

FORMAL COMPLAINT

These materials are for general informational purposes only and do not constitute legal advice or substitute for the provisions of any statute, rule, or regulation.

Any person can file a formal complaint with the Illinois Pollution Control Board (Board). When you file a formal complaint, you, as the "complainant," start an enforcement action before the Board. By filing a formal complaint, you assume the responsibility to prove to the Board that the person you are complaining about, called the "respondent," has committed a violation. Your formal complaint must specifically allege which provision of the following you believe the respondent has violated:

- The Environmental Protection Act (Act)
- The Board's regulations
- A Board order
- A permit issued by the Illinois Environmental Protection Agency (IEPA)

IEPA is not required to investigate your allegations. The Board cannot provide you with legal advice. If the Board accepts your formal complaint, you will generally need to prepare and file other documents with the Board, as well as formally present your case at hearing. Board employees cannot prepare these documents for you or speak on your behalf.

Preparing, Filing, and Serving a Formal Complaint

To start an enforcement action, you must prepare a formal complaint, a notice to respondent, and a certificate of service. You may use the formal complaint, notice, and certificate forms that follow or create your own. Any documents you create must contain all of the information called for by the forms.

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 (100 W. Randolph St., Suite 11-500, Chicago, Illinois 60601). You can file documents with the Clerk by delivering them in person, placing them in the U.S. mail, or using a messenger service (e.g., Federal Express, United Parcel Service).

As noted, the person you are complaining about is called the "respondent." Your formal complaint may identify more than one respondent. Though you "file" a document with the Board's Clerk, you "serve" that document on each respondent. You must serve one copy of the formal complaint and notice of filing on each respondent by registered mail, certified mail, messenger service, or personal service. The notice must inform the respondent that you have filed the formal complaint with the Board and that the respondent may be required to attend a hearing on a date set by the Board.

You must provide proof (e.g., mail or messenger service receipt) to the Clerk of the Board that you have served a copy of the formal complaint on each respondent. The Board prefers that you attach the proof of service to the completed certificate of

service when you file your formal complaint with the Board. However, if you choose to send your formal complaint to the Board and each respondent simultaneously, you must provide the Board with the proof of service later.

Proof of service is required for all documents you file with the Board, not just the formal complaint. Your filings other than the formal complaint can but need not be served by registered mail, certified mail, messenger service, or personal service. For example, you may serve these other documents by U.S. mail. If you do serve a respondent by either certified or registered mail, or by messenger service, you must file with the Board a copy of the receipt showing that the document was delivered to the respondent. If you personally serve a respondent, you must file with the Board a signed and notarized affidavit stating who you served with a copy of the document and where and when you served it. If you serve a respondent by U.S. mail, you must file with the Board a signed and notarized affidavit stating where and when you mailed the document and that you mailed it with sufficient postage.

Please refer to Sections 101.302, 101.304, and Part 103 of the enclosed Board procedural rules (35 Ill. Adm. Code 101.302, 101.304, 103) for more information about these filing and service requirements.

Board Accepting Formal Complaint and Assigning Hearing Officer

Once the Clerk's Office receives your formal complaint, and the proof of service on each respondent, the Clerk will assign a docket number to your complaint and schedule your complaint for initial review by the Board at a Board meeting. The Board first reviews a formal complaint to determine whether it is "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 form. "Frivolous" means that the 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. See 35 Ill. Adm. Code 103.212(a) and items 5 and 9 of the formal complaint form. For example, the Board has the authority to order a respondent to stop polluting and pay a fine, 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.

If the Board finds that a formal complaint is either duplicative or frivolous, the Board will dismiss the complaint and notify both you and each respondent of its decision. Under the Act, you may then seek relief from the alleged violation in the circuit court (see 415 ILCS 5/45(b)), or you may file an appeal of the Board's decision with the appellate court (see 415 ILCS 5/41(a)).

If, however, the Board finds that a formal complaint is neither duplicative nor frivolous, the Board will accept the case for hearing and assign a hearing officer. The

hearing officer will then contact the parties to schedule a hearing. At hearing, the complainant must present evidence, such as sworn testimony, to prove that the respondent has committed the violation or violations alleged in the formal complaint.

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 the formal complaint and any motions or briefs, and present the case at hearing.

Costs

To file your formal complaint or any other document with the Board, you do not pay any filing fee to the Board. The Board will pay hearing costs, such as hearing room rental, court reporting fees, and hearing officer expenses. You are responsible for the costs that you or your attorney may incur in pursuing your complaint (e.g., attorney fees, duplicating charges, travel expenses, and witness fees).

State of Illinois
Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601
<http://www.ipcb.state.il.us/>

FORMAL COMPLAINT

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In The Matter Of:)
)
)
Joseph & Victoria Morrissey)
(Insert your name(s) in the space above))
Complainant(s),)
)
v.)
)
Geoff Pahios)
Alpine Automotive)
(Insert name(s) of alleged polluter(s)))
Respondent(s))

PCB 20 -
(For Board use only)

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 Contact Information

Name: Joseph & Victoria Morrissey
Street Address: 32 S. Chestnut Ct
Hawthorn Woods
County: Lake
State: IL
Phone Number: (847) 726 -1377

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

Name: _____
Street Address: _____
County: _____
State: _____
Phone Number: () -

3. Name and address of respondent (alleged polluter)

Name: Geoff Pahios (Owner Alpine Automotive)
Street Address: 1320 Ensell Rd
Lake Zurich
County: Lake
State: IL
Phone Number: (847) 438 - 7770

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

Alpine Automotive is an auto/truck repair, 24 hour towing service and police impound facility. In 2007, Geoff Pahios moved his business from the heart of the industrial park to a new location adjacent to residential homes with the expressed understanding that it would not have an adverse affect on the residential community. Since the new property is not zoned for outdoor storage or 24 hour towing, a special use permit had to be approved by the village. Alpine Automotive is operating as usual, but they are now adjacent to residential homes (less than 200 feet).

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 5/24 (formally III, 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

35 Ill. Adm. Code, Subtitle H, Chapter I, Section 901.104

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 Violation from the Alpine Automotive facility is both a nuisance and a violation of existing noise laws by exceeding decibel levels.

Noise violations are caused by 4 main sources;

1. 24 Hour Towing: Many police impounds are at night and often on weekends. Heavy diesel trucks pull up, unhook the vehicle, which involves very loud rattling of heavy chains across a striated (furrowed) aluminum bed. The engine is revved to lift the bed for the vehicle to be removed and the engine is revved again to lower the bed. The diesel engine noise is a constant throughout the entire process. Most tows are conducted in the rear space between the Alpine building and the homes, within a couple of hundred feet.
2. Truck/Auto Repair: This is the bulk of the noise which is caused by everyday operations. Impact Wrenches, Ratchets, Air Hammers, Grinders, Drills and Cutting Tools are inherently loud. These noises are loud and sudden sounds which can go on for minutes or hours. Work done inside the building is bad enough, but sometimes the work is done in the back lot between the homes and the building. Sound echoes throughout the neighborhood.
3. Ventilation Fan: The ventilation system exhaust points directly at the residential homes. Although shielding has been hastily installed, the noise is still much like a small jet engine pointed directly at the homes.
4. Engine noise: Trucks idle for long periods of time, in some cases up to an hour.

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)

Alpine moved its operations to the existing facility gradually in the spring of 2007. We have tried our best to document the noise and have hundreds of video clips with sound readings ...

- 1. Towing: Towing is part of regular operations so it happens on a daily/weekly basis during normal business hours. The worst tows are the police impounds which take place mostly in the midnight to 3am timeframe and usually on weekends. These happen year-round and occur at least several times a month.**
- 2. Truck/Auto Repair: This is an everyday occurrence, but gets worse as the weather gets warmer from early spring to late fall. The Alpine facility is not air-conditioned so this noise peaks during the summer months.**
- 3. Ventilation Fan: The fan noise is worst in the winter months when work is done with the doors closed. However, the complainants' still hear the fan noise year round with no predictable pattern. Usually when the front and rear bay doors are open, the fan is off, but it comes on at random times often at early hours (before 7am) and stays on until evening.**
- 4. Engine Noise: An everyday occurrence.**

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 from Alpine Automotive has egregiously and unreasonable interfered with the use of property and enjoyment of life despite sworn statements from the owner of Alpine Automotive that "The proposed use and development of this parcel will have no adverse effects on the community or industrial park". The reality is that the complainant's lose sleep at night, are awoken at early hours and are subjected to daily irritating and infuriating noise. The noise has caused a severe drop in property value and has damaged the emotional health and well being of the complainant's. The use of the outdoor property has been severely limited.

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))

The solution to these issues are relatively straightforward and the complainant's are only seeking to abate the noise;

1. 24 Hour Towing: No towing vehicles to the rear of the building.
2. Truck/Auto Repair: The IPCB should mandate that all repair work should be done inside the facility with the rear bay doors shut. Simply closing the doors and performing work inside eliminates the violation. Rear bay doors should only be open when moving vehicles and work should be restricted during times that the rear doors are open.
3. Ventilation Fan: This needs to be moved to the front of the building away from the residents.
4. Engine Noise: No idling of trucks in the back of the building
5. Barrier: Alpine Automotive removed trees and foliage between the two properties which they had relied upon to gain approval for the zoning variance. The 6ft chain link fence should be replaced with a sound dampening fence.

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.)

Joseph and Victoria Morrissey are representing themselves.

12. Joseph Morrissey
(Complainant's signature)

CERTIFICATION
(optional but encouraged)

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

Joseph Morrissey
(Complainant's signature)

Subscribed to and sworn before me

this 15th day

of August, 2008

Donna Lobaito
Notary Public



My commission expires: May 23, 2010

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.

CERTIFICATE OF SERVICE

I, the undersigned, on oath or affirmation, state that on _____, 20____,
I served the attached formal complaint and notice on the respondent by

X 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 GEOFF PARIOS

Street 1320 ENSLEY RD

City, state, zip code LAKE ZURKOW, IL 60047
(list each respondent's name and address if multiple respondents)

 Joseph Mennery
Complainant's signature

Street 32 S. CHESTNUT CT

City, state, zip code HAWTHORN WOODS, IL 60047

Subscribed to and sworn before me

this 1st day

of August, 2008.

 Donna Lobaito
Notary Public



My commission expires: May 23, 2010



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Track & Confirm **FAQs**

Track & Confirm

Search Results

Label/Receipt Number: **7004 1160 0006 6586 3173**
 Status: **Delivered**

Your item was delivered at 10:22 AM on July 26, 2008 in LAKE ZURICH, IL 60047.

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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. 		A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee	
1. Article Addressed to: GEOFF PAHIOS ALPINE AUTOMOTIVE 1320 ENSELL RD LAKE ZURICH, IL 60047		B. Received by (Printed Name) C. Date of Delivery	
2. Article Number (Transfer from service label) 7004 1160 0006 6586 3173		D. Is delivery address different from item 1? If YES, enter delivery address below:	
PS Form 3811, February 2004		3. Service Type <input 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.	
Domestic Return Receipt		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
102595-02-M-1540			

7004 1160 0006 6586 3173

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Postage	\$	\$1.51
Certified Fee		\$2.70
Return Receipt Fee (Endorsement Required)		\$2.20
Restricted Delivery Fee (Endorsement Required)		\$0.00
Total Postage & Fees	\$	\$6.41

07/25/2008

Sent To: **GEOFF PAHIOS - ALPINE AUTO**
 Street, Apt. No.; or PO Box No.: **1320 ENSELL RD**
 City, State, ZIP+4: **LAKE ZURICH, IL 60047**

PS Form 3800, June 2002 See Reverse for Instructions