

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

MATT GILL,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 16-68
	)	(Citizens Enforcement-Noise)
CHS, INC. - CARROLLTON FARMERS	)	
ELEVATOR	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

To: Carol Webb	Matt Gill
Hearing Officer	Complainant
Illinois Pollution Control Board	RR 1 Box 3
1021 North Grand Avenue East	Carrollton, IL 62016
P.O. Box 19274	Matt.Gill@illinois.gov
Springfield, Illinois 62794-9274	
<a href="mailto:Carol.Webb@illinois.gov">Carol.Webb@illinois.gov</a>	Jacob Varble
	30 North Main Street
	Carrollton, IL 62016

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board, Respondent, CHS Inc.'s Opposition to Complainant's Motion for Joinder.

CHS Inc.

By:           /s/ Jeffery A. Sepesi          

Dated: August 2, 2016

Jeffery A. Sepesi (ARDC No. 6230245)  
Law Office of Jeffery Sepesi  
8389 Seneca Pointe  
Eden Prairie, MN 55347  
Telephone: (952) 426-8279  
[j.sepesi@att.net](mailto:j.sepesi@att.net)

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**Respondent's Opposition to Complainant's Motion for Joinder**

Respondent, CHS INC., by and through its attorney, JEFFERY A. SEPESI, in response to Motion for Joinder filed by Complainant, MATT GILL, respectfully moves this Board to dismiss the Motion for Joinder as substantially incomplete and defective in form. In support, Respondent submits as follows:

**Background**

1. On December 15, 2015, Complainant, Matt Gill, filed a Citizens Enforcement Complaint against CHS Inc. ("CHS"). The Complaint alleges that CHS violated numeric noise provisions of the Board's noise rules at 35 Ill. Adm. Code Section 901.102(a) and 35 Ill. Adm. Code Section 901.102(b). The Complaint concerns sound emitted from aeration fans at CHS's old ground pile storage unit and new flat storage building which had an alleged impact on Complainant's nearby residence.

2. Specifically, the Complaint alleged that "the sound level significantly exceeds the octave band center frequency (hertz) at 500, 1000 and 2000 Hz ranges" (Complaint ¶ 6) and purportedly that "[s]ound pressure level measurements were made on three occasions between December 1, 2015 and December 10, 2015 during nighttime

hours and were up to 14 dB over the limit specified at 35 Ill. Adm. Code Section 901.102(b).”<sup>1</sup> (Complaint ¶ 7).

3. CHS uses the aeration fans only during/after the fall harvest season, and only as needed to maintain acceptable grain pile moisture and temperature conditions to inhibit grain deterioration. CHS stops operating the fans once the grain is shipped offsite.

4. CHS ran the old ground storage area’s four aeration fans throughout the 2015 harvest season. In 2015, CHS constructed a new flat storage building to replace the old ground storage area. It has ten aeration fans. CHS operated some of the new flat storage building’s fans during the latter part of 2015 harvest season.

5. Going forward, CHS does not plan to use the old ground storage area during normal harvest years. In the event a bumper harvest exceeds the storage capacity of the new storage building, the old storage pile would be used strictly in a “last in first out” grain inventory basis to minimize its use to the greatest extent possible.

6. At the April 11, 2016 status hearing, CHS reported that it had conducted an environmental sound study in February to assess sound level emissions from both the old ground storage area and the new flat storage building. CHS prepared a scope of work for the sound study that strictly adhered to the Board’s rules for sound measurement established by 35 Ill. Adm. Code Parts 900, 901 and 910, as well as ANSI S1.4-1983.

7. CHS received Mr. Gill’s advance permission to collect daytime and nighttime property-line-noise-source data at his property, but on the date of the planned sampling event, his wife informed CHS that they were withdrawing permission for access

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<sup>1</sup> Mr. Gill has not provided CHS with any reports, data sheets or any other documentation of the sound pressure level measurements supporting the above noise level claims. A motion filed concurrently with this Opposition seeks production of this material.

to the property. The basis for this withdrawal of permission was unclear.

8. As a result, CHS secured permission to collect property-line-noise-source data from a neighboring property located in close proximity to the CHS Carrollton facility (“Campbell property”). CHS believes sound pressure levels measured at the Campbell property are representative of those at the Gill property.<sup>2</sup>

9. CHS shared the results of the sound study with the Hearing Officer and Mr. Gill prior to the April 11, 2016 status hearing. On several occasions since then, CHS offered to address any questions or concerns that Mr. Gill might have regarding this study, but he has demurred.

10. At the April 11, 2016 status hearing, CHS stated that although the sound study demonstrated that operation of the new flat storage building’s fans did not cause sound levels at the Campbell property (and presumably at the Gill property) to exceed the Board’s numeric limits, CHS would consider and possibly implement engineering controls to further reduce sound emissions.

11. This summer, CHS unilaterally implemented the following engineering controls to reduce sound emissions: (1) installed aeration tubes throughout the new flat storage building; (2) erected sound abatement fences around the aeration fans on the north wall of the new flat storage building; and (3) created an earthen berm along the property line parallel to Illinois State Highway 108.

12. CHS performed another sound study in July 2016 to assess the effectiveness

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<sup>2</sup> The Campbell property is approximately 0.5 miles away from the CHS Carrollton facility, and south and directly across Illinois State Highway 108 (Main Street) from the Gill property. It is actually somewhat closer to the CHS Carrollton facility than the Gill property.

of these engineering measures. Once again, CHS sought Mr. Gill's permission for access to his property to make property-line sound measurements. Once again, Mr. Gill refused to provide access.

13. The July sound study, like February study, found that when the new flat storage building fans were operated, sound pressure level measurements at the Campbell property were less than the Board's numeric noise limits.

**The Motion for Joinder Fails to Demonstrate Reason to Join Jacob Varble**

14. Shortly after CHS informed Mr. Gill of its intent to conduct a second sound study, Mr. Gill filed his pro se motion to join a neighbor, Jacob Varble, in this present litigation.<sup>3</sup>

15. Mr. Varble resides at 30 North Main Street in Carrollton, on property located across Main Street from and north of the CHS facility.

16. Mr. Gill has no factual basis or legal basis for joining Mr. Varble as a co-Complainant as the Motion provides no specific allegation that the Board's numeric noise standards have been violated at Mr. Varble's property.

17. The Motion merely hypothesizes that "[a]ny noise abatement undertaken by the Respondent to lower noise level to legal levels approximately ½ mile away may not result in acceptable noise levels at residential property directly adjacent to the Respondent, e.g., Jake Varble's residence." Motion ¶ 3 (emphasis added).

18. Unlike Mr. Gill's original Complaint, which at least alleged violations of specific Board numeric sound limits and purported to present "evidence" of the date and

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<sup>3</sup> The Motion states that Mr. Gill and Mr. Varble are moving to join as "respondents" in this matter. CHS assumes that this is in error, and Mr. Gill is moving to join Mr. Varble as an additional Complainant.

extent of such violations, the Motion is completely and utterly silent regarding sound issues at Mr. Varble's property.

19. CHS has managed operations at the Carrollton facility since November 2014. During this period, Mr. Varble never complained to CHS about noise.<sup>4</sup>

20. Mr. Gill cannot merely "me too" Mr. Varble into this matter. This Board has made it crystal clear that with respect to violations of the numeric noise limits, any violation is specific and unique to each noise recipient. See Robert F. Kassela, Jr. and Kellie R. Kasella v. TNT Logistics North America Inc., PCB 06-01.

21. In Kassela, this Board addressed six separate Citizen noise complaints that alleged violations of the Board's numeric noise limits from the same source. In rejecting a claim that these complaints were duplicative, this Board stated

"in attempting to demonstrate a numeric noise violation, the sound measurements must be taken *within the receiving land*. See, e.g., 35 Ill. Adm. Code 901.102(a) ("emission of sound . . . when measured at any point within such receiving Class A land"). Accordingly, each of the six citizen complaints against TNT is alleging numeric noise violations at a *different* property. Thus, even if a violation of a numeric standard is proven at one receiving property, there may not be an exceedence of that standard at another receiving property. The complaints against TNT are therefore not duplicative of each other." (emphasis in italics in original; underlined emphasis added.)

Robert F. Kassela, Jr. and Kellie R. Kasella v. TNT Logistics North America Inc., PCB 06-01, slip op. at 3 (September 1, 2005). See also John and Linda Maracic v. TNT Logistics North America Inc., PCB 05-212; Vincent and Jennifer Neri v. TNT Logistics North America Inc., PCB 05-213; Wayne Haser v. TNT Logistics North America Inc., PCB 05-216; Ken Blouin v. TNT Logistics North America Inc., PCB 05-217; Kenneth E. Medema v. TNT Logistics North America Inc., PCB 05-220.

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<sup>4</sup> Mr. Varble's house is for sale, having been on the market since May 9, 2016. Recently, Mr. Varble complained to CHS regarding dust and asked CHS to purchase his home. CHS declined. At that time, Mr. Varble did not complain about noise.

22. Further, the Board has held that, as in this instant case, where violations of a numeric noise standard are alleged, sound measurements of the alleged property-line-noise-source are required and must be taken with “strict adherence to applicable measurement procedures.” Charter Hall Homeowner’s Association v. Overland Transportation System, Inc., PCB 98-81, slip op. at 19 (Oct. 1, 1998) (emphasis added); *see also* 35 Ill. Adm. Code 900.103(b), 910.105. Furthermore, it “is the complainant in an enforcement action who has the burden of proof.” Id.

23. There is no hint that Mr. Varble or anyone else has taken any sound measurements at Mr. Varble’s property.

**Complainant’s Basis for Joinder Are Legally Insufficient**

24. Gill asserts, without explanation or proof, that joinder is proper for either of two reasons. Motion ¶¶ 5-6. He is wrong.

25. Joinder is allowed if “a complete determination of a controversy cannot be had without the presence of the person who is not already a party to the proceeding.” 35 Ill. Adm. Code 101.403(a)(1). Mr. Gill claims “Here, the presence of Jake Varble would certainly results in a ‘complete determination’ of lawful sound levels, pursuant to 35 Ill. Adm. Code 101.403(a)(1)” Motion ¶ 5. Why Mr. Gill believes Mr. Varble’s participation would help is unclear. As noted, there are no apparent sound level measurements at Mr. Varble’s property. Moreover, Mr. Gill has failed to share his own sound measurements and has prevented CHS from obtaining their own measurement at his property. Therefore, his supposed desire for a “complete determination of lawful sound levels” is at odds with his own actions.

26. Further, as the TNT Logistics cases indicate, when numeric noise standard

violations are alleged, injury is specific and must be proven at each receiving location, no matter that the alleged noise source is the same. Mr. Gill and Mr. Varble's claims are independent of each other, even if both are directed at CHS. Whether a violation of the numeric noise limits exists at Mr. Gill's property does not hinge on the sound levels at Mr. Varble's and vice versa. A "complete determination" of their respective controversies can in fact be had "without the presence of the other."

27. Joinder is also allowed where "[t]he person who is not already a party to the proceeding has an interest that the Board's order may affect." 35 Ill. Adm. Code 101.403(a)(2). Mr. Gill's motion claims "Jake Varble has 'an interest' that the Board's order may affect." Motion ¶ 6 (emphasis added). One is left to speculate what that interest may be, however, because the Motion fails to articulate any concerns of Mr. Varble, nor provide any inkling of evidence showing a violation of the numeric noise standards at Mr. Varble's property.

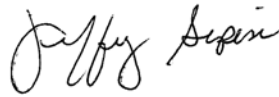
28. There is no basis here for joining Mr. Varble as an additional complainant to this matter. If he can allege and believes that he can ultimately prove specific violations of the numeric noise standards at his property, Mr. Varble is certainly free to file his own Citizens Complaint. As with the TNT Logistics cases, Mr. Gill and Mr. Varble's cases would be distinct, but the hearing officer would be free "to manage these cases so as to allow for the most efficient use of the resources of the Board and the parties." Kasella, PCB 06-01, slip op. at 3 (September 1, 2005).

**WHEREFORE**, Respondent respectfully moves this Board for an order that denies the Motion for Joinder.



Respectfully submitted,

CHS INC., Respondent

A handwritten signature in cursive script, appearing to read "Jeffery Sepesi".

By: \_\_\_\_\_  
Jeffery A. Sepesi  
One of its Attorneys

Dated: August 2, 2016

Jeffery A. Sepesi (ARDC No. 6230245)  
Law Office of Jeffery Sepesi  
8389 Seneca Pointe  
Eden Prairie, MN 55347  
Telephone: (952) 426-8279  
[j.sepesi@att.net](mailto:j.sepesi@att.net)

**CERTIFICATE OF SERVICE**

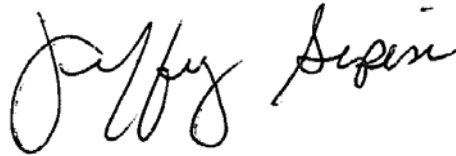
The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Respondent, CHS Inc.'s Opposition to Complainant's Motion for Joinder was filed electronically on August 1, 2016 and that true copies were transmitted by electronic mail on August 2, 2016 to:

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, Illinois 62794-9274  
Carol.Webb@illinois.gov

Matt Gill  
Complainant  
RR 1 Box 3  
Carrollton, IL 62016  
Matt.Gill@illinois.gov

and by U.S. Mail, first class postage attached:

Jacob Varble  
30 North Main Street  
Carrollton, IL 62016

A handwritten signature in black ink, reading "Jeffery Sepesi". The signature is written in a cursive style with a large, looped initial "J".

Jeffery A. Sepesi (ARDC No. 6230245)  
Law Office of Jeffery Sepesi  
8389 Seneca Pointe  
Eden Prairie, MN 55347  
Telephone: (952) 426-8279  
[j.sepesi@att.net](mailto:j.sepesi@att.net)