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STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

MILTON and VIRGINIA KAMHOLZ	)	
	)	
COMPLAINANTS	)	PCB 02 - 41
	)	(Citizen's Enforcement case Air, Noise)
v.	)	
	)	
LAWRENCE and MARIANE SPORLEDER	)	
	)	
RESPONDENTS	)	

NOTICE OF FILING

To: The Clerk of the Board  
 Illinois Pollution Control Board  
 100 W. Randolph Street  
 James R. Thompson Center  
 Suite 11-500  
 Chicago, Illinois 60601

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

To: Joseph Gottemoller, attorney for the Respondents  
 Madsen, Sugden, and Gottemoller  
 One North Virginia Street  
 Crystal Lake, Illinois 60014  
 (815) 459 5152

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board, and to Hearing Officer Bradley Halloran, the Complainant's Reply Brief. This filing is being issued by the Complainants, Milton and Virginia Kamholz, and is directed to the Board, and to Hearing Officer Bradley Halloran. A copy is herewith served upon you.

*Milton Kamholz / Virginia Kamholz*  
 Milton and Virginia Kamholz, Complainants

Milton and Virginia Kamholz  
 1306 Sullivan Rod  
 Woodstock, Illinois 60098  
 (815) 568 6166  
 January 21, 2003

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

JAN 23 2003

STATE OF ILLINOIS  
Pollution Control Board

	)	
	)	
MILTON C. and VIRGINIA L. KAMHOLZ	)	
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Complainants	)	BCB 02-41
	)	(Citizen's Enforcement- Air, Noise)
v.	)	
	)	
LAWRENCE and MARIANE SPORLEDER	)	
	)	
Respondents	)	
	)	

**COMPLAINANT'S REPLY BRIEF**

NOW COME the complainants, MILTON and VIRGINIA KAMHOLZ, on their own behalf, to reply to RESPONDENT'S SUPPORTING BRIEF, and in support of their own position, submit the following brief.

**ALLEGED VIOLATIONS**

Complainants allege that the Respondents violated Section 9 (a) of the Environmental Protection Act, (Act) (415 ILCS 5/9 (a) , (Act) (415 ILCS 5/24 (2000), and Sections 900.102, 900.102(a), of the Board regulations. (35 Ill. Adm. Code 900.102, 901.102(a). These alleged violations occurred due to the riding of dirt bikes, ATVs, go-carts, a truck, and numerous cars.

**Section 9(a) of the Act**, states, No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any state, so as to cause or tend to cause air pollution in Illinois. 415 ILCS 5/9 (a) (2000)

**Section 3.02 of the Act** defines "air pollution" as: The presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property. 415 ILCS 5/3.02 (2000)

**Section 900.102** of the Board regulations provides that:

No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the (Act) , so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter. 35 ILL. Adm. Code 901.102.

**Section 900.101** of the Board regulations defines “noise pollution” as:

The emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity. 35 Ill. Adm. Code 900.101

**Section 901.102(a)** of the Board’s regulations prohibits emitting sound above numeric limits during daytime hours from a source on Class A, B, or C land to any receiving Class A land. See Ill. Adm Code 901.102(a)

#### **FACTS**

A formal complaint containing these alleged violations, was served upon the Respondents on November 11, 2001. The Board accepted the complaint, and on November 19, 2002, a hearing was held. The Complainants decided not to file a brief, however the Respondents did file one. The following is our response to their brief, and to their alleged established facts.

Page 3, Paragraph 1, under FACTS, MR. GOTTEMOLLER, respondents attorney, states that the 1993 Polariis 350 ATV, is a required piece of machinery, needed for maintenance purposes.

#### **REPLY**

By saying nothing more than this about the ATV, he implies that this is the main and only purpose for this vehicle. Complainants allege that this ATV is used once or twice a year for maintenance purposes, and the rest of the time it is used by the grandson to rod around on, as he desires. Kamholz made numerous attempts to establish this fact. Tr. 275, 291, 292. As the videos show, the ATVs are ridden often, and are responsible for much of the noise, dust, and smelly exhaust fumes, that are being complained about. It is obviously a desired piece of equipment, *not* a required piece of equipment.

MR. GOTTEMOLLER also states that the surrounding landowners use similar vehicles, ride them in the ditch line parallel with Sullivan Road, and asks SPORLEDER if KAMHOLZ complains about them. (Tr. 285, and 286) SPORLEDER answers on line 7, and adds, "nor the neighbors to the north who has a dirt bike"

**REPLY:**

Here again he implies something that does not exist the way it is intended to make one believe. The Kamholzs' haven't ever complained because there's simply nothing to complain about. There are no violations of the law involved. The west neighbor is a 68 acre farm, and an ATV drives past in the ditch line once or twice a year. They do not rod around. The north neighbor owns a dirt bike, but doesn't ride it. SPORLEDER tries to paint a different picture.

Page 3, Paragraph 2, contains four misleading statements. It reads: Further , it was established that over the past sixteen years, SPORLEDER allowed their grandchild to operate mini-bikes and motorcycles on their own property. That the vehicles were factory built(Tr287). The time allowed for said operation was set by SPORLEDER from 11:00 am to 8:00 p.m. and that the grandchild owns one dirt bike at the time of hearing. Tr256) In addition, it was undisputed that SPORLEDER has not allowed the use of any truck or car on the property itself since 1997.

**REPLY**

The use of the word *grandchild*, implies one small child. It should read grandchildren, other family members, *and* friends. Only mini- bikes and motorcycles are mentioned as the vehicles ridden over the past 16 years. For the record, it's been dirt bikes, ATVs, go carts, a truck and a couple of cars. *Mini* bikes haven't been ridden over there for a long time. "Vehicles are factory built" is a true enough statement, but we still question the extremely high decibel readings on the ATV? ( Exhibit # 15, and video tape. ) The time allowed for riding was 10:00 am, *not* 11:00 am. The 11:00 am time stated by MRS. SPORLEDER, (Tr 255) was an error, and gave us an hour of relief that we never really got. MR. SPORLEDER states 10:00 am which is correct, (Tr.299) The fact that the *grandchild* owns 1 dirt bike at time of hearing. (Tr 256) implies again that we are talking about a *child* instead of a 21 year old adult man. One dirt bike implies that this is the only vehicle this person rides. Our video shows different. The truck has not been driven on the property since 1997, but not because MR. SPORLEDER disallowed it. It was simply because the grandson that drove it turned 16 in June of 1997, and got a driver's license. The offense still occurred, and was stated in the complaint because it was a part of the ongoing violations of that time period. It also shows a pattern of behavior.

**PAGE 3, PAR 3** states SPORLEDER testified that their grandson would educate himself by working on the dirt bikes and /or trucks, and by doing so, he would learn how to fix motors, and learn other mechanical skills (Tr253) and that they allowed the riding so that their grandson would keep out of trouble (Tr 270-271 and because of the rural nature of the area, there was not of other activity for an adolescent (Tr.286)

**REPLY:**

In SPORLEDER'S attempts to justify their grandson's activity , KAMHOLZ can only refer to the fact that their grandson quit school as soon as he turned 16. (Tr 83) If education was so important to the SPORLEDERS, it seems he would have finished his education in school. That also would help to keep him out of trouble. There are many activities in rural areas, this was just their choice. SPORLEDERS tried to make his riding appear to be about learning, instead of fun and frolic. KAMHOLZ objected to this questioning (Tr 251-252-253- and 254) . Whether he was learning or not, had nothing to do with the way he rodded around the property. It had nothing to do with the noise, dust, and smelly exhaust fumes he was creating.

**PAGE 3, LAST PAR.;** states After receiving the KAMHOLZ complaint, and learning that an action was pending, the grandson has not ridden a dirt bike or ATV on the property. Further , SPORLEDER attempted to resolve the alleged problem by restricting the riding of dirt bikes and ATVs so that the riding ( **PAGE 4** ) avoided the abutting corner of the KAMHOLZ property. Additionally, evergreen trees were planted to buffer the sound of the vehicles. (Tr 259-260) SPORLEDER testified that the riding did not cause noise, which bothers them (Tr 286), and that SPORLEDER entertained guests while the riding took place (Tr 288-89)

**REPLY:**

The riding *did* continue *after* the complaint was received as seen on video # 3. The complaint was served upon the SPORLEDERS by messenger, on November 11, 2001. This is a matter of record, even though SPORLEDERS still maintain that it was not served until December. The riding stopped for the winter, in 2001, and did not resume in 2002. There was absolutely no attempt to resolve the alleged problem by restricting the riding to avoid the abutting corner of the Kamholz property.. Video shows this. Exhibit # 13, the diagram of the properties, shows the diagonal path, and it states right on there, that sometimes the boys ride in that direction. It's always been that way, and they did it on their own. High decibel readings (Tr 218, 222, 223, and exhibit # 15 ) shows that the diagonal path didn't ,and wouldn't make a difference in the noise. MR. ZAK testified that the noise distance of 75 A weighted 300 to 400 feet away , and as high as 90 close to the property line .(Tr 218) He speaks of noise variations in (Tr 221-222-

**Top of Page 4 con't**

and 223) The wide range of readings take in SPORLEDER'S entire property.

MR. and MR SPORLEDER both testified that evergreens were planted to buffer the noise. (Tr 259-260 301-302.) There are 4 evergreens approximately 8 feet tall, and another 6 tiny evergreens approximately 3 feet tall. The first row was planted in 1997, and were about 3 feet tall at the time. They are now 8 feet. The second row was planted in 2000. They are now 3 feet tall. I video from my window, and I had a clear view of the riding. If the line of vision is not obscured, the path of sound waves will not be obscured. Please see exhibit # 14, Photos # 23 , 26, and 29., taken in 2001... These trees are not a sound barrier by any stretch of the imagination, but definitely misleading testimony.

**Page 4 Par. 2** states: In their complaint, KAMHOLZ complained that the alleged violations were on a continued basis since 1993. Testimony revealed that they have not spoken with SPORLEDER since 1993 (Tr 248) Moreover it was in 1993 that Kamholz complained that SPORLEDER had improperly burned material in violation of County Code. (Tr 248)

**REPLY**

(Tr 248-249) MRS SPORLEDER states that our last conversation was in 1993 when the burning STARTED. This is wrong. Our conversation stopped when the burning STOPPED, which was in JULY of 1995. There were still many conversations between 1993 and 1995. Many were to request that MR. SPORLEDER please stop burning noxious smelling materials. (Tr 261-262-263-264-265-292 293 294) The alleged violations listed in our complaint did start in 1993, ( Question # 7 of the Complaint) however they were not of a serious nature until 1995 with the arrival of the first dirt bike. Burning was not an issue in our complaint because that was settled by the McHenry County Health Department. We didn't even know at that time that we were going to have a dirt bike and ATV problem in the near future. The burning issue was resolved before the dirt bike came. SPORLEDER stopped speaking to KAMHOLZS, when the county made them stop burning. That had nothing to do with this complaint.

**PAGE 4 Par 3** states: Further testimony showed that KAMHOLZ made no attempt to contact SPORLEDER and resolve the alleged riding problem. (Tr 289) Moreover, SPORLEDER testified on cross examination by KAMHOLZ that they would have stopped the riding if KAMHOLZ had contacted SPORLEDER. (Tr 269)

**REPLY:**

**Page 4 Par. 3 con't****REPLY:**

KAMHOLZ maintains that SPORLEDER *did* indeed know of the problem. It's a matter of record that MRS SPORLEDER signed for a registered letter on August 10, 1996, which spelled it all out for them. The letter told them that their noise was driving the KAMHOLZS' crazy, and asked them to please stop. (See exhibit # 6, the letter, with signed receipt.) MRS SPORLEDER testified to MR. GOTTEMOLLER, that KAMHOLZ never contacted them. SPORLEDER states that if KAMHOLZ would have called , and tried talking in a nice manner, SPORLEDER would have had them stop riding over there. (Tr 258). SPORLEDER DIDN'T HAVE THE DIRT BIKE IN 1993. The noise was not an issue in 1993. That was the burning time period, and phone calls *didn't* help that situation. SPORLEDER S stopped speaking to KAMHOLZS after the County Health Department made them stop burning in July of 1995, and that was the reason for the letter rather than a phone call.

**PAGE 4 PAR. 4** states: Video evidence was also introduced by KAMHOLZ. SPORLEDER directs the Board to important facts revealed by the video. A portion of the video involves the driving of a pick up, which has not occurred in over five years as previously stated. More importantly, Kamholz make the following comments while the video tape: "ATVs and mini bikes are no problem." Tr 90. It has been a long time since we had riding goin on, this bike is a little quieter: (Tr 90) "he went up on the other side. That is good. It is not so loud when he goes up there" (Tr 91)

**REPLY**

Regarding the comments about the pick up truck, Kamholz doesn't know what SPORLEDER means here. KAMHOLZ acknowledges the fact that the truck stopped riding around the property in 1997. However this fact by no means minimizes the truck activity during that time period. I was a very stressful period of time and was in serious violation of dust and smelly exhaust fumes. (The noise wasn't as bad as the dirt bikes, and ATVs) This activity displayed a pattern of behavior that was worsening each year as the offenders got older.. As far as the comments make by MRS. KAMHOLZ on the videos, Kamholz tried to explain them as MR. GOTTEMOLLER brought them up, but MR. GOTTEMOLLER wouldn't allow it. (Tr 89, 90, 91, 92) KAMHOLZ did get an opportunity to explain later, (Tr 95, 96, 97, 126,) and on Tr 128, KAMHOLZ said, "years back the Atvs didn't bother us" The kids were smaller then. Now we get 90 decibel readings on an ATV that's 100 feet away from you , spinning around kicking up dust and expelling exhaust fumes. Also, they aren't riding *mini* bikes any more. MR ZAK testifies about intensity and variation of sound levels, (Tr 218 and 221)

**PAGE 4 LAST PAR.** States: Further, the video does not show any dust accumulation, nor exhaust pollution. In fact KAMHOLZ have their windows and door exposed to the natural air during the video.

**REPLY**

\_\_\_ There are many references to dust and smelly exhaust in the videos and through out the transcript. (Tr 71, 75, 80, 83, 85, 124, 155, 156, 175, 177, 190, 277, 297)

**PAGE 5 PAR. 1** states: Finally, the video shows only a limited number of days. (9 dates are listed)

**REPLY**

There are a lot more than 9 days of riding on the video. There are 33 different days of riding activity on the videos, covering a period of time from June 1997 to November of 2001. Video # 4 was taken in 2002, but shows no riding. This shows only that the vehicles are being loaded up and hauled away for riding in an appropriate place. Testimony of MRS. KAMHOLZ states that there was a lot of riding that took place, without video. (Tr 88)

**Page 5 Par. 2 and 3 states: Section 9(a)** Under the Act and Board regulation, and “air violation has occurred if the complainant has proven the the complained of...air pollution has unreasonable interfered with the complainant’s enjoyment of life....” *Detlaf v. Boado & Epb Park services, Inc.* PCB 92-26 (1993), In *Detlaf* the only air pollution evidence produced at hearing was smoke rising from a cooking area in a neighboring park. The Board concluded that the complainants did not produce adequate evidence of an unreasonable interference due to the smoke.

**REPLY**

KAMHOLZ does not see the relevance of this to our case. Kamholz maintains that the dust and smelly exhaust fumes that are emitted from SPORLEDER’S vehicles, comes onto their property, comes into their house, and does interfere with their enjoyment of life and property.

**Page 5 Par 4** states: The present case is very similar to *Detlaf* with regard to air pollution. Complainants produced twelve witness, eight of which did not provide any testimony to air pollution. As to the KAMHOLZS’, MRS KAMHOLZ testified that you can see a *little* dust behind the car” when referring to a picture (Tr 80) She further concluded, without support, that “when you see ruts like that you know, there is dust” (Tr 92-93) Her testimony is devoid of any fumes, exhaust, or dust caused by Sporleder, which unreasonable interferes with the enjoyment of her property.

**REPLY**

Complainants produced 12 witnesses, 5 (not 8) of which did not directly address air pollution. Those 5 did however testify to the activity, which we know creates dust, and exhaust fumes. All 12 witnesses testified to the *activity* that produces the pollutants of noise, dust, and exhaust fumes. Video and pictures



**Page 5 Par. 4 con't**

show ruts and grass-less areas. Testimony of SPORLEDER admits to dust. (Tr 277, and 297) Other mentions of dust, (Tr. 71,75, 80, 83, 124, 155, 156, 159, 175, 177, 190, 198) There ar many mentions of smelly exhaust both in the video, and in testimony. We know how unpleasant exhaust fumes are, and if you are smelling them, you are not going to enjoy yourself until the smell goes away. You cannot enjoy your recreation room or you deck and patio, if they smell of exhaust.

**Page 5 Last Par. And top of Page 6.** states: MR. KAMHJOLZ testified that he could not relax because the riding was taking place (Tr 189) When asked, he replied: "I guess it was stress caused, caused a stressful feeling. Q. Because of? A. The noise, probably mostly. I probably wasn't as close to the dust and fumes because usually I was working towards the other end of the property. MR. GOTTEMOLOLER states: 'By his own admission, MR. KAMHOLZ demonstrates that he was not near the allege dust or fumes, and that he was *enjoying his property* by working the land.

**REPLY**

By his own admission, MR KAMHOLZ demonstrates that he *does not enjoy his property*, because of noise, dust, and smelly exhaust fumes. (Tr 190, 192) He can not enjoy his rec room, take a nap, or watch a ball game on his one day a week off work. When he works toward the other end of the property, dust and fumes are not a problem. The dust and fumes come onto our patio and into our house. It doesn't go towards the other end of the property.

**Page 6 Par 1**states The next witness who testifies to any air pollution is Natalie Secor. Her entire air pollution testimony consists of the following at Tr. 159. Q. Have you ever seen dust or smelled exhaust fumes while the riding takes place. A. Yes There is nothing in Ms. Secors's testimony which demonstrates that the dust and/or fumes unreasonably interferes with the KAMHOLZ'S enjoyment of their property. In fact, Ms. Secor does not even testify that the fumes smell bad...

**REPLY**

MRS. SECOR testified that she did see dust and smell fumes while the riding took place. (Tr 159) She *saw* it, and she *smelled* it. That means it exists. Exhaust does *not* smell good, and dust gets breathed in before it settles. The next paragraph is the same type of testimony, only done by Mike Dworzynski. He was asked the same question by MR GOTTEMOLLER, and the same answer was given. (Tr 175, 177) KAMHOLZ contends that this is air pollution. We know what exhaust fumes smell like, and we know what dust looks like. No one likes having someone throwing it at you.

**Page 6, Last Par.** States KAMHOLZ never put forth evidence or testimony, which demonstrates that SPORLEDER has violated Section 9(a) of the Act. As a result, the Board must find that KAMHOLZ has not met their burden as to this allegation.

**REPLY:**

Again, The testimony of qualified witnesses, ALL of whom have noses, who testified to smelly exhaust fumes, and dust, is what KAMHOLZ has offered. The knowledge that the activity does take place, and does create dust and smelly exhaust fumes, is what KAMHOLZ offered. While there are no technical numbers or readings offered, Kamholz believe they have shown sufficient proof of air pollution , that prove to be an annoyance and a nuisance that definitely interferes with the enjoyment of their lives and property.

We trust that the Board will agree with this conclusion.

**Page 7 Par. 1,2,3,4** MR. GOTTEMOLLER states: that MR. GREG ZAK, (complainant's expert witness) did not record any decibel reading from the KAMHOLZ property, nor did he witness any of the alleged violations. Also, that the equipment used to record these decibel readings did not satisfy the requirements For measuring sound measurements required by Section 951.105. KAMHOLZ wishes the Board to believe that Sporleder did violate 901.102(a) and that KAMHOLZ has sustained their burden. Gottemoller further states: "As a result of the record being devoid of a violation of 901.102(a), the Board must find for the Sporleder on this charge.

**REPLY**

MR. ZAK saw the activity on video tape, which provides a dependable and accurate accounting of the activity. What you see is what you see. Nothing can change this. Having dealt with this type of situation for many many years, does qualify him to make judgment upon what he sees, and hears. Video recordings are acceptable evidence, and are used in every field of media and police work in today's world. The radio Shack decibel noise meter is also an acceptable and recommended instrument for the purpose used. Mr Zak advised Kamholz on the use of this instrument, and viewed on video the actual operation of it. Mr. Zak's testimony, (Tr 207, 208, 209, 210) . Mr ZAK did an on site inspection of the properties, and found that things were as they appeared on video. KAMHOLZ has provided the Board with an abundance of evidence, and "Yes", Kamholz does want the Board to see that SPORLEDER has violated Sec. 901.102(a), and trust that they will find in favor of the KAMHOLZ complaint.

**Page 8 Par. 1,2,3,4**, states: The definition of noise pollution, which appears at the beginning of this Brief, so I will not repeat it. Sounds must *objectively* affect the complainant's life or business activity," The unreasonableness of noise must be determined in light of the factors set forth in Section 33© of the Act. (415 ILCS 5/33 © *Detlaff* **Par 2** Addressing each factor under 33(a) it is clear that KAMHOLZ life and enjoyment of the property has not been interfered with unreasonably.

**REPLY**

**Page 8 Par 1,2,3,4, con't**

**1) Character and Degree of Injury** The complaint alleges that the noise from SPORLEDER occurred on a continuous basis, and caused harm to their physical and mental health. Specifically, KAMHOLZ allege that they suffered from sore throats, headaches, and that the odor from the exhaust fumes has infiltrated their home. However the record is silent as to any physical ailments suffered by KAMHOLZ. No physician reports were tendered; no testimony as to physical injury was offered.. No witness testified that they physically suffered from the alleged pollutants from SPORLEDER.

**Page 8 Par 1,2,3,4****REPLY****1) Character and Degree of Injury:**

The record is not silent. The charges are clearly stated in the complaint, and the testimony of 12 witnesses stating that the noise is excessive, and interferes with the enjoyment of life and property. These allegations are as real as they can possibly get. The video clearly shows terrible abuse to the complainants, due to the noise that's being generated on the SPORLEDER'S property and flowing over onto the KAMHOLZ property. Mr.ZAK'S Testimony that This level of noise would have a significant impact on ones life, and that it's ' ONE OF THE MOST SIGNIFICANT SOUND IMPACTS I HAVE SEEN IN MANY MANY YEARS' (Tr 223 and 231) This is powerful testimony coming from a noise expert of 30 years. The noise is real, and the noise is loud. Decibel readings also support this fact. Kamholz is not going to run off to see a doctor every time a sore throat or headache occurs because of the riding. Kamholz realizes where the ailment is coming from, and that it will go away when the air clears. This does not make it any less of a headache or sore throat. Kamholz hosted only a couple parties during the ten years in question. (She used to host quite a few) Both were spoiled by the SPORLEDER activities. One during the burning time period, when the guests had to leave because of noxious burning by SPORLEDER. (Tr 294) We couldn't even escape into the house because the smell had come in through the windows. The other was interrupted by the riding activity. I stopped having parties (other than family) after that.

**Page 8 Par. 5** states: Moreover, the riding is not continuous. The riding does not occur in the early morning hours, nor does the riding take place late at night. The evidence also demonstrates only nine days of riding activity. Out of a ten year period, nine days is not continuous in nature.

**REPLY**

This paragraph is in error. It's right that the riding didn't take place in the early morning or late at night, but the rest of it is wrong and misleading. The videos are NOT of riding activity over a 10 year period. They are from 1997 to 2001. That's 4 years. There are 33 days of riding activity, not 9. There is also testimony

**Page 8, Par 5 con't REPLY**

by MRS KAMHOLZ that there was a lot of riding that was not on video. (Tr88). As far as the morning and night time limits, when were the KAMHOLZ'S supposed to entertain, or *enjoy* their lives or property? Do You have a cook out or watch a ball game before 10 am or after 8pm. Do you take a nap or plan your outside activity before 10am or after 8pm?

**Page 8 Last paragraph** states: The complaint also alleges a loss in Kamholz property value. In order to support this claim, KAMHOLZ called LILLIAN CARAUCIO, a licensed real estate agent, as a witness. MRS. CARACIO never witnessed the live riding of any vehicles by SPORLEDERS (Tr 56). Because she had not seen the riding activity in person, MRS CARAUCIO had to speculate if someone would **PAGE 9** Purchase a piece of property which was adjacent to land where mini-bikes and ATVs were ridden (Tr 58). The Board should take notice that the speculation is not even with regard to the KAMHOLZ property, but rather a piece of property in the abstract.

**REPLY**

Witness Caraucio was not speculating, but was voicing an opinion, which she had the right to do in order to answer the question asked of her. (Tr 54) . KAMHOLZ asked CARAUCIO what she based her opinion on. (Tr 58) Caracio has 15 years experience in selling homes, and she established the fact that the riding of dirt bikes next door to a piece of property for sale, could be detrimental to the sale of that property.

**Page 9 Paragraph 2, 3, states** MOREOVER, when asked by KAMHOLZ if an interested party in the KAMHOLZ property would be dissuaded by the riding of the vehicles, MRS.CARAUCIO responded, 'WELL, I can't say that every buyer would say that' (Tr 610. Further still, in her own written opinion, Mrs. Caraucio stated that the riding of dirt bikes "with in 70 feet of the subject property *could* be detrimental to the sale of this property." (Tr 64) The testimony of MRS CARAUCIO brought out the fact that alleged problem caused by SPORLEDER is subjective to KAMHOLZ. When asked why KAMHOLZ did not purchase another piece of property, Ms. CARAUCIO stated that the neighboring property had motorbikes. (Tr 58) Then on cross examination, she testified that two buyers were interested in purchasing the KAMHOLZ property so that they could ride their motorcycles on the property (Tr 66-67) The record is silent as to any physical damage to the property, to KAMHOLZ, and with regard to any loss property value. As a result, the character and degree of injury is non-existent, and the general welfare of the party and property is not harmed.

**REPLY**

MR. GOTTEMOLLER uses only part of CARAUCIO'S answer to leave a misleading thought. (Tr 61) She says "Well I can't say that every buyer would say that." The rest of it reads, "But if the bikes were running up and down and making a lot of noise, they would be more inclined to walk away,." MR

GOTTEMOLLER states that the alleged problem caused by SPORLEDER is *subjective* to KAMHOLZ.

Not at all. The violations that have taken place next door are very real, and living with these problems, is

reality. Why would we buy a home that would offer us the same problem we have now? That would be a stupid thing to do. Further, MRS CARAUCIO did not testify that two buyers were interested in purchasing the KAMHOLZ property. (Tr 66-67) She said "A" piece of property where they could ride their motorcycles. Our property was not on the market, and she knew they would not be able to ride their motorcycles on our property. They would be in violation of the law, just as SPORLEDERS are. MRS. CARAUCIO went on to say "I also knew it would be very difficult to find a place for what they wanted. People don't want motorcycles running around too close to their homes" (Tr 67) It is the professional opinion of MRS CARAUCIO that this activity could be detrimental to the sale of our property. KAMHOLZ thinks so also, and hopes that the Board agrees.

**Page Last paragraph 9 states: 2) Social and economic Value of Pollution Source:** Testimony at trial revealed that the KAMHOLZ children operated similar bikes in the past (Tr 160) In fact, a Kamholz witness, Mike Dworzynski testified that he rode motorbikes when he was younger, and that he currently allows his children to ride on their property in Belvidere, Illinois (Tr 179) Moreover, other residents in the area also use similar vehicles for recreational and maintenance purposes, (Tr 285-86 )

#### **REPLY**

KAMHOLZ children did not operate *similar* bikes in the past. KAMHOLZ children operated a MINI bike over 25 years ago, for a short period of time. There are no similarities to the activities going on next door on the SPORLEDER property. You do not see any MINI bikes on our video. You do not see children on our video. Our riding took place during a different time, under very different circumstances, and has nothing to do with our case. KAMHOLZ and SPORLEDER were the only homes on Sullivan Road. . Our son was, and is handicapped.. He never rode aggressively. The bike was quiet, and offended no one.. The bike was parked in the barn after little use, 25 years ago, and it hasn't been touched since. Our complaint is about now, and violations of the law. There were no violations or laws broken 25 years ago. Further, what our son in law did when he was young has nothing to do with us, or our case, and what he does with his children has nothing to do with this case. Our grandchild doesn't ride here, because we won't allow it. Times are different.

The other residents in this area are not violating any laws. As said before, the west neighbor is a 68 acre farm . You may see them pass by a couple times a year.They do not rod around. The neighbor to the north has a dirt bike, BUT does NOT ride it.

**Page 10 Par 1 and 2** states In addition to the complainant's witnesses enjoying the social benefit of such activity, SPORLEDER testified that the ATV is used for yard maintenance, and for entertaining their grandchildren (Tr 257). SPORLEDER also testified that their grandson would educate himself by working on the dirt bikes and /or trucks, and by doing so, he would learn how to fix motors, and learn other mechanical skills. (Tr 253), and that they allowed the riding so that their grandson would keep out of trouble (Tr 270-71, and because of the rural nature of the area there was not of other activity for an adolescent (Tr 286)

The social value in the rural setting is very high as evidenced by the number of participants. It is clear from the record that SPORLEDER are not alone in this activity. Riding motorbikes is and activity that the KAMHOLZ children, in-laws and grandchildren have engaged in as well as many neighbors.

### REPLY

This has already been addressed earlier in this brief. Every statement above is either misleading or untrue. For MR. GOTTEMOLLER to imply that the past lives of KAMHOLZS' mature adult witnesses have anything to do with this case is ludicrous., and is nothing more than a diversion from the wrong doings of his clients. .The fact that MR. GREG WRIGHT rode a street legal motorcycle 30 years ago has nothing to do with our complaint. Mr. SECOR rode a street legal motorcycle 22 years ago, which has no bearing on this case. MIKE DWORZYNSKI used to ride dirt bikes at a legal dirt bike track, and he now takes his son there. He also can allow his son to ride on their property, because there are no laws being violated. What has that got to do with our case? I do not allow this child to ride on our property, because it would violate the law. Because these men rode motorcycles in a legal manner at one time in their lives, has nothing to do with our complaint, and SPORLEDER'S illegal activity . SPORLEDER states that they allowed the grandson to ride so he'd stay out of trouble. It doesn't make sense to allow him to break the law to stay out trouble. . You can't justify bad or illegal behavior this way. Kamholz does not want to take this enjoyment away from the SPORLEDER family and their friends, they just want them to take the activity to a proper and legal place to do it.

Once a year for yard maintenance does not qualify the ATV as a maintenance vehicle. This is a recreational vehicle that the grandson rods around on, creating dust, smelly fumes, and noise. That's the truth, and the video proves it. SPORLEDER uses his Allis Chalmers tractor for maintenance, not his ATV. KAMHOLZ agrees that education is a good thing, however, The riding activity that takes place next door has absolutely nothing to do with education. The boy quit school at age 16. This does not display a concern for education. Rodding around on loud, obnoxious, smelly vehicles, has nothing to do with education.

As far as activities in a rural area being limited, that's all in how you look at life. There are many choices,

and SPORLEDERS just happened to choose this one. The SPORLEDRES *ARE* alone in this activity. To say that “there are MANY neighbors involved , is an *untrue statement*. The “2” neighbors previously mentioned, have already been explained. One has a 68 acre farm, and drives past in the ditch line possibly 2 times a year, and the other does have a dirt bike, BUT does NOT ride it. This is the truth.

SPORLEDER’S illegal , and inconsiderate behavior simply cannot , and should not be justified.

**PAGE 10 Paragraph 3 and 4 states: 3) Suitability of the Source :** The properties in question are in a rural setting, with many of the lot sizes being five acres or greater. The physical character of the land is most suitable for the engaged activity. The Board is not considering motorbike riding in a highly congested neighborhood, with half-acre lots, with twenty feet between homes. The tone of the complaint and requested relief, is that the KAMHOLZ want to live in a quiet residential area. The area is zoned as Estate property, and the riding of motorbikes is a permissible activity. However, if KAMHOLZ desire a tranquil place to live, perhaps a private community would better suit them. In other words, KAMHOLZ want the spaciousness of a five-acre parcel, but they do not want to deal with other aspects of owning such land.

#### **REPLY**

The physical character of the land is *not* at all suitable for the riding of loud dirt bikes, ATVs and go carts. This possibility exists only if you do not have a neighbor. 5 acres may sound like a lot of land, but the property is only 385 feet wide. This does not give enough space for these vehicles to ride without emitting noise, dust, and fumes, onto the next door neighbor’s property. Place a house 50 feet from the dividing property line, and the suitability is non-existent. The videos, the decibel readings, the testimony of the witnesses, especially the expert noise witness, MR. ZAK, all support this conclusion.

We *DO* live in a quiet residential area. It couldn’t get any quieter. (See MR ZAK’S testimony Tr 210) The riding of dirt bikes, ATVs, and go carts have disrupted the quietness of the area. We moved here 31 years ago. This is our home. We were the first family on Sullivan Road except for the 2 farms. The area has been extremely quiet for all these years, until SPORLEDER’S grandsons and their friends started riding loud recreational vehicles. They are the offenders, and they are the ones who are in violation of the law. Because we don’t like excessive noise, dust, and smelly exhaust fumes, MR. GOTTEMOLLER suggests that we move to a more suitable neighborhood. SPORLEDER AND MR. GOTTEMOLLER want the riding to resume. KAMHOLZ thinks the riding should be stopped, and the neighborhood would then be quiet again. If the riding were to resume, KAMHOLZ still believe they would not be able to sell their home. Look at the video, and decide if that’s the kind of neighbor anybody would like to have.

**Page 10 Par. 5 states : 4) Techniocal practicability and economic reasonableness of control :** Because the area in question is rural, and therefore without many natural or man –made barriers to block sound, it would be economically burdensome to require SPORLEDER to install a devices to **(Page 11)** eliminate the sound. Additionally, KAMHOLZ has not come forth with the type of barriers, the location of barriers, and the cost of such barriers. Without this information, the Board cannot determine the feasibility of such action. The record does reflect that SPORLEDER has planted trees to absorb some of the sound, and that they have avoided riding on certain portions of their land. (Tr259). However, to require SPORLEDER to eliminate all use of the vehicles would be unreasonable and unjust to SPORLEDER.

**REPLY**

As stated in the previous paragraph, the area is not at all suitable for these vehicles. The above topic for discussion, helps to confirm this fact. No barrier solutions were offered because there are no AFFORDABLE ones possible. (The length of the dividing property line is 545 feet long.) Witness GREG ZAK touched on this in his testimony. (Tr234-235) The best and only workable solution to this problem, has been found by the SPORLEDERS themselves. That is to load the vehicles up and haul them to a suitable riding place. They have been doing this for a year now, and they have shown that they have the ways and means to do so. (See video # 4)  
As discussed *supra*, To state that SPORLEDERS have planted trees to buffer the sound, is again, very misleading. The few small trees that have been planted do not even obstruct the view, much less any sound. The last video of the riding activity, was taken from inside my recreation room in November of 2001. (Video # 3) As you can see, there is no obstruction of our vision because of the trees.

**Page 11 Par. 3 and 4: 5) Subsequent Compliance** states: As discussed *supra*, SPORLEDER has modified their activity, including not riding on the property for the last year. However, SPORLEDER does have right to enjoy his property, and the riding may resume. MOREVER, had KAMHOLZ CONTACTED SPORLEDER ten years ago to address the alleged pollution, this matter would have been resolved in a more neighborly fashion.

**REPLY**

As already explained, There was NO modification of riding before it stopped in November of 2001, and modification wouldn't have helped anyway (Tr 218) The riders rode the entire property, with the heaviest riding done along the property line. High decibel readings were recorded from all locations of the property. See video, and decibel readings. KAMHOLZ also have the right to enjoy their property, and should not have to endure the negative results of SPORLEDERS behavior. SPORLEDER CAN and should enjoy their property. There are many to do this other than riding. His pleasure should not be at the expense of someone else's freedoms. His activity and pleasures hurt other people, and this is wrong.. We all must obey the laws that are written, for our own good as well as for the good of others. This is understood by most people.



**Page 11 Par 3 and 4 Subsequent Compliance con't REPLY CON'T**

This too has already been discussed earlier in this brief. (See first REPLY Page 6) Review: The riding activity was not a problem 10 years ago. There was a problem at that time, but it had nothing to do with this complaint. Many phone calls were made about that problem, all of which fell on deaf ears. The SPORLEDERS were notified of the riding activity problem by a registered letter on August 10 of 1996.

**Page 11 Par 5 Conclusion on Unreasonable Interference:** The record does not show any physical harm to KAMHOLZ person or property. Moreover, the complainants allowed similar activity to occur on their property in the past. Further, other residents in the neighborhood engage in like activity. There is no evidence of diminution in value of the KAMHOLZ property. In fact the record shows that others would purchase the property to ride motorbikes. The video tapes show that windows to the KAMHOLZ property are open, and that MRS. KAMHOLZ is speaking at a normal level without any throat ailments. The tapes also show that the television can be heard while the riding is taking place. SPORLEDER contend that KAMHOLZ have not met their burden of proof to show that the riding has objectively unreasonably interfered with the enjoyment of their property.

**REPLY**

All of the above statements have been addressed, previously in this brief. In response to the last paragraph, the burden of proof has been met. This was done through the testimony of 12 witnesses, the registered letter of Aug. 10<sup>th</sup> 1996, the complaint, the work, the time, the money, the frustration, the videos, the decibel readings, the elimination of a social life at our home, the years of dealing with this abuse, and the desperation. The fear of not being able to sell our house, and the fear of having to continue to live this way. KAMHOLZ contend that they have indeed met their burden of proof.

**PAGE 12 Par. 1 CONCLUSION :** This case is not the type of case that should be in front of the Board. Rather, it is a dispute between two neighbors. A dispute that began with something other than riding motorbikes and ATVs. The animosity displayed by KAMHOLZ arises from a burning issue which occurred ten years ago. Because SPORLEDER did not commit any burning violations, that matter was dismissed by a court of law. Unable to prosecute the burning issue, KAMHOLZ found another SPORLEDER activity that bothered them. KAMHOLZ became fixated on the activities of SPORLEDER but never once made any effort to communicate with Sporleder. Instead KAMHOLZ videotaped SPORLEDER, and complained to anyone who would listen: the sheriff, county board, and now the Pollution Control Board. However the activity engaged in by SPORKEDER is not pollution. The record is devoid of any evidence of an air pollution violation, or noise pollution under Section 901.102(a). Moreover, there is insufficient evidence to support the remaining allegation: that the riding unreasonably interferes with the KAMHOLZ enjoyment of the property in an objective manner. It is clear from the record that the operation of motorbikes has fallen out of Kamholz favor. Kamholz allowed their children to ride on their property in the past, but they no longer allow it. They desire to move, but will not purchase a piece of property, because the neighbors may own motorbikes. The KAMHOLZ in-laws own and ride motorcycles on their property, but will not do so when Kamholz come and visit. However, the subjective dislike of motorbikes and ATV's is not the standard the Board is required to use. Objectively, KAMHOLZ has not proven that the activity engaged by SPORLEDER unreasonably interferes with their enjoyment of the property. As discussed *supra* other people were interested in purchasing the KAMHOLZ property to engage in similar activity. Moreover other neighborhood residents operate motorbikes and ATVs. What KAMHOLZ defines as pollution is acceptable and desired behavior by others.

**REPLY**

Oh how wrong can wrong get? This case does belong in front of the Pollution Control Board, because it's all about pollution. Air and noise pollution, being created by unreasonable, inconsiderate, neighbors who have no concept of proper social behavior towards their fellow man. It is not about a dispute of 10 years ago. That is what SPORLEDERS and MR. GOTTEMOLLER would like the Board to think. From the very beginning of this case, that's what they have tried to turn this into, and have you believe. MR. GOTTEMOLLER'S opening statement at the hearing was about the "dispute" They have nothing to fall back on without the burning dispute. They have said many misleading and untruthful things, and KAMHOLZ can only hope for the sake of their case, that this has been an obvious pattern through out the entire time of this ordeal. The SPORLEDERS absolutely *did* commit burning violations. Not a few, but many over a period of 3 years. The Mchenry County Health Department handled the situation, and ordered Sporleder to stop the burning of illegal materials. The burning issue was never in a court of law as stated. We were not trying to prosecute anything or any body. We just reported the offense and the county simply shut him down. That was the end of it. Our complaint and present case is not supposed to be about , and is not about the burning dispute.

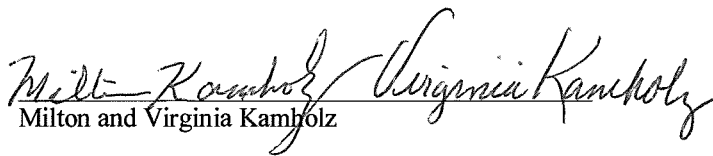
To state that the KAMHOLZS' displayed *animosity*, is an unkind and unnecessary judgment on the part of the SPORLEDERS and MR. GOTTEMOLLER, and to state that KAMHOLZ became *fixated* on the activities of the SPORLEDERS, is another untrue judgment call. We put up with the noxious burning for 3 years before regretfully having to report them. They received many pleas from us to stop, and fair warning of the report date. They chose to ignore us. We have put up with the present problem seriously since 1995 and we are just now doing something about it, after an attempt to stop it failed. Again, they chose to ignore us. Their lack of social manners, has forced our hand both times. We are tolerant people, but will seek help when necessary. We have sought help through other avenues before coming before the Board. We now find ourselves before you struggling with many SPORLEDER implications, and untruths, as we seek a solution. SPORLEDER wants to resume riding, the very activity that brought them here in the first place. To resume riding would be to resume the violations.

The rest of the CONCLUSION in SPORLEDER'S BRIEF, is repetitive and has already been addressed.

CONCLUSION

KAMHOLZ can hardly believe that the word “conclusion” is on the page before me. This whole thing started in earnest back on Mother’s Day of 2001. That was the day we decided that something had to be done. That was the first step of many that brought us here to our conclusion page. Many pages have passed by before this one , during the past year and a half. In our opening statement at our recent hearing, I stated that we were seeking a return to a peaceful, and normal life, which would offer some tranquillity in our home. We return to that request now. We ask the Board to hear our plea, and grant us our needed relief. We are confident that our burden of proof has been met, that the law will prevail, and that the Board will find in favor of KAMHOLZ.

Respectfully submitted,

  
Milton and Virginia Kamholz

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JAN 23 2003

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MILTON and VIRGINIA KAMHOLZ

Complainants

v.

LAWRENCE and MARIANE SPORLEDER

Respondents

PCB 02---41  
(Citizen's Enforcement, Noise, Air)

PROOF OF SERVICE

I, the undersigned, on oath, state that I served on the date of 1-22-03, the attached Notice of Filing, and Complainant's REPLY BRIEF, by certified mail, upon the following persons.

The Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
Chicago, Illinois 60601

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

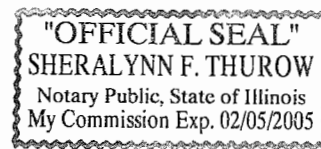
Joseph Gottemoller  
One North Virginia Street  
Crystal Lake, Illinois 60014

*Milton Kamholz Virginia Kamholz*  
Milton and Virginia Kamholz

SUBSCRIBED AND SWORN TO BEFORE ME THIS

22<sup>nd</sup> DAY OF January, 2003

*Sheralynn F. Thuron*  
Notary Public



Milton and Virginia Kamholz  
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Woodstock, Illinois 60098  
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JAN 23 2003

STATE OF ILLINOIS  
Pollution Control Board

Milton and Virginia Kamholz  
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January 21, 2003

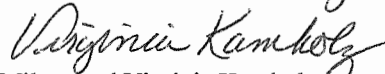
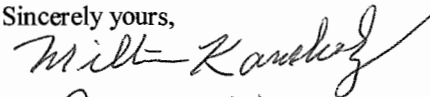
Clerk of the Board  
State of Illinois  
Pollution Control Board  
100 W. Randolph Street Suite 11-500  
Chicago, Illinois 60601

RE: PCB 02-41

Dear Clerk of the Board,

Enclosed, please find an original and 9 copies of a Notice of Filing , and a Complainant's Reply Brief. Also please find a notarized Proof of Service for said mailing.

Sincerely yours,



Milton and Virginia Kamholz