

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

RECEIVED
CLERK'S OFFICE

JUL 15 2005

STATE OF ILLINOIS
Pollution Control Board

FORMAL COMPLAINT

**BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD**

Lawrence Keith Padgett _____)	
Charlotte Ann Padgett _____)	
_____)	
_____)	
(Insert your name(s) on lines)	
above),)	
)	
Complainant(s),)	
)	
v.)	PCB <u>06-07</u>
)	(For Board use)
Attorney's Title Guaranty Fund Inc _____)	
_____)	
_____)	
_____)	
(Insert name(s) of alleged polluter(s))	
on lines above),)	
)	
Respondent(s).)	

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:

Lawrence Keith Padgett

#1 Lyndhurst Place

Champaign, IL 61820

Phone: (217) 359-6932

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

Phone: _____

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

Attorneys' Title Guaranty Fund Inc _____

Attn: Jerry Gorman _____

2408 Windsor Place _____

Champaign, Illinois 61820 _____

Phone (217) 359-2000 _____
(if known)

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:

The operating of air conditioning unit on the respondents property (west side), closest
complainants property. The business is an office/business facility.

5. List specific sections of the Environmental Protection Act, Board regulations, Board order, or permit that you allege have been or are being violated: 35 Ill. Adm. Code, Subtitle H, Chapter I, Section 900.106

415 ILCS 5/24 (formally Ill, Rev. Stat. 1991, Ch. 1111/2, Par. 1024) _____

35 Ill. Adm. Code, Subtitle H, Chapter I, Section 900.102 _____

35 Ill. Adm. Code, Subtitle H, Chapter I, Section 901.102a _____

35 Ill. Adm. Code, Subtitle H, Chapter I, Section 901.102b _____

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 is caused by the operation of the Air Conditioner Unit located on the West side of Attorney Title Guaranty Fund Inc. located at 2408 Windsor Place, Champaign, Ill 61820.

The noise pollution source is located in the proximity of the Complainant's property and consists of a commercial size unit. It consists of (6 motors), (6 fans), huge condensing coil and accompanying noise from the unit. _____

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 occurs year-round, almost constantly throughout the day and night (24 hours per day), with the greatest frequency, volume and duration during the summer.

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 Air Conditioner Unit operation by the Respondent has resulted in an unreasonable interference with the use and enjoyment of Complainant's property, disturbance during the night of their sleep which endangers the physical and emotional health and well-being of the Complainant's and depresses the value of Complainant's property. _____

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)):

Complainant's request that the Board enter an Order directing the Respondent to cease and desist from further violations of applicable statutes and regulations and more specifically relocate the Air Conditioner to the opposite side of their building where there are commercial, not residential properties. In the alternative, sound barriers or devices be employed that would affirmatively reduce all noise violations to levels not in violation of current laws. Complainant's request the Board to enter such further, or other, relief it deems appropriate under the circumstances. _____

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 Complainants.

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.):

I am representing myself as owner of 1 Lyndhurst Place, Champaign, Illinois _____

12. Lawrence Keith Padgett
(Complainant's signature)

CERTIFICATION (optional but encouraged)

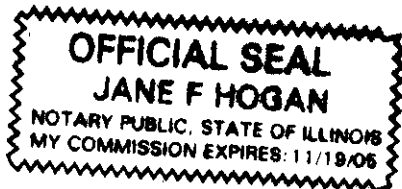
I, LAWRENCE KEITH PADGETT, on oath or affirmation, state that I have read the foregoing and that it is accurate to the best of my knowledge.

Lawrence Keith Padgett
(Complainant's signature)

Subscribed to and sworn before me
this 8th day
of July, 2005

Jane F Hogan
Notary Public

My commission expires: 11-19-2005



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). 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.

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.

NOTE: THIS FORM MUST BE INCLUDED IN THE SERVICE TO RESPONDENT

INFORMATION FOR RESPONDENT RECEIVING COMPLAINT

The Board will not accept this complaint that has been served upon you if the case is determined to be either duplicitous or frivolous. Duplicitous means that a similar case is pending in another court or in another action before the Board. The response to question #10 in the complaint states the opinion of the Complainant(s) on this issue.

Neither can the Board accept the complaint if the action is frivolous. Frivolous means that the requested relief is beyond the Board's authority to grant. For example, the Board has the authority to order the Respondent(s) to cease and desist the polluting activity and order a fine after following certain procedures. The Board does not have the authority for example to grant monetary compensation to the Complainant for damage to health or property. Also, the Board cannot order the polluting activity to cease while the case is pending, except under special circumstances. The response to question #9 in the complaint states the opinion of the Complainant(s) on this issue.

If you believe this case is duplicitous or frivolous, please file a motion with the Board within two weeks from the date of service. The motion must state the basis for which the motion is made and a concise statement of the relief sought. Memoranda, affidavits, and any other relevant documents should accompany the motion. If more time than two weeks is necessary to gather supporting evidence, please indicate this within the two weeks and state your reasons as well as the amount of additional time needed. Upon good cause, the Board may grant an extension at its next Board meeting.

Ten (10) copies of the motion must be filed with the Clerk of the Board with proof of service. Service may be done either personally or by First Class United States mail. Mail service is presumed completed four days after mailing.

If no response is received by the Board within two weeks, the Board, at its discretion, may find that the complaint is not duplicitous or frivolous and may accept the case for hearing.

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)

JULY 8, 2005, 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 --- Attorneys' Title Guaranty Fund, Inc. _____

Street --- 2408 Windsor Place _____

City, state, zip code --- Champaign, Illinois 61820 _____
(list each respondent's name and address if multiple respondents)

Lawrence Keith Padgett
Complainant's signature

Street #1 Lyndhurst Place _____

City, state, zip code -- Champaign, IL 61820 _____

Subscribed to and sworn before me

this 8TH day

of July, 2005

Jane F Hogan
Notary Public

My commission expires: 11-19-2005



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature X <u>Ken Kruger</u> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to: <u>Attorney's Title Guaranty Fund</u> <u>Attn: Jerry Gorman</u> <u>2408 Windsor Place</u> <u>Champaign, IL 61820</u></p>		<p>B. Received by (Printed Name) <u>Ken Kruger</u></p> <p>C. Date of Delivery <u>7-12</u></p>	
		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number (Transfer from service label)</p>		<p><u>7004 2510 0005 7229 4419</u></p>	

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

7004 2510 0005 7229 4419

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$ 0.83
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.88
UNIT ID: 0821	
Clerk: RMJTS 2819	
07/11/05	
<p>Sent To <u>Attorney's Title Guaranty Fund, Inc.</u> Street, Apt. No.: <u>Attn: Jerry Gorman</u> or PO Box No. <u>2408 Windsor Place</u> City, State, ZIP+4 <u>Champaign, IL 61820</u></p>	

PS Form 3800, June 2002 See Reverse for Instructions