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STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

February 3, 2009

ANNE MCDONAGH and DAVID)	
FISHBAUM,)	
)	
Complainants,)	
)	PCB 08-76
v.)	(Citizens Enforcement – Noise)
)	
RICHARD and AMY MICHELON,)	
)	
Respondents.)	
)	
)	

HEARING OFFICER ORDER

On January 29, 2009, all parties participated in a telephonic status conference with the hearing officer. Discussions centered on complainants' Motion to Bar Respondents' Expert Opinions, filed November 12, 2009. The respondents filed a Motion for Extension of Time to Complete Discovery on December 1, 2009. Respondents' motion also addresses complainants' motion to bar. On December 9, 2008, the complainants filed their response.

Complainants' motion states that the respondents have not complied with the discovery schedule as set forth in the Hearing Officer Order of September 11, 2008. Specifically, the complainants allege that the respondents failed to serve their experts report as required by the discovery schedule. The complainants further state that any testing of the respondents air conditioners now "could not fairly represent warm weather levels of activity and noise", and therefore, respondents' expert and his report must be barred. (Mot. at 3).

In their motion, respondents represent that written discovery has been served and responded to, and that respondents' expert was still in the process of testing and preparing a report. Respondents represent that the expert report will be provided to the complainants on or before January 6, 2009.

The complainants response continues to request that respondents' expert be barred from participating and that "testing their air conditioning system in freezing temperatures cannot replicate summertime levels of usage and noise" (Response at 1-2).

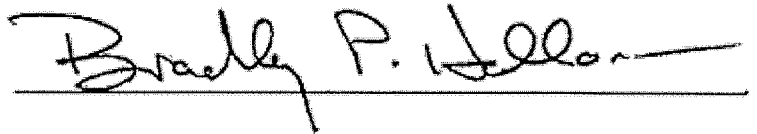
While it appears to be true, and as conceded by the complainants, an air conditioning system cannot be properly tested for noise when temperatures fall in the winter. To bar respondents expert from completing his report would be prejudicial to the respondents and may also be prejudicial to the complainants as well. Complainants' motion to bar is denied.

During the status conference, the complainants requested that a hearing date be set a reasonable time after the respondents completed their testing. It was agreed that testing could recommence as early as April 2009. Therefore, respondents' expert report is due to be served on or before May 5, 2009. All discovery to be completed on or before May 5, 2009. Any pre-hearing motions, including motions *in limine*, must be filed on or before May 7, 2009. Any responses must be filed on or before May 8, 2009. The mailbox rule will not apply to the pre-hearing motions and responses, and all electronic or approved telefax filings must be received by the Clerk's Office no later than 4:30 p.m. of the due date. A hearing in this matter was scheduled for May 13, 2009.

Also discussed at the status conference was respondents' representation that a hearing may not be necessary. Respondents represented that they have requested from the local government a variance so that the air conditioners could be moved to the opposite side of the house. This would presumably alleviate any noise issues and the complaint could be dismissed. Further discussion will be entertained at the next telephonic status conference.

The parties or their legal representatives are directed to appear at a telephonic status conference with the hearing officer on March 5, 2009, at 10:00 a.m. The telephonic conference must be initiated by the complainant, but each party is nonetheless responsible for its own appearance. At the conference the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line.

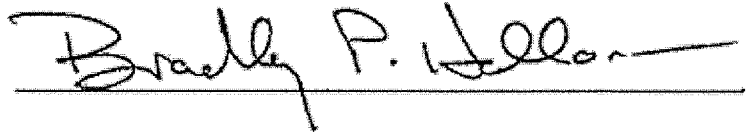
Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on February 3, 2009, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on February 3, 2009:

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601

A handwritten signature in black ink that reads "Bradley P. Halloran". The signature is written in a cursive style and is positioned above a solid horizontal line.

Bradley P. Halloran
Hearing Officer
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