

The Board does not determine whether the noise from Copper Fire is a nuisance by only looking at objective sound measurements. Instead, the Board must consider the factors enumerated in Section 33(c), and all other relevant facts and circumstances. There is nothing in Section 33(c) which states 39 decibels, or any particular decibel limit, cannot constitute a nuisance. In fact, the Board can determine there is a nuisance without any decibel measurements. Contrary to Respondents' contention, numerical evidence of decibel readings is not a requirement to establish Respondents are causing a nuisance. *See Discovery S. Grp., Ltd. v. Pollution Control Bd.*, 275 Ill.

App. 3d 547 (1995). Indeed, Complainants "merely [need] to show, by a preponderance of the evidence, that noise emitted by [Copper Fire] . . . unreasonably interfered with the enjoyment of life and lawful activities." *Id.* at 555.

C. Respondents incorrectly argue the noise nuisance standard is unconstitutionally vague.

Respondents claim the "Board may not find the Respondents have created a nuisance under the established facts because such a finding would make the nuisance standard unconstitutionally vague and unenforceable." (Respondents' Brief, at 12.) This assertion is without merit.

Causing a nuisance is not a protected right under the constitution. Illinois courts have already rejected the argument the nuisance standard is unconstitutionally vague. In *Ferndale Heights Utilities Co. v. Illinois Pollution Control Bd.*, 44 Ill. App. 3d 962 (1976), the Illinois Court of Appeals was presented with the exact argument Respondents attempt to raise here. The utilities company argued the nuisance standard is unconstitutional and denies due process of law because it lacks sufficient standards for determining what constitutes noise pollution. *Id.* at 967. The Court of Appeals found when read in conjunction with the Section 33(c) factors, there are sufficient standards to accord a party due process of law under the statutory framework and Section 900.102 is therefore not unconstitutional. *Id.*

i. The cases cited by Respondents do not support the nuisance standard is unconstitutionally vague.

Notably, Respondents do not cite the Illinois case which directly considers the constitutional argument they raise in their brief. Respondents do cite cases from other jurisdictions and Illinois cases on unrelated laws, but these decisions do not support finding the Illinois noise nuisance standard is unconstitutionally vague. Complainants briefly address each case cited by Respondents below:

- In *Coates v. Cincinnati*, 402 U.S. 611 (1971), the city ordinance in question made it unlawful for three or more persons to meet together on a sidewalk or street corner if it annoyed any police officer. The prohibited conduct was based entirely on whether one person thought the conduct was annoying. By contrast, while Respondents would like the Board to believe the only evidence in this matter is Geri Boyer is annoyed by Copper Fire, in fact, the statutory framework for finding a noise nuisance is not based on whether one person is annoyed, and is instead based on objective criteria. The Section 33(c) factors provide adequate framework, and the evidence supporting a nuisance is based on more than Geri's testimony she is annoyed.

- Respondents cite the dissent in *Holder v. Humanitarian Law Project*, 561 U.S. 1, 42-44 (2010). The Supreme Court found the statute in question was not vague.

- In *United States v. L. Cohen Grocery Co.*, 255 U.S. 81 (1921), the Lever Act made it unlawful for any person to willfully make any unjust or unreasonable rate or charge in handling or dealing with any necessaries. Unlike the Illinois nuisance standard, the law lacked any specific or definite act being forbidden.

- In *People v. Bossie*, 108 Ill. 2d. 236 (1985), the court determined the law was unconstitutionally vague because the term "principal law enforcement officer" was vague. The court noted a person of ordinary intelligence might think "principal law enforcement officer" is a senior ranking officer, a sheriff, the chief of police, or numerous other people. Here, Respondents make no argument they do not understand what any of the terms in the nuisance standard mean.

- The law at issue in *People v. Law*, 202 Ill. 2d 578 (2002), prohibited a social host from allowing an intoxicated minor to leave their residence. The court found the law failed to give the occupant fair warning of what conduct was required to prevent an intoxicated minor from leaving a social gathering, and requiring the occupant to prevent the minor from leaving would expose the occupant to criminal activity for unlawful restraint. By contrast, one does not need to break the law to not cause a noise nuisance. There is also fair warning of what conduct is required through the statutory scheme and Section 33(c) factors. Respondents also were given fair notice they were causing a nuisance before this action was filed through Complainants' numerous complaints and demand letters and the public reviews of Copper Fire.

- In *City of Lincoln Ctr. v. Farmway Co-Op, Inc.*, 298 Kan. 540 (2013), while the city's noise ordinance was unconstitutionally vague as applied, the court determined the nuisance ordinance was not. The nuisance ordinance conveyed a definite warning and fair notice of what conduct was prohibited and sufficiently protected parties from arbitrary and discriminatory enforcement. Like here, under the Kansas nuisance standard "whether any activity constitutes a nuisance is generally determined by reference to the interest invaded and the harm inflicted, not the nature or quality of the defendant's acts." *Id.* at 551. The court found Farmway was clearly aware its facility was injuring and disrupting the lives of those in the surrounding neighborhood, much like Responses are well aware Copper Fire

is interfering with Complainants' enjoyment of life. This is sufficient notice and not unconstitutionally vague.

D. Respondents incorrectly state "this Board has never been presented with a complainant alleging noise at 39 decibels and below constitutes a nuisance." (Respondents' Brief, at 9.)

It is unclear how Respondents can assert the Board has never found 39 decibels and below constitutes a nuisance, since Complainants cited *Pawlowski v. Benchwarmers Pub, Inc*., PCB, 99-82, 2000 WL 381837 (Apr. 6, 2000), in their Closing Brief explaining the Board found 35 to 36 decibels, along with testimony about the music interfering with the complainants ability to sleep and watch television, sufficient basis to find a nuisance. Respondents themselves cite *Pawlowski* in their closing brief for an entirely different reason. (*See* Respondents' Brief, at 17.) Either Respondents did not read Complainants' brief and the cases Respondents cited in their own brief, or Respondents have just chosen to ignore the case law and misstate the law to their own peril.

E. "Respondents have been unable to find a single reported decision from this Board where the alleged noise polluter was found to be compliant with the objective noise standards in 35 Ill. Adm. Code Section 901.102 and the Board still found a nuisance noise violations." (Respondents' Brief, at 9-10.)

It is perplexing Respondents claim they were unable to find a single decision from the Board where the alleged noise polluter was found to be compliant[1] with the objective noise standards in 35 Ill. Adm. Code Section 901.102 and the Board still found a nuisance noise violation. The only explanation is Respondents did not read Complainants' response in opposition to Respondents' motion for summary judgment, the Board's order on summary judgment, or Complainants' Closing Brief. If counsel failed to read any of these documents and failed to do any research on the issue, then it is possible Respondents' counsel would be unable to find a decision. Otherwise, Respondents chose to ignore the law and make sweeping statements without support.

[1] As noted in Section I.E. there has been no finding Respondents are compliant with noise standards in 35 Ill. Adm. Code Section 901.102.

See, e.g., *Charter Hall Homeowner's Ass'n v. Overland Transp. Sys., Inc*., PCB 98-81, 1998 WL 714214 (Oct. 1, 1998) (cited by Complainants' in opposition to summary judgment and in their Closing Brief, cited by the Board in the summary judgment order, and finding respondents' truck terminal operations constituted noise pollution despite lack of proof respondents' noise emissions violated the numerical limits in Section 901.102); *Roti v. LTD Commodities*, 355 Ill. App. 3d 1039 (2005) (affirming Board determination respondents' nighttime warehouse operations constituted noise pollution based on residential neighbors' testimonial evidence despite numerical evidence respondents complied with the numerical limits in Section 901.102).

F. Respondents improperly claim noise can only be a nuisance at a certain decibel level.

Throughout their Brief, Respondents claim 39 decibels cannot constitute noise pollution or a nuisance, without any support. This case is not about whether Respondents created noise at a certain decibel level, but whether the noise from Copper Fire unreasonably interferes with Complainants' enjoyment of life. Indeed, Renae testified the Boyers "brought [the lawsuit] because they could hear sound on their side of the wall." (Day 2 Tr., at 234:9-10.)

G. Respondents incorrectly claim the Board does not have the authority to issue the order requested by Complainants.

Without citing any legal authority, Respondents claim the Board does not have the authority to issue the cease and desist order requested by Complainants. (Respondents' Br., at 17.) Complainants are requesting an order from the Board finding Respondents are causing a nuisance and the nuisance must stop. Certainly, the Board has the authority to issue an order requiring Respondents to stop violating the law and causing a nuisance. *See Manarchy v. JJJ Assocs., Inc.*, PCB 95-73, 1996 WL 419475, at *13 (July 18, 1996) (ordering the respondent nightclub to

"immediately cease and desist from violations of Section 24 of the Environmental Protection Act and 35 Ill. Admin. Code 900.102").

H. Respondents incorrectly ask the Board to strike the public comments.

While the record reflects Mr. Petruska was in attendance at the final hearing, Mr. Petruska received the transcript, and Mr. Petruska received the Hearing Report, perhaps he was not listening or did not review the materials explicitly inviting public comment by November 20, 2024. (Day 2 Tr., at 238:10-11; Nov. 7, 2024 Hearing Report, setting a briefing schedule including a November 20, 2024 deadline for public comment). Complainants are bewildered by Respondents' demand to strike public comments, assertion public comments should be made during the hearing, and the claim post hearing comments are generally only allowed for hearings about new regulations. Not only did the hearing officer explicitly invite public comment, Section 101.110(a) states "[t]he Board encourages the public to participate in ***all*** its proceedings." (emphasis added). Further, public comment whether delivered orally or in writing is never subject to cross examination. *See* Section 101.628(c). The public comments were submitted by November 20, 2024. There is no basis to strike them.

III. THE SECTION 33 FACTORS ARE NOT IN RESPONDENTS' FAVOR

Complainants addressed in detail the Section 33(c) factors in their Closing Brief. Respondents assert all factors are in Respondents' favor but failed to provide evidence at the final hearing on the Section 33(c) factors or address the evidence in their Brief. Complainants incorporate the arguments and evidence raised in their Closing Brief, and specifically address certain stark shortcomings in Respondents' Brief below.

A. Section 33(c)(i): Degree of Injury or Interference.

Respondents' only argument for character and degree of injury is 39 decibels is extremely low. (Respondents' Brief, at 14.) This does not address the character and degree of injury factor, which is determined by looking to whether the noise substantially and frequently interferes with Complainants use and enjoyment of life and property. *Metivier v. Douglas Kenyon, Inc.*, PCB 92-74, 1993 WL 538290, at *4 (Dec. 16, 1993). Complainants' Closing Brief contains the only argument on this issue. (*See* Complainants' Post-Hearing Closing Brief, at 24-25.)

B. Section 33(c)(ii): Social and Economic Value of the Pollution Source.

Respondents' argument for this factor is bars and restaurants are important to Main Street and Renae Eichholz testified about the economic value of Copper Fire. (Respondents' Brief, at 14-15.) Notably, to support their assertion Renae testified about the economic value, Respondents direct the Board to "generally" see the day 2 hearing transcript. Complainants have reviewed the transcript and Renae Eichholz did not testify about the economic value of Copper Fire, including providing information on the number of persons employed, or taxes and wages information. While Respondents assert Copper Fire participates in having live music with other bars and restaurants, Respondents have not provided specific evidence conclusively demonstrating the economic impact of Copper Fire.

Respondents also failed to recognize the evidence regarding the economic benefit of Complainants' business and building. Respondents failed to provide evidence at the final hearing showing Copper Fire's social and economic impact outweighs the value of Complainants' building and small business. Respondents' assertion on this point is exactly that – an assertion, upon a review of the transcript, one devoid of any support. While Respondent certainly COULD have testified about the economic benefit offered to the Belleville community by Copper Fire, the record

shows Respondent did not offer such testimony. Respondents' direction to the day 2 hearing transcript "generally" is strong proof Respondents are aware they failed to preserve this evidence and is an attempted end around of the lack of evidence in the record.

C. Section 33(c)(iii): Suitability or Priority Location.

Respondents wholly failed to address suitability and priority location. Instead, likely recognizing they lose on this factor, Respondents merely lumped factors 2 and 3 together, and did not in fact address suitability or priority location. (Respondents' Brief at 14.) The only evidence on this factor is in Complainants' Closing Brief. (*See* Complainants' Post-Hearing Closing Brief, at 26-27.) Complainants have priority location, and Respondents cannot establish loud music from Copper Fire is suitable for the location directly adjacent to a residential living space.

D. Section 33(c)(iv): Technical Practicability and Economic Reasonableness of Eliminating Noise Pollution.

Respondents' argument on this factor is the noise is already 39 decibels and below, and there if no evidence a reduction would satisfy Complainants. (Respondents' Brief, at 16.) This argument does not address factor 4. The only argument on technical practicability and economic reasonableness is in Complainants' Closing Brief. (*See* Complainants' Post-Hearing Closing Brief, at 27-28.) Respondents have not explained why they cannot turn the volume down at Copper Fire.

E. Section 33(c)(v): Subsequent Compliance.

Respondents claim they are compliant with the law and still took efforts to reduce the sound level. (Respondents' Brief at 16-17). There is no evidence Respondents have subsequently come into compliance and instead noise continues to unbearably and unreasonably interfere with Complainants' lives. As explained in Complainants' Closing Brief, none of Respondents' purported "remediation" efforts actually remedied the nuisance, there is no evidence any of their policies are followed, and instead, Respondents believe their neighbors should just listen to the

music from Copper Fire whether they like it or not. (*See* Complainants' Post-Hearing Closing Brief, at 28-29.)

IV. A CIVIL PENALTY IS APPROPRIATE

Respondents claim no civil penalty is appropriate, but do not provide any argument except the sound levels in the Boyer loft are not loud. (Respondents' Brief, at 17.) Respondents failed to address any of the Section 42(h) factors. The only argument on Section 42(h) is in Complainants' Closing Brief. (*See* Complainants' Post-Hearing Closing Brief, at 30-32.) Complainants explained the rationale and calculation behind the requested $80,000 penalty. Moreover, Respondents' request for any order to "give Respondents 60 days to do whatever this Board order[s] Respondents to do" exemplifies Complainants' concern Respondents will continue to cause a nuisance unless properly motivated to comply with the order and deter them from future violations. Indeed, it appears Respondents want to continue to delay this matter, and any compliance with the law, and think it will take them 60 days to turn down the volume at Copper Fire. As the Board is undoubtedly aware, it would take seconds, not days to turn the volume down at Copper Fire; the request for a 60-day period in which to do something Respondents could have done once they received notice Copper Fire was causing a nuisance is inexplicable.

CONCLUSION

Respondents failed to provide evidence at the final hearing or provide an accurate factual and legal analysis in their Brief. Respondents have unreasonably interfered with Complainants' enjoyment of life for over six years, refused to mitigate, and refused to turn the music down. Respondents violated Section 24 of the Act and 35 Ill. Adm. Code 900.102. Complainants are entitled to relief from the constant nuisance from Copper Fire. The Board should permanently enjoin Respondents and order them to cease and desist all future violations, and impose a $80,000

penalty given the nature and duration of Respondents' repeated violations and to deter future violations

Dated: February 6, 2025

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CERTIFICATE OF SERVICE

It is hereby certified true and correct copies of the foregoing was served via email on February 6, 2025, upon the following:

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