

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAR 19 2007
STATE OF ILLINOIS
Pollution Control Board

YORK HIGH NEIGHBORHOOD
COMMITTEE (a voluntary organization)
Janet and Fred Hodge, Patricia and David
Bennett, Sheila and Mike Trant, Joe Vosicky,
Jean and Peter Conroy, Frank Soldano,
Joseph Reamer, Elizabeth and Charles
Laliberte

Complainants

And

ELMHURST PUBLIC SCHOOLS,
DISTRICT 205

Respondents

Case PCB 05-93

(Citizen's Enforcement-Noise)

**NOTICE OF FILING AND REQUEST FOR RELIEF FROM
HEARING REQUIREMENT**

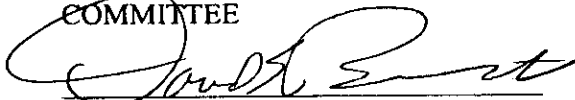
The Complainants and Respondent in this matter hereby file the attached proposed Stipulation and Settlement Agreement and respectfully request relief from the hearing requirement of Section 31(c)(1) of the Environmental Protection Act, 415 ILCS 5/31(c)(1), and that the Pollution Control Board accept the attached Stipulation and Settlement Agreement.

Respectfully submitted,

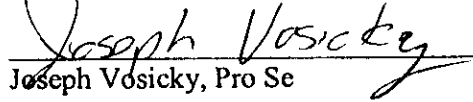
[SIGNATURE PAGE FOLLOWS]

Dated: February 27, 2007

YORK HIGH NEIGHBORHOOD
COMMITTEE



David E. Bennett, Pro Se

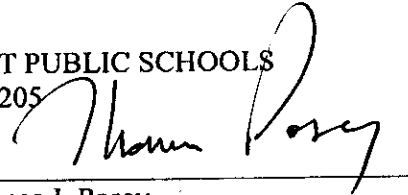


Joseph Vosicky, Pro Se

Patricia Bennett
Joseph Reamer
Frank Soldano
Sheila Trant
Mike Trant
Janet Hodge
Fred Hodge
Jean Conroy
Peter Conroy
Elizabeth Laliberte
Charles Laliberte

ELMHURST PUBLIC SCHOOLS
DISTRICT 205

By: _____



Thomas J. Posey
Franczek Sullivan PC
300 South Wacker Drive, Suite 3400
Chicago, IL 60606-6785

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DISTRICT 205

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STIPULATION AND SETTLEMENT AGREEMENT

This Agreement entered into between the Complainants, York High Neighborhood Committee, Janet and Fred Hodge, Patricia and David Bennett, Sheila and Mike Trant, Joe Vosicky, Jean and Peter Conroy, Frank Soldano, Joseph Reamer, Elizabeth and Charles Laliberte (collectively "Complainants"), and the Respondent, Elmhurst Public Schools, District 205 (the "District"), in order to compromise, settle and resolve all disputes and differences relating to the Complainants' Formal Complaint against the District that was filed before the Illinois Pollution Control Board as Case No. PCB 2005-093 (the "Complaint");

WHEREAS, the District owns and operates the York Community High School ("York") located at 355 W. St. Charles Road, Elmhurst, IL 60126;

WHEREAS, Complainants claim that the chiller and cooling tower components of the air conditioning system (the "Chillers") located on the roof of the academic building on the West side of the York property emits sounds that exceed the applicable limits established by the Illinois Environmental Protection Agency;

WHEREAS, the District has installed new and different fan blades and motors in the Chillers in an attempt to resolve these issues; and

WHEREAS, the parties have agreed to compromise and settle any and all disputes or causes of action based in whole or in part upon events occurring to the present date related to that claim, including, but not limited to, all allegations raised in the Complaint, in order to avoid the potential expense and inconvenience of further proceedings;

WHEREFORE, in consideration of the covenants contained herein, the Complainants and the District agree as follows:

1. **Operation of the Chillers.** The District will operate the Chillers at York as follows:

- a. The District is currently operating the Chillers in a manner that conforms with the Daytime Limits for noise emissions outlined in 35 Ill. Admin. Code § 900.101, *et seq.* The District will continue to operate the Chillers in compliance with those provisions of the Code;
- b. Subject to the exceptions contained in Paragraphs (c) and (d) below, the District will not operate the Chillers between the hours of Ten O'clock p.m. (10:00 p.m.) and Seven O'clock a.m. (7:00 a.m.) (the "Prohibited Hours").
- c. In the event that the District implements modifications to the Chillers and/or the area surrounding the Chillers that result in the Chillers coming into compliance with the Nighttime Limits for noise emissions outlined in 35 Ill. Admin. Code § 900.101, *et seq.*, it is understood that this

Agreement will no longer limit the District's right to operate the Chillers during the Prohibited Hours; and

d. In the absence of such modifications, the District shall be permitted to operate the Chillers during the Prohibited Hours:

- (1) Where doing so is necessitated by the occurrence of a special event outside of the regularly scheduled academic day at York relating to the education of District 205's students (including graduation ceremonies and District 205 student athletic and social events) so long as the District provides Complainants' designated representative with at least seventy-two (72) hours notice that such operation will occur. It is understood by the parties that such events are expected to occur infrequently; and
- (2) Where doing so is necessary in response to an emergency situation in order to protect the health and safety of the occupants of York High School and/or to preserve the physical integrity of the York facility where no feasible alternative to nighttime operation is reasonably available. In the event of such operation, the District will provide notice to Complainants' designated representative as soon as is practicable, and will cease that operation upon the earlier of the emergency subsiding or a feasible alternative being implemented. It is understood that such emergency situations shall not last more than forty-eight (48) hours except in cases where a state of emergency has been

declared by a public body. In the event that an emergency situation requiring operation of the Chillers does last longer than forty-eight (48) hours and a state of emergency has not been declared, the District will provide notice to Complainants' designated representative as to the need for continued operation as soon as is practicable, and shall cease such operation as soon as reasonably possible.

2. **Time Records of Operation.** The District shall provide Complainants with copies of the time records of operation that are automatically generated by the York facility's computerized climate control system that record the dates and hours of operation of the Chillers in a format that clearly indicates the dates and times of the system's operation. These time records of operation will be provided to Complainants' designated representative within the first five days of the calendar month subsequent to the Effective Date of this Agreement.

3. **Designated Representatives.** The Complainants' designated representative for the purposes of this Agreement is Fred Hodge, 435 Elm Park Avenue, Elmhurst, Illinois 60126, (630) 279-9643, fnh435@aol.com. The Complainants may change the designated representative by written notice to the District. The District's designated representative for the purposes of this Agreement is Dr. Lynn Krizic, Superintendent, 130 W. Madison Street, Elmhurst, Illinois 60126, (630) 617-2305.

4. **Enforcement of Agreement.** This Agreement shall be filed with the Illinois Pollution Control Board as soon as practicable after execution. In the event that Complainants believe that a breach of this Agreement has occurred, Complainants will notify the District of the alleged breach in writing, specifying the nature of the alleged breach and the date and time that it

allegedly occurred. The District will respond to Complainants' allegations in writing within three (3) business days and will subsequently meet with Complainants at a mutually agreeable date and time to discuss Complainants' allegations. It is understood that if these written exchanges and meetings do not suffice to resolve any dispute surrounding the alleged breach, Complainants may pursue an appropriate action to enforce the Agreement in the courts of the State of Illinois.

5. **Warranty/Covenant Not to Assert Claims.** Complainants warrant that, other than the Complaint, they have no claims pending against the District with any court, governmental or administrative agency. Nothing in this Agreement shall prevent the Complainants from reinstituting a proper proceeding, or otherwise seeking relief from the Illinois Pollution Control Board or the courts, in the event that in the future York's noise emissions exceed Illinois Environmental Protection Agency limits with respect to the Chillers that were the subject of this dispute.

6. **Term of Agreement.** This Agreement shall remain in effect for a period of three (3) years after the Effective Date (the "Initial Term"). Following the expiration of the Initial Term, the Agreement will automatically renew for a period of one (1) year (the "Renewal Period") unless one of the parties gives the other party's designated representative written notice of intent not to renew at least ninety (90) days before the expiration of the Initial Term. If the Agreement enters into a Renewal Period, it will automatically renew annually for a period of one (1) year at the end of each Renewal Period, and shall continue to renew for successive one (1) year Renewal Periods, unless one of the parties gives the other party's designated representative written notice of its intent not to renew at least ninety (90) days before the expiration of the then applicable Renewal Period.

7. **No Admission.** The parties mutually understand and agree that this Agreement does not constitute any admission of fault, responsibility or liability on the part of the District. Further, this Agreement is entered into solely for the purpose of compromise and in an effort to resolve the Complaint. This Agreement shall not be admissible in any proceeding as evidence of any violation of any law, statute or regulation, except as necessary to enforce the terms of this Agreement.

8. **Entire Agreement.** The terms of this Agreement constitute the entire Agreement between the parties, and this Agreement supersedes any prior agreement executed between the parties to the extent that the prior agreement is inconsistent with this Agreement.

9. **Severability.** The parties acknowledge and agree that the provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of other provisions herein. If any provision of this Agreement is deemed unenforceable for any reason whatsoever, such provision shall be appropriately limited and given effect to the extent that it may be enforceable, and all other provisions of this Agreement shall remain fully enforceable.

10. **Governing Law.** The parties agree and acknowledge that this Agreement is to be executed in the State of Illinois and shall be interpreted, construed and enforced under the laws of the State of Illinois.

11. **Counterparts.** This Agreement may be executed in counterparts by the parties.

Charles Laliberte

Charles Laliberte

Dated: 2/21/07

Elizabeth Laliberte

Elizabeth Laliberte

Dated: 2.21.07

Joseph Reamer

Joseph Reamer

Dated: 2-21-07

Frank Soldano

Frank Soldano

Dated: 2-23-07

Mike Trant

Mike Trant

Dated: 2/21/07

Sheila Trant

Sheila Trant

Dated: 2-21-07

Joseph F. Vosicky

Joseph F. Vosicky

Dated: 2-21-07