BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KYLE NASH,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 07-96
	)	
KAREN SOKOLOWSKI,	)	(Citizens Enforcement - Noise)
	)	
Respondent.	)	

NOTICE OF FILING AND PROOF OF SERVICE

TO: Kyle Nash
1630 W. 33rd Place
Chicago, IL 60608

PLEASE BE ADVISED that on the 14th day of August, 2008, Respondent Karen Sokolowski, by her attorney James M. Knox, filed Respondent's Appearance and Motion to Dismiss herein, with the Clerk's Office, State of Illinois, Pollution Control Board, copies of which are attached hereto and herewith served upon you.

NAME: James M. Knox, Attorney for Karen Sokolowski
ADDRESS: 121 W. Chestnut, #3104, Chicago, IL 60610
TELEPHONE: 312/587-1356

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Sec. 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that a copy of this Notice of Filing and Proof of Service, with attached Appearance and Motion to Dismiss, was served on the Complainant, Kyle Nash, at the address shown above, by depositing true and correct copies thereof in a sealed, properly addressed, postage pre-paid envelope, and depositing the same in the USPS drop box located at 121 W. Chestnut Street, Chicago, IL 60610, before 4:30 p.m., on August 14, 2008.

Witnessed and certified to this 14th day of August, 2008.

_____
James M. Knox

ILLINOIS POLLUTION CONTROL BOARD

KYLE NASH,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 07-96
	)	
KAREN SOKOLOWSKI,	)	(Citizens Enforcement - Noise)
	)	
Respondent.	)	

APPEARANCE BY ATTORNEY

ATTORNEY APPEARANCE
I HEREBY FILE MY APPEARANCE AS ATTORNEY FOR:
THE RESPONDENT
Karen J. Sokolowski

IN THE ABOVE ENTITLED CAUSE.

Name: **James M. Knox, Attorney at Law**
Address: **121 W. Chestnut St. #3104**
Chicago, IL 60610
Telephone: **312-587-1356**
Date: **August 14, 2008**

PROOF OF SERVICE

Under penalties as provided by law pursuant to Sec. 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that a copy of this Notice of Filing with all attachments was mailed to Kyle Nash, 1630 W. 33rd Place, Chicago, IL 60608, postage pre-paid, on August 14, 2008, before 4:30 p.m.

Witnessed and certified to this 14th day of August, 2008.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KYLE NASH,	)	
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Complainant,	)	
	)	
v.	)	PCB 07-96
	)	
KAREN SOKOLOWSKI,	)	(Citizens Enforcement - Noise)
	)	
Respondent.	)	

MOTION TO DISMISS

NOW COMES respondent KAREN SOKOLOWSKI, by and through her attorney, JAMES M. KNOX, and moves the Board to dismiss the Amended Complaint and Amended Motion for Summary Judgment (*hereinafter,* "amended pleadings"), pursuant to Section 101.506 of the Pollution Control Board Procedural Rules; in support thereof states:

1. This matter has a long history, leading to the current Amended Motion for Summary Judgment, filed on July 30, 2008, alleging violation of Title VI, Section 24, of the Environmental Protection Act, *viz* noise emitted beyond the boundaries of respondent's residence that unreasonably interferes with complainant's enjoyment of her property, so as to violate any regulation or standard adopted by the Board under this Act.

2. As stated in the amended motion for summary judgment, the relief sought by complainant is that the Board "order that the respondent stop polluting."

3. By "polluting," the complainant refers to certain wind chimes allegedly located on respondent's residential two-flat property, adjacent to complainant's residence, based on her observations and recordings that she obtained in "the summer of 2007."

4. In complainant's unnumbered paragraph of her Amended Motion for Summary Judgment, styled "Statement of Facts Relevant to this Motion," complainant states unequivocally that 1) "[t]he second (backyard) windchime was removed several weeks after the Respondent was served..." and, 2) "[t]he Respondent removed the front porch chime after the initial status hearing on August 9, 2007..."

5. Nothing in complainant's amended pleadings, in either her amended Formal Complaint, or in her amended Motion for Summary Judgment, suggests that the "polluting," *viz* noise emitting wind chimes allegedly located on respondent's property, was continued, or is continuing, or that there was at any time since the admitted voluntary removal of these devices from respondent's property, a repetition of this noise emitting phenomena on respondent's property, since August 9, 2007, in violation of 415 ILCS 5/24, that "***unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act,***" nor has complainant cited any regulation or standard adopted by the Board under the act that was allegedly violated.

6. Therefore, the only relief that complainant can be seeking in this proceeding is an Order from this Board that the respondent cease and desist hanging, using, or in anyway allowing the installation or use of wind chimes on his property in the future, since, by complainant's own admission in her amended pleadings, these devices were voluntarily removed from respondent's property on August 9, 2007, which was in direct response to complainant's proceedings before this Board and they have never been reinstalled.

7. There is thus no "case in controversy" before this Board regarding noise pollution on respondent's property, and there is thus no relief that this Board can provide in the premises in that the subject of complainant's complaint has by her own admission been removed one year ago, as of August 9, 2008, thus her pleadings request relief for only a purely hypothetical nuisance, which is speculative only, because the noise complained of was voluntarily abated by respondent, based on complainant's own admission in her pleadings, and thus her continued proceeding before this Board is without merit in that the issue raised is moot.

8. Accordingly, respondent respectfully requests that the Board not accept the amended pleadings for hearing, and that the Board find that the amended pleadings are 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), because the amended pleadings fail to state a cause of action upon which the Board can grant relief. While the Board unquestionably has the

authority to order a respondent to stop polluting, or to implement abatement measures, the amended pleadings fail to make out a prima facie case for a continuing violation, where abatement was voluntarily completed over one year ago by complainant's own admission, and there is no polluting occurring for the Board to order to stop.

WHEREFORE, based on the foregoing, respondent respectfully requests that the Board dismiss these proceedings, with prejudice.

Respectfully submitted,

_____
Attorney for Respondent

James M. Knox
Attorney for Respondent
Chestnut Tower
121 W. Chestnut, #3104
Chicago, Illinois 60610
312/587-1356