

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROBERT F. KASSELLA, JR., and )  
KELLIE R. KASSELLA, )  
Complainant, )  
v. ) PCB No. 06-001  
) (Enforcement Noise)  
TNT LOGISTICS )  
NORTH AMERICA, INC., )  
Respondent. )

NOTICE OF FILING

TO:  
Ms. Dorothy M. Gunn Bradley P. Halloran, Esq. Edward W. Dwyer  
Clerk of the Board Hearing Officer Thomas G. Safley  
Illinois Pollution Control Illinois Pollution Control HODGE DWYER  
Board Board ZEMAN  
100 West Randolph St. 100 West Randolph St. 3150 Roland Ave.  
Suite 11-500 Suite 11-500 P.O. Box 5776  
Chicago, IL 60601 Chicago, IL 60601 Springfield, IL 62705

PLEASE TAKE NOTICE that on February 10, 2006, NOLAN LAW OFFICE will file with the Office of the Clerk of the Illinois Pollution Control Board the attached **Motion to Expedite Rule on Motion for Leave to Amend Complaint Instantly**, copies of which are attached hereto and hereby served upon you.

  
\_\_\_\_\_  
Attorney for Complainant

Timothy M. Nolan, Mary A. Sullivan  
NOLAN LAW OFFICE  
Attorneys for Defendants  
53 West Jackson Blvd., Suite 1137  
Chicago, IL 60604-3702  
(312) 322-1100; Fax (312) 322-1106

PROOF OF SERVICE

The undersigned attorney certifies that this notice is served by mailing a copy to each person to whom it is directed, by placing a copy of said document in an envelope properly addressed to each person above with postage prepaid and depositing same in the U.S. Mail at 53 W. Jackson Blvd., Chicago, Illinois on February 10, 2006.

  
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Complainant,	)	
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v.	)	PCB No. 06-001
	)	(Enforcement Noise)
TNT LOGISTICS	)	
NORTH AMERICA, INC.,	)	
	)	
Respondent.	)	

**MOTION FOR EXPEDITED RULING ON MOTION  
FOR LEAVE TO AMEND COMPLAINT, INSTANTER**

NOW COME the Complainants, ROBERT F. KASSELLA, JR. and KELLIE R. KASSELLA., by and through their attorneys, NOLAN LAW OFFICE, and pursuant to 35 Ill. Adm. Code Section 101.512, move for an expedited ruling on Complainants' Motion for Leave to Amend his Complaint *instanter*. In support hereof, Complainants state as follows:

On July 5, 2005, Complainants filed their Complaint with the Illinois Pollution Control Board alleging violations of 35 Ill. Adm. Code 901.102, 901.103, 901.104 and 901.106, seeking relief against Respondent for noise pollution emanating and resulting from Respondent's business.

Complainants sought, received and relied upon guidance of IPCB in drafting and filing their Complaint and were dissuaded from retaining counsel, having been advised that IPCB would fulfill that role.

Complainants were not represented by counsel at the time of the filing of the Complaint which alleges violation of Illinois Administrative Code 901.102, 901.103, 901.104 and 901.106 noise measurement standards requiring expenditures for noise analysis.

On October 19, 2005, the NOLAN LAW OFFICE filed its Appearance on behalf of Complainants.

On December 5, 2005, Complainants' counsel filed its Motion for Leave to Amend Complaint, *Instantly*, or in the Alternative to Set a Date Certain for Hearing on Motion, clearly stating the grounds upon which the motion was made and containing a concise statement of the position or relief sought.

Complainants, by and through their attorneys, seek leave to amend their Complaint by pleading a violation of 35 Ill. Adm. Code 900.102, availing themselves of their right to all available remedies and in particular, a broader evidentiary standard not contingent on costly expenditures as is specifically provided under 35 Ill. Adm. 951.104 as follows:

(Agency Note: 35 Ill. Adm. Code 900.102 prohibits noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, and 35 Ill. Adm. Code 900.102 is not dependent upon utilization of specific numerical limits expressed in terms of decibels. Thus, applicable law does not necessarily require that sound pressure level measurements be obtained to determine whether a noise source is in compliance with 35 Ill. Adm. Code 900.102. In the event sound pressure level measurements are obtained, such measurements shall be in accordance with this report. However, the contents of this report shall not be interpreted so as to require sound pressure level measurements to determine whether a noise source is in compliance with 35 Ill. Adm. Code 900.102.)

On December 20, 2005, Respondents filed their Response to the Motion and on December 27, 2005, Complainants filed their Reply.

No date was scheduled for hearing of Complainants' Motion and same was not addressed until the scheduled telephone status hearing of February 9, 2005 with Hearing Officer Bradley Halloran. At that time, Complainants were advised not only that no ruling from the Hearing Officer would be forthcoming, notwithstanding 35 Ill. Adm.

Code 101.502 and 35 Ill Adm. Code 101.610(n), but no date certain would even be set for hearing.

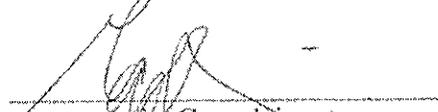
Complainants' Motion is not dispositive of this matter and does not seek dismissal, summary judgment or the disposal of any issue, claim or defense in this case. Neither does it seek to add parties under Section 103.206, nor are any of the subparts of Section 103.206 applicable herein.

Complainants have complied with the relevant provisions of the Illinois Administrative Code and the continuing delay in the execution of these provisions causes undue prejudice, expense and continuing injury to Complainants, while impeding his rights to remedy as provided by law.

WHEREFORE, Complainants, ROBERT F. KASSELLA, JR. and KELLIE R. KASSELLA, pray for entry of an Order granting leave to amend their Complaint *instanter*.

Respectfully submitted,

NOLAN LAW OFFICE



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KELLIE R. KASSELLA

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