

JUL 28 2003

**ORIGINAL**  
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD STATE OF ILLINOIS  
Pollution Control Board

David and Jacquelyn McDonough,	)	
	)	
Complainants,	)	
	)	
vs.	)	PCB No. 00-163
	)	
Gary Robke,	)	
	)	
Respondent	)	

**MOTION TO MODIFY THE OPINION AND ORDER OF THE ILLINOIS POLLUTION CONTROL BOARD DATED FEBRUARY 6, 2003**

Comes now respondent, Gary Robke, by and through his attorney, Stephen R. Wigginton, of Weilmuenster & Wigginton, P.C., and pursuant to the Opinion and Order of the Board dated February 6, 2003, hereby informs the Board of the need to modify the Order and in support thereof states as follows:

1. On February 6, 2003, the Illinois Pollution Control Board issued its decision in case no. PCB 00-163 (Citizens Enforcement – Noise).
2. Pursuant to the Board’s Order it required respondent, Gary Robke, to construct a noise wall between his property and the property owned by the complainants, David and Jacquelyn McDonough. The Board ordered that a 12-foot high wall consisting of a 6-foot high berm topped by an airtight 6-foot high fence be constructed. The Board ordered that the wall be constructed in a contiguous L-shape and be 150 ft. in length running east to west and 60 ft. in length running north to south.
3. On June 17, 2003, the City of Mascoutah, Illinois, advised respondent, Gary Robke, that it would not allow a berm and fence to be constructed in the area directed by the Board. The City of Mascoutah advised respondent Robke that a power

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line runs directly underneath the berm on which Mr. Robke planned to construct the noise wall. Further, the current design prepared in accordance with Board's order actually places a berm on top of one of the electrical pedestals owned by the City of Mascoutah. I am enclosing a copy of the letter issued by the City of Mascoutah on June 16, 2003.

4. At the hearing on this matter respondent Robke advised the Board that the City of Mascoutah had various concerns regarding the construction of a noise wall and would not look favorably upon an application for a variance of a 12-foot fence. The Board anticipated that respondent Robke might run into problems with the City of Mascoutah and advised in the Order (page 6) that if respondent Robke had difficulties with the City of Mascoutah during the construction of the noise wall, he could attempt to modify this Order as required.

5. Due to the position of the City of Mascoutah, respondent Robke is unable to comply with the Board's Order of February 6, 2003, requiring a noise wall be constructed within 180 days. Further, respondent Robke is unable to comply with the Board's Order that a berm and noise wall be constructed in the location directed by the Board.

6. The City of Mascoutah has indicated a willingness to meet to discuss a possible resolution to this matter and counsel for respondent Gary Robke has requested a meeting with the City of Mascoutah and complainants, David and Jacquelyn McDonough.

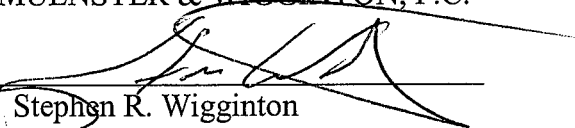
WHEREFORE, respondent, Gary Robke, respectfully requests that the portion of the Order requiring the construction of a noise wall and berm be stayed pending

further discussions with the City of Mascoutah and complainants, David and Jacquelyn McDonough and for such other relief the Board deems just under the circumstances.

Respectfully submitted,

WEILMUNSTER & WIGGINTON, P.C.

BY:

  
Stephen R. Wigginton

ATTORNEY FOR RESPONDENT  
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Belleville, IL 62226  
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**PROOF OF SERVICE**

The undersigned certifies that on the 24<sup>th</sup> day of July, 2003, a copy of the foregoing pleading was served upon the following attorney(s) of record and interested parties to the above cause by the method indicated below:

David and Jacquelyn McDonough  
751 N. Jefferson  
Mascoutah, IL 62258

Dorothy M. Gunn  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph Street, Ste. 11-500  
Chicago, IL 60601

Steve Langhoff  
Hearing Officer  
Illinois Pollution Control Board  
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Springfield, IL 62704

- U.S. Mail
- Personal Delivery
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- Overnight Courier

Karen Lues