

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

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

MORRY GABEL, MYRA GABEL, DON)
FOREMAN, MARSHA FOREMAN, KEITH)
PINSONEAULT and TRACY PINSONEAULT,)
)
Complainants,)
vs.) No. PCB 03-38
)
THE WEALSHIRE, INC., an Illinois)
Corporation,)
)
Respondent.)

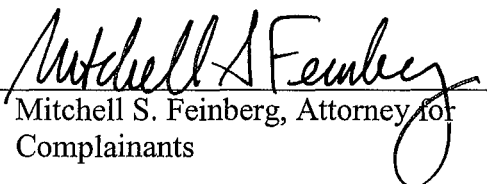
NOTICE OF FILING

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
100 W. Randolph – Suite 11-500
Chicago, IL 60601
FAX: 312-814-3669

Bruce T. Logan
Ash, Anos, Freedman & Logan, L.L.C.
77 W. Washington – Suite 1211
Chicago, IL 60602
FAX: 312-346-7847

PLEASE TAKE NOTICE that on the 9th day of October, 2003, there was filed with the Illinois Pollution Control Board the attached **Complainants' Response and Objections to Respondent's Motion to Stay Proceedings**, a copy of which is herewith served upon you.

CHUHAK & TECSON, P.C.

By: 
Mitchell S. Feinberg, Attorney for
Complainants

Mitchell S. Feinberg
CHUHAK & TECSON, P.C.
Attorney for Complainants
30 S. Wacker Drive – Suite 2600
Chicago, IL 60606
312-444-9300
Firm ID No. 70693

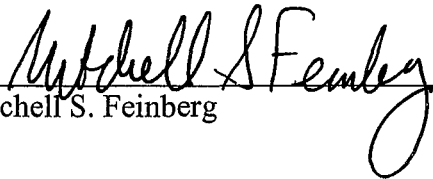
AFFIDAVIT OF SERVICE

The undersigned, being first duly sworn on oath, deposes and says that he caused to be served the above and foregoing Notice of Filing and Complainants' Response and Objections to Respondent's Motion to Stay Proceedings by sending a copy to:

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
100 W. Randolph – Suite 11-500
Chicago, IL 60601
FAX: 312-814-3669

Bruce T. Logan
Ash, Anos, Freedman & Logan, L.L.C.
77 W. Washington Street – Suite 211
Chicago, IL 60602
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by depositing same in the U.S. Mail Chute at 30 S. Wacker Drive, Chicago, Illinois 60606, before 5:00 p.m. on October 8, 2003, with proper postage prepaid, and via facsimile to the numbers indicated above on October 8, 2003.

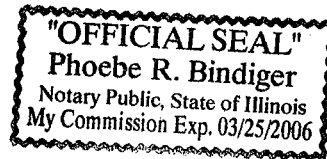


Mitchell S. Feinberg

SUBSCRIBED AND SWORN to before me
this 8th day of October, 2003



NOTARY PUBLIC



and/or rejected by Respondent. The Complaint was filed over a year ago and this dispute has been known by Respondent for well over two (2) years. Any stay in these proceedings would cause undue hardship and burden to Complainants.

Respondent states that it has begun remedial modifications with the air conditioning units. And while setting the thermostat to run only when the temperature exceeds a certain degree makes sense, when the air conditioning units are running, they are in severe violation of the law.

A stay of these proceedings is unnecessary for the following reasons.

1. While Respondent argues, in Paragraph 8 of its Motion, that winterization of the unit will soon take place and that the system cannot operate once it is winterized, Complainants' expert, Greg Zak, has informed counsel for Complainants that said information is incorrect. While it is correct that you cannot run the compressors or water system, Respondent can still run the fans. And it is the opinion of Mr. Zak that the fans make most of the noise, and thus are the source of the violation to begin with. Therefore, the fans can be run manually by a technician familiar with the units, which would then allow Respondent to take any appropriate noise readings without the need for any delay. This can be done in October which is the time that Respondent states the remainder of the remedial measures will be completed. Therefore, there is no need to wait until next June to take the readings, as Complainants are confident that a reading in October, when the fans alone are running at a normal speed, even without the compressors and pipes running, will show a significant violation of the law when said readings are done in strict compliance with the rules and regulations of the Pollution Control Board.

2. Complainants have complained about this noise for years, have attempted to reach an agreement with Respondent, but realize that they need a court order finding Respondent in violation, and requiring Respondent to come into compliance in order to obtain the desired results.

3. Finally, Complainants' expert, Mr. Zak, believes that the remedial measures described in Paragraph 7(e), "the insulation or perforated steel and insulation noise absorption panels for the inside walls of a masonry enclosure, and a deflecting wooden shield mounted above the 8'5 masonry enclosure" will not have a significant effect on the problem.

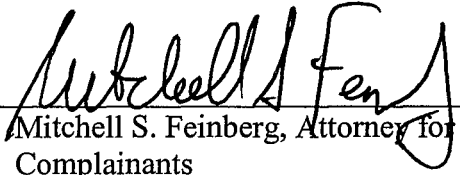
To allow for a stay and a delay in these proceedings until next June would be a severe injustice to Complainants. This would mean they would have to endure yet another full season of incredible noise emanating from these high-powered air conditioning units, which are adjacent to their property. It would ruin yet another Spring/Summer, when there is no need for this delay, as the fans can be run manually at the present time, or even after winterization; and Respondent can be instructed to take a noise measurement similar to the two (2) that were taken by Complainants, in conformity with the rules and regulations of the Pollution Control Board. To date, Respondent has failed to take any such proper noise measurements. Finally, Complainants should not be penalized for Respondent's failure to take a timely reading of the units.

WHEREFORE, COMPLAINANTS object to the granting of a stay in these proceedings, as there is no need for such delay, and as Respondent does have an opportunity to conduct its own independent sound testing as explained immediately above in this response. Complainants respectfully request that the stay be denied and that Respondent be compelled to comply with the

Hearing Officer's discovery schedule, so that this matter can move forward as opposed to being delayed, or grant any other relief deemed just and appropriate.

Respectfully submitted,

CHUHAK & TECSON, P.C.

By: 

Mitchell S. Feinberg, Attorney for
Complainants

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