

ILLINOIS POLLUTION CONTROL BOARD
April 19, 2007

YORK HIGH NEIGHBORHOOD)
COMMITTEE (a voluntary organization),)
JANET HODGE, FRED HODGE, PATRICIA)
BENNETT, DAVID BENNETT, SHEILA)
TRANT, MIKE TRANT, JOE VOSICKY,)
JEAN CONROY, PETER CONROY, FRANK)
SOLDANO, JOSEPH REAMER,)
ELIZABETH LALIBERTE, and CHARLES)
LALIBERTE,)
)
)
Complainants,)
)
v.) PCB 05-93
) (Enforcement - Noise)
ELMHURST PUBLIC SCHOOLS, DISTRICT)
205,)
)
)
Respondent.)

ORDER OF THE BOARD (by G.T. Girard):

On November 15, 2004, York High Neighborhood Committee, Janet Hodge, Fred Hodge, Patricia Bennet, David Bennet, Sheila Trant, Mike Trant, Joe Vosicky, Jean Conroy, Peter Conroy, Frank Soldano, Joseph Reamer, Elizabeth Laliberte, and Charles Laliberte (complainants) filed a complaint against Elmhurst Public Schools, District 205 (respondent). The complaint concerns alleged sound emissions from respondent's school, York Community High School, at 355 W. St. Charles Road in Elmhurst, DuPage County. The parties now seek to settle. For the reasons below, the Board declines to accept the parties' stipulation and proposed settlement. The Board gives the parties until June 4, 2007, to file an amended stipulation and proposed settlement addressing the deficiencies identified in this order.

Section 31(d)(1) of the Environmental Protection Act (Act) allows any person to file a complaint with the Board. *See* 415 ILCS 5/31(d)(2) (2004); 35 Ill. Adm. Code 103.212. In this case, complainants allege that respondent violated certain noise provisions of the Act and the Board's regulations. According to the complaint, excessive noise is caused by the operation of air conditioner chillers and ventilation fans located near the northwest corner of the roof of York Community High School. Complaint at 3.

Under Section 31(d)(2) of the Act:

Whenever a complaint has been filed by a person other than the Attorney General or State's Attorney, the parties may file with the Board a stipulation and proposed settlement accompanied by a request for relief from the hearing requirement of

Section 31(c)(1) of the Act [415 ILCS 5/31(c)(1) (2004)]. Unless the Board, in its discretion, concludes that a hearing should be held, no hearing on the stipulation and proposal for settlement is required. 415 ILCS 5/31(d)(2) (2004); *see also* 35 Ill. Adm. Code 103.301.

On February 27, 2007, the Board hearing officer conducted a hearing at which the parties discussed that they had agreed to the terms of a stipulation and proposal for settlement and that they intended to soon file the document with the Board. *See* Tr. at 4-5. On March 19, 2007, the parties filed the stipulation and proposed settlement, accompanied by a motion for relief from the hearing requirement of Section 31(c)(1) of the Act. The Board denies the motion for relief from the hearing requirement as moot because, as noted, the parties went to hearing.

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. *See* 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of respondent's operations. In addition, Section 103.302(c) requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2004)), which bears on the reasonableness of the circumstances surrounding the alleged violations. *See* 35 Ill. Adm. Code 103.302(c). Specifically, Section 33(c) requires that the Board consider:

all the facts and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved, including, but not limited to:

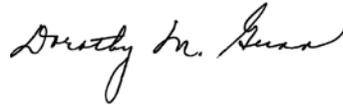
- i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- ii) the social and economic value of the pollution source;
- iii) the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
- iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- v) any subsequent compliance. 415 ILCS 5/33(c) (2004).

The Board finds that the parties' stipulation and proposed settlement fails to address the Section 33(c) factors. Nor was any testimony or other evidence introduced at hearing pertaining to the factors. The Board accordingly holds that the stipulation and proposed settlement is deficient under the Board's procedural rules and therefore declines to accept it. *See* 35 Ill. Adm. Code 103.302, 103.306(a).

The parties have until June 4, 2007, to file an amended stipulation and proposed settlement with the Board, addressing the deficiencies identified above. Failure to do so may result in the dismissal of this case.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 19, 2007, by a vote of 3-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board