

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/>

**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, Inc**  
*(Insert name(s) of alleged polluter(s))*

Respondent(s)

PCB 20 09-10 -  
*(For Board use only)*

**Responses to Respondent's Motions in Limine**

Now come the complainants, Joseph and Victoria Morrissey, to respond to Respondent's motions in Limine and Respondent's witness list dated Jan 8, 2010.

1. *Preventing non-party participants that live in the neighborhood of the Complainants from providing oral and/or written statements on the record as to any aspects of the noise they allege to emanate from the Respondents' location under Pollution Control Board Rule 101.628, 35 Ill. Admin Code 101.629 (Westlaw 2010). The Complainants failed to name any of their neighbors as witnesses or as people having knowledge of the noise pollution in their responses to the Respondents' discovery. Allowing any such unnamed individuals to provide any written and/or oral statements is tantamount to rewarding the Complainants for circumventing the discovery process and the discovery rules of this Honorable Board in that the names of such individuals were known to the Complainants but not disclosed to the Respondents. Allowing any such statement into the record would be prejudicial to the Respondents in that it would undermine the Respondent's rights to cross-examination of such witnesses as the failure to disclose any such individuals prevented the Respondents from taking their discovery depositions. Such actions would violate the Respondent's rights to due process of law under the 11th Amendment to the United States Constitution and Article I, Section 2 of the Illinois Constitution.*

**Response to Motion 1.** The neighbors are permitted to make statements not to the proofs, but to the impact of the noise complaint on them as neighbors. They intend to make statements supporting Morrisseys' noise complaint as they too are affected by the noise and would like it to discontinue as it serves no beneficial purpose and obstructs the enjoyment of the residences in the entire community. With respect to respondent's reference to the due process clause in the fourteenth amendment, there is no recognized property right to make noise and the neighbors' statements regarding the Morrisseys' noise complaint would have no impact on respondent's due process rights. Also, the respondents are incorrect in their motion in that Complainants did not list neighbors as potential witnesses. From Complainants' responses to Written Discovery Request submitted 1-28-2009; "*At this time the Complainants are undecided on using witnesses other than Greg Zak of Noise solutions and Frank Gambino. It is our understanding that there is a separate discovery for expert witnesses. Potential witnesses would be village officials from both villages, both Police Chiefs, area neighbors and Lakewood Meadow Association officials.*"

*" State the full name and address of each person who witnessed or claims to have witnessed the occurrences (alleged noise pollution) alleged in the Complaint.*

**ANSWER:**

**Frank and Karen Gambino**

**23 S. Chestnut Ct**

**Hawthorn Woods, IL 60047**

*Lakewood Meadow is a subdivision with 60 homes encircled with a common area and a bike/walking path. All residents would potentially be witnesses, but at this time the complainants are undecided on using witness testimony to prove the noise violations other than the above."*

*2. To treat the introduction of any report prepared by Greg Zak in accordance with Pollution Control Board Rule 101.628(b) as a written statement without the availability of crossexamination.*

*The Complainants have consciously chosen not to call Mr. Zak as a witness on in support of their complaint. As such, this failure effectively denies the Respondents their rights of cross-examination of Mr. Zak's opinions in this matter.*

**Response to Motion 2.** Complainants will present Greg Zak as a witness at the hearing and he will be subjected to cross examination, thus making this motion moot. See complainants' witness list. There should be no surprise as to his appearance as a witness at the hearing as complainants repeatedly attempted to make Greg Zak available for deposition and respondents eventually decided not to take his deposition. See letters to respondent's attorney filed in the record dated 9-8-09 and 8-14-09. Complainants also listed Greg Zak as a witness in Responses to Written Discovery Request submitted 1-28-2009. While his report will be utilized at the hearing, his testimony will be elicited live at the hearing.

From Complainants' responses to Written Discovery Request submitted 1-28-2009; "*At this time the Complainants are undecided on using witnesses other than Greg Zak of Noise solutions and Frank Gambino. It is our understanding that there is a separate discovery for expert witnesses. Potential witnesses would be village officials from both villages, both Police Chiefs, area neighbors and Lakewood Meadow Association officials.*"

3. To exclude any evidence of the video tapes prepared by the Complainants as they are undated and/or inaccurately dated. Additionally the video tapes do not indicate the method of recording and that the audio was a true and accurate representation of the noise level in light of potential audio gain built into the recording device nor the source of the noise on the recordings. Therefore, the Complainants cannot establish an appropriate foundation for the introduction of said tapes.

**Response to Motion 3.** Joe Morrissey will lay the foundation in his explanation as to the videotapes which depict multiple instances of the noise made by respondent and the recorded decibel levels measured by the calibrated sound meter. Complainants have also entered personal logs of recordings, including time and date taken and subject of recording, as exhibits to the board and respondents to lay foundation for video exhibits.

4. To exclude any video/audio tapes intended to be introduced by the Complainants. Such audio/video tapes were obtained without the consent of the Respondents and thereby obtained in violation of the Illinois Eavesdropping Act. The Complainants knowingly and intentionally used an eavesdropping device, the audio/video recorder, knowing attempting to intercept and/or record noise including conversations occurring on the Respondents' premises. 720 ILCS 5/14-1 et.seq.; 720 ILCS 5/14-2(a)(1). (Westlaw 2010). Furthermore, according to said Act, any evidence obtained in violation of the act is not admissible in any trial or administrative proceeding. 720 ILCS 5/14-5 (Westlaw 2010); People v. Rodriguez, 313 Ill. 877, 886, 730 N.E.2d 1188, 1195-1196 (2ndDist. 2000).

**Response to Motion 4.** There will be no audio recordings of any conversations offered as evidence at the hearing. Therefore, the Illinois Eavesdropping Act has no application to this evidence. The Illinois Eavesdropping Act does not serve as a bar to the admission of the non-conversational noise evidence at this hearing. In addition, Geoff Pahios, Respondent, states in his sworn deposition taken July 22, 2009 that "He can document all he wants from his own property. I have no problem with that."

**Response to Respondents Witness List.** Complainants respectfully ask the Board to issue a motion to clarify and/or strike respondent's witness list as serving not to identify actual witnesses for hearing but to create subterfuge as to whom the respondents truly intend to call.

**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 12<sup>th</sup> day

of Jan, 2010.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_