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STATE OF ILLINOIS
Pollution Control Board

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

DEFENDANT'S ANSWER TO FORMAL COMPLAINT

**BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD**

YORK HIGH NEIGHBORHOOD COMMITTEE)
(a voluntary organization))
Janet and Fred Hodge, Patricia and David)
Bennett, Sheila and Mike Trant, Joe Vosicky,)
Jean and Peter Conroy, Frank Soldano,)
Joseph Reamer,)
Elizabeth and Charles Laliberte)
Complainant(s),)
v.) PCB 2005-093
ELMHURST PUBLIC SCHOOLS,)
DISTRICT 205,)
Respondent(s).)

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

<u>Name</u>	<u>Address</u>	<u>Phone</u>
Janet Hodge	435 Elm Park, Elmhurst, IL 60126	(630) 279-9643
Fred Hodge	435 Elm Park, Elmhurst, IL 60126	(630) 279-9643
Patricia Bennett	346 Elm Park, Elmhurst, IL 60126	(630) 279-9349
David Bennett	346 Elm Park, Elmhurst, IL 60126	(630) 279-9349
Sheila Trant	251 Berkley, Elmhurst, IL 60126	(630) 941-1879
Mike Trant	251 Berkley, Elmhurst, IL 60126	(630) 941-1879
Joe Vosicky	345 Elm Park, Elmhurst, IL 60126	(630) 530-1542
Jean Conroy	448 Elm Park, Elmhurst, IL 60126	(630) 833-6246
Peter Conroy	448 Elm Park, Elmhurst, IL 60126	(630) 833-6246
Frank Soldano	446 Elm Park, Elmhurst, IL 60126	(630) 834-9978
Joseph Reamer	215 Fairview, Elmhurst, IL 60126	(630) 279-3016
Elizabeth Laliberte	481 Alma, Elmhurst, IL 60126	(630) 832-9010
Charles Laliberte	481 Alma, Elmhurst, IL 60126	(630) 832-9010

ANSWER: District 205 submits that no responsive pleading is necessary.

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

Contact person:
David Bennett
222 N. LaSalle St.
Suite 2400
Chicago, IL 60601
Phone: 312-609-7714

ANSWER: District 205 submits that no responsive pleading is necessary.

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

Dr. Joel W. Morris
Superintendent
Elmhurst Public Schools
130 West Madison Street
Elmhurst, Illinois 60126-4838
Phone: (630) 834-4530

ANSWER: District 205 admits that Dr. Joel W. Morris is the Superintendent at District 205 and that the address and contact information set forth in Paragraph 3 is correct. Further responding to Paragraph 3, District 205 states that it is represented by counsel, Franczek Sullivan P.C., in this matter.

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:

Operation of air conditioner chillers and ventilation fans located on the roof near the northwest corner of York High School located at 355 W. St. Charles Road, Elmhurst, IL 60126

ANSWER: District 205 admits that the Complaint in the above-captioned matter concerns the operation of air conditioner chillers and ventilation fans located at the address set forth in Paragraph 4. As set forth in greater detail below, District 205 denies the allegation that it is causing or allowing any pollution.

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

415 ILCS 5/23 (formerly Ill. Rev. Stat. 1991, Ch. 111 ½, Par. 1023)

415 ILCS 5/24 (formerly Ill. Rev. Stat. 1991, Ch. 111 ½ Par. 1024)

35 Ill. Admin. Code, Subtitle H, Chapter I, Section 900.102

35 Ill. Admin. Code, Subtitle H, Chapter I, Section 901.102,a)

35 Ill. Admin. Code, Subtitle H, Chapter I, Section 901.102,b)

35 Ill. Admin. Code, Subtitle H, Chapter I, Section 901.106

ANSWER: District 205 denies that it has violated any of the statutes or regulations set forth in Paragraph 5 and denies that it has violated any Board order.

6. Describe the type of pollution that you alleged (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, as caused by the operation of air conditioner chillers and ventilation fans located near the northwest corner of the roof of York High School, 355 W. St. Charles Road, Elmhurst, IL 60126. The noise pollution source is located in the proximity to the Complainants' properties.

ANSWER: District 205 admits the allegation in Paragraph 6 that the Complaint concerns alleged noise pollution purportedly caused by the operation of air conditioner chillers and ventilation fans located near the northwest corner of the roof of York High School. District 205 denies the allegation in Paragraph 6 that the noise pollution source is located in sufficient proximity to all of the individual Complainants' properties.

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 noise pollution originated during the summer of 2002, following the installation of the air conditioner chillers and ventilation fans as part of the construction and modernization of the York High School facility. Noise from the chillers has continued during periods of warm weather when the chillers are in operation. Noise is generated continuously during the day but has also been produced during early morning hours, night time hours, and on weekends and holidays. The ventilation fans operate continuously seven days a week, throughout the year.

ANSWER: District 205 admits the allegation in Paragraph 7 that the alleged noise pollution at issue in the Complaint originated during the summer of 2002 following the installation of the air conditioner chillers and ventilation fans. Responding to the allegations in Paragraph 7 concerning alleged noise pollution generated by the air conditioner chillers, District 205 states that: the level of noise generated by the air conditioner chillers is substantially less than that asserted by Complainants; District 205 has appreciably decreased the operations of the chillers, including at night-time, weekends and holidays, in an effort to decrease any noise they may generate; and District 205 has taken other measures to decrease the operation of the chillers, including increasing the temperature levels in York High School during the summer months. Responding to the allegations in Paragraph 7 concerning alleged noise pollution generated by the ventilation fans, District 205 states that the level of noise generated by the ventilation fans is substantially less than that asserted by Complainants. Further, District 205 affirmatively states that: (1) continuous operation of the ventilation fans is a necessary component of the overall operations of York High School; (2) continuous operation of the ventilation fans is necessary for safety purposes; (3) District 205 has taken numerous meaningful steps to abate any noise that may be generated by the ventilation fans, such as installing costly sound attenuators in Fall 2004, and modifying the size and volume of ventilation fans in December 2004.

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:

The noise generated by the school constructed and operated by the Respondents has resulted in an unreasonable interference with the use and enjoyment of Complainants' properties, endangerment of the physical and emotional health and well-being of the Complainants.

ANSWER: District 205 denies the allegations in Paragraph 8.

9. Describe the relief that you seek from the Board (*e.g.*, an order that the respondent stop polluting, take pollution abatement measures, perform and 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)):

The Complainants request that the Board enter an Order directing the Respondents to cease and desist from further violations of applicable statutes and regulations and, more specifically, order the Respondents to permanently reduce the noise produced by the air conditioner chillers and ventilation fans. Further, the Complainants request the Board enter an order according such further, or other, relief as it may deem appropriate in the circumstances.

ANSWER: District 205 denies that the Complainant is entitled to any relief and submits that Complainants are specifically not entitled to the relief requested in Paragraph 9. Further, District 205 affirmatively states that: diminishing the current ventilation levels will adversely affect those who use and occupy York High School, and sufficient ventilation is necessary to safeguard against other substantial safety risks; granting the requested relief is prohibitively expensive, as the School District has limited funds remaining in its building bonds; District 205 already has taken substantial measures to abate any noise generated by the chillers and ventilation fans at issue in the Complaint (see Answer to Paragraph 7); and the particular relief Complainants seek is unduly vague and ambiguous.

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):

None known to the complainants. Previously, Complainants registered their complaints with the Superintendent of the School District. However no resolution of the noise pollution issue has been achieved.

ANSWER: District 205 is not aware of any identical or substantially similar case against it pending before the Board or in another forum for the same alleged pollution. Further responding to the allegations in Paragraph 10, District 205 states that Superintendent Morris has met with Complainants or their representatives on numerous occasions -- in fact, on over ten occasions -- and has directed the implementation of costly measures designed to abate any alleged noise generated by the air conditioner chillers and ventilation fans at issue in this matter.

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 alleged to represent (a) himself or herself as an individual or (b) his or her unincorporated sole proprietorship, through the individual may prefer having attorney representation.):

In reference to Item 1, all are representing themselves as individuals.

David Bennett and Joe Vosicky are attorneys and licensed and registered to practice law in Illinois.

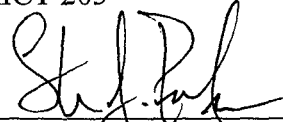
ANSWER: District 205 is represented in this matter by Franczek Sullivan P.C.

WHEREFORE, Defendant ELMHURST PUBLIC SCHOOLS, DISTRICT 205 respectfully submits that Complaint should be dismissed with prejudice and that Complainants are not entitled to any relief.

Respectfully submitted,

ELMHURST PUBLIC SCHOOLS,
DISTRICT 205

By: _____



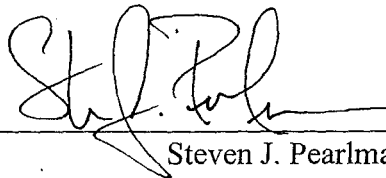
One Of Its Attorneys

Steven J. Pearlman
Franczek Sullivan P.C.
300 South Wacker Drive
Suite 3400
Chicago, Illinois 60606-6783
(312) 786-6128

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he caused a copy of the foregoing **ANSWER TO COMPLAINT** to be served upon the following individuals by regular U.S. Mail, proper postage prepaid, on this 10th day of January, 2005:

Janet Hodge	435 Elm Park, Elmhurst, IL 60126
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Steven J. Pearlman