

State of Illinois  
POLLUTION CONTROL BOARD  
JAMES R. THOMPSON CENTER  
100 W. RANDOLPH STREET, SUITE 11-500  
CHICAGO, ILLINOIS 60601

RECEIVED  
CLERK'S OFFICE

SEP 02 2003

STATE OF ILLINOIS  
Pollution Control Board

**FORMAL COMPLAINT**

**BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD**

L. Erickson )  
 )  
 )  
 )  
 )  
(Insert your name(s) on lines )  
above), )  
 )  
Complainant(s), )  
 )  
v. )  
 )  
CHARLESTON CLASSIC HOMES. )  
LAWRENCE E. VAN SOMEREN JR. )  
407 E. GARTNER RD. )  
NAPERVILLE IL. 60540 )  
(Insert name(s) of alleged polluter(s) )  
on lines above), )  
 )  
Respondent(s). )

PCB 04-26  
(For Board use)

Note: If you do not use this formal complaint form and instead draft and type your own, it must contain all of the information requested by this form. All items must be completed. If there is insufficient space to complete any item, you may attach additional sheets, specifying the number of the item you are completing. Once completed, you must file the original and nine copies of the formal complaint, notice to respondent, and certificate of service with the Clerk of the Board at the above address.

1. Your name, street address,  
county, state:

317 E. HAWTHORNE BLVD.

WHEATON, IL.

(DUPAGE COUNTY)

Phone: \_\_\_\_\_

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

Phone: \_\_\_\_\_

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

- LAWRENCE VAN SOMEREN JR.

407 E. GARTNER RD.

Building address: NAPERVILLE, IL. 60540

311 E. HAWTHORNE BLVD. WHEATON, IL.

630-420-8084

Phone: 630-640-1713

(if known) 630-420-2929

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:

BUILDING - DEMOLITION & NEW CONSTRUCTION

AT 311 E. HAWTHORNE BLVD.

WHEATON, IL. 60187

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

TITLE VI  
EPA: (415 ILCS 5/23) Sec. 23, (415 ILCS 5/24) Sec. 24  
(415 ILCS 5/25) Sec. 25

TITLE 35 EP SUBTITLE H. PART 900 PROVISIONS  
900.101 (NOISE POLLUTION) 900.102 PROHIBITION  
OF NOISE POLLUTION.

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:

NOISE; FROM 7 A.M. UNTIL 5 P.M. (APPROX. 10 HOURS  
PER DAY) THERE IS CONSTANT BULLDOZING, HAMMERING,  
POUNING AND EXCESSIVE BANGING ABOUT 6 feet  
from our windows.

LOCATION: 311 E. HAWTHORNE BLVD.  
OF NOISE WHEATON, IL. 60187

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):

7 A.M. - 5 P.M. DAILY (EXCEPT SUN.) ALL  
DAY LONG SINCE 7/16 (approx).

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:

MY FAMILY HAS SUFFERED LOSS OF ENJOYMENT OF  
OUR HOME (WE WERE FORCED TO MOVE OUT DUE TO NOISE)  
RESULTING IN HEADACHES, STRESS, INABILITY TO CONCENTRATE)  
THE COMPUTER AND FILES ARE IN THE HOME ALSO, SO THIS  
NOISE HAS RESULTED IN LOSS OF INCOME.

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

STOP THE NOISE! (OR PAY FOR US  
TO LIVE ELSEWHERE - BUILDER'S EXPENSE)

10. Identify any identical or substantially similar case you know of that is already pending 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):

SIMILAR CASES HAVE BEEN FILED ACCORDING  
TO MIKE MCCAMBRIDE AT IPCB STATE,

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.):

9

12

*L. Erickson*

(Complainant's signature)

CERTIFICATION (optional but encouraged)

I, *L. Erickson*, on oath or affirmation, state that I have read the foregoing and that it is accurate to the best of my knowledge.

*L. Erickson*

(Complainant's signature)

Subscribed to and sworn before me  
this 29<sup>TH</sup> day  
of AUGUST, 2003.

*Pamela L Malley*  
Notary Public

My commission expires: 4-25-04



## **NOTICE TO RESPONDENT**

**NOTE: THIS STATEMENT MUST BE INCLUDED IN THE SERVICE OF THE FORMAL COMPLAINT ON THE RESPONDENT**

### **INFORMATION FOR RESPONDENT RECEIVING FORMAL COMPLAINT**

Please take notice that today I filed with the Clerk of the Illinois Pollution Control Board (Board) a formal complaint, a copy of which is served on you along with this notice. You may be required to attend a hearing on a date set by the Board.

Information about the formal complaint process before the Board is found in the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.*) and the Board's procedural rules (35 Ill. Adm. Code 101 and 103). These can be accessed at the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). The following is a summary of some of the most important points in the Act and the Board's procedural rules. It is provided for general informational purposes only and does not constitute legal advice or substitute for the provisions of any statute, rule, or regulation:

#### **Board Accepting Formal Complaint for Hearing; Motions**

The Board will not accept this formal complaint for hearing if the Board finds that it is either "duplicative" or "frivolous" within the meaning of Section 31(d) of the Act (415 ILCS 5/31(d)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202). "Duplicative" means that an identical or substantially similar case is already pending before the Board or in court. *See* 35 Ill. Adm. Code 103.212(a) and item 10 of the formal complaint.

"Frivolous" means that the formal complaint seeks relief that the Board does not have the authority to grant, or fails to state a cause of action upon which the Board can grant relief. For example, the Board has the authority to order a respondent to stop polluting and pay a civil penalty, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does not have the authority, however, to award attorney fees to a citizen complainant. *See* 35 Ill. Adm. Code 103.212(a) and items 5 and 9 of the formal complaint.

If you believe that this formal complaint is duplicative or frivolous, you may file a motion with the Board, within 30 days after the date you were served with the complaint, requesting that the Board not accept the complaint for hearing. The motion must state the facts supporting your belief that the complaint is duplicative or frivolous. Memoranda, affidavits, and any other relevant documents may accompany the motion. If you need more time than 30 days to file a motion alleging that the complaint is duplicative or frivolous, you must file a motion for an extension of time within 30 days after service of the complaint. A motion for an extension of time must state why you need more time and the amount of additional time you need. Timely filing a motion alleging that the complaint is duplicative or frivolous will stay the 60-day period for filing an answer to the complaint. *See* 35 Ill. Adm. Code 103.204, 103.212(b).

All motions filed with the Board's Clerk must include an original, nine copies, and proof of service on the other parties. Service may be made in person, by U.S. mail, or by messenger service. Mail service is presumed complete four days after mailing. See 35 Ill. Adm. Code 101.300(c), 101.302, 101.304.

If you do not respond to the Board within 30 days after the date on which the complaint was served on you, the Board may find that the complaint is not duplicative or frivolous and accept the case for hearing. The Board will then assign a hearing officer who will contact you to schedule times for telephone status conferences and for hearing. See 35 Ill. Adm. Code 103.212(a).

### **Answer to Complaint**

You have the right to file an answer to this formal complaint within 60 days after you receive the complaint. If you timely file a motion alleging that the complaint is duplicative or frivolous, or a motion to strike, dismiss, or challenge the sufficiency of the complaint, then you may file an answer within 60 days after the Board rules on your motion. See 35 Ill. Adm. Code 101.506, 103.204(d), (e), 103.212(b).

The Board's procedural rules require the complainant to tell you as respondent that:

**Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. 35 Ill. Adm. Code 103.204(f).**

### **Necessity of an Attorney**

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. See 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless wish to have an attorney prepare an answer and any motions or briefs, and present a defense at hearing.

The Clerk's Office will provide you, upon request, with a list of *pro bono* attorneys. These individuals or organizations may, in certain circumstances, represent citizens before the Board without charge. The Board does not review the qualifications of these attorneys and makes no representations about their credentials, abilities, or willingness to act as your attorney. No attorney on the list is required to accept any particular case. If you wish to contact any of these attorneys, you must do so on your own.

### **Costs**

In defending against this formal complaint, you are responsible for your attorney fees, duplicating charges, travel expenses, witness fees, and any other costs that you or your attorney may incur. The Board requires no filing fee to file your answer or any other document with the Board. The Board will pay any hearing costs (*e.g.*, hearing room rental, court reporting fees, hearing officer expenses).

If you have any questions, please contact the Clerk's Office at (312) 814-3629.



## CERTIFICATE OF SERVICE

I, the undersigned, on oath or affirmation, state that on (month, day, year)

AUGUST 29, 03, I served the attached formal complaint and notice on the respondent by: (check appropriate line)

☒ certified mail (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

☒ registered mail (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

☐ messenger service (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

☐ personal service (attach affidavit if available, otherwise you must file affidavit later with Clerk)

at the address below:

### RESPONDENT'S ADDRESS:

Name LAWRENCE E. VAN SOMEREN / CHARLESTON CLASSIC HOMES

Street 407 E. GARTNER RD.

City, state, zip code NAPERVILLE, IL. 60540  
(list each respondent's name and address if multiple respondents)

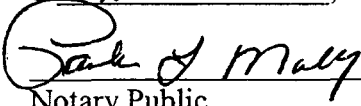
  
Complainant's signature

Street 317. E. HAWTHORNE

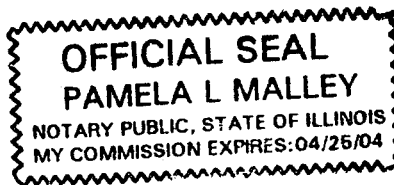
City, state, zip code WHEATON, IL 60187

Subscribed to and sworn before me

this 29TH day  
of AUGUST, 2003

  
Notary Public

My commission expires: 4-25-04



Subj: **Re: Noise regulations**  
 Date: 7/1/03 12:17:17 PM Central Daylight Time  
 From: mccambridge@ipcb.state.il.us (Mike McCambridge) (312)-814-6924  
 To: I81200@aol.com

It means that the NUMERIC standards of Part 901 do not apply to construction equipment without regard to time of night or day. That is not to say that the noise is exempted from regulation. (Section 900.102 prohibits "noise pollution," and Section 900.101 defines that as "the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity." Thus, an exception from the numeric standards does not exempt the noise.

>>> <I81200@aol.com> 07/01/03 12:05PM >>>

Found the regulations- Does 901.107 "exceptions- Sections 901.103-901.106 shall not apply to sound emitted for construction" mean there is no recourse or that construction can occur at any hour and to the detriment of the neighborhood?

*no person shall allow  
emission of sound  
beyond the boundaries  
of his property.*

Does section 415 ILCS 5/24 Sec.24 source P.A. 76-2429 (Illinois Compiled Statutes Environmental Safety Act ILCS) still exist? "No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life " apply?

Please help I81200@aol.com

#### Headers

Return-Path: <mccambridge@ipcb.state.il.us>  
 Received: from rly-xk03.mx.aol.com (rly-xk03.mail.aol.com [172.20.83.40]) by air-xk01.mail.aol.com (v94.1) with ESMTP id MAILINXK14-4f373f01c21d36b; Tue, 01 Jul 2003 13:17:17 -0400  
 Received: from PCB\_SPI (mail.ipcb.state.il.us [163.191.14.2]) by rly-xk03.mx.aol.com (v94.27) with ESMTP id MAILRELAYINXK38-58a3f01c1dc1ac; Tue, 01 Jul 2003 13:16:23 2000  
 Received: from PCB-MTA by PCB\_SPI  
 with Novell\_GroupWise; Tue, 01 Jul 2003 12:13:54 -0500  
 Message-Id: <sf017b02.065@PCB\_SPI>  
 X-Mailer: Novell GroupWise Internet Agent 6.0.3 Beta  
 Date: Tue, 01 Jul 2003 12:13:30 -0500  
 From: "Mike McCambridge" <mccambridge@ipcb.state.il.us>  
 To: <I81200@aol.com>  
 Subject: Re: Noise regulations  
 Mime-Version: 1.0  
 Content-Type: text/plain; charset=US-ASCII  
 Content-Transfer-Encoding: quoted-printable  
 Content-Disposition: inline  
 X-AOL-IP: 172.20.83.40