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JUN 18 2007

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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) PCB 2005-093
)
Complainants,)
)
v.)
)
ELMHURST PUBLIC SCHOOLS,)
DISTRICT 205,)
)
Respondent.)

AGREED MOTION TO SUPPLEMENT SETTLEMENT AGREEMENT

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 Respondent, Elmhurst Public Schools, District 205 (the "District"), for their Agreed Motion To Supplement their previously filed Settlement Agreement and Stipulation state:

1. On November 12, 2004, Complainants filed a Formal Complaint with the Illinois Pollution Control Board (the "Board") alleging that the District had violated the limits for noise emissions established by the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* (the "Act").
2. On February 23, 2007, the parties entered into a Stipulation and Settlement Agreement (the "Agreement") in order to settle and resolve their disputes and differences relating to the Formal Complaint.

3. On March 19, 2007, the parties filed the Agreement with the Board and requested relief from the hearing requirement of Section 31(c)(1) of the Act.

4. On April 19, 2007, the Board issued an Order indicating that it rejected the Agreement on the grounds that it did not sufficiently address the factual stipulations outlined in Section 33(c) of the Act (the "Section 33(c) factors"). The Order further provided that the parties' deadline to file an amended stipulation and proposed settlement was June 4, 2007.

5. The parties' requested further guidance from the Board as to the format and substance of the factual stipulations required to obtain the Board's approval of the Agreement. On June 1, 2007, Kathleen Crowley, Senior Board Attorney, advised the District's counsel, Thomas Posey, as to the general format that the parties' amended factual stipulations must be presented in and the general substantive information they must contain in order to obtain the Board's approval, and also directed Mr. Posey to prior decisions by the Board addressing the Section 33(c) factors.

6. On June 4, 2007, the parties requested an extension of time until June 18, 2007 to submit an addendum to the Agreement containing stipulations addressing the Section 33(c) factors. The Board granted the parties' motion.

7. On June 18, 2007, the parties filed contemporaneously with this Motion their Supplemental Stipulations Regarding Settlement Agreement (attached hereto as Exhibit A) which contain stipulations addressing the Section 33(c) factors.

8. The parties seek to compromise, settle and resolve all disputes and differences relating to Complainants' Formal Complaint against the District without the expense and inconvenience of further litigation.

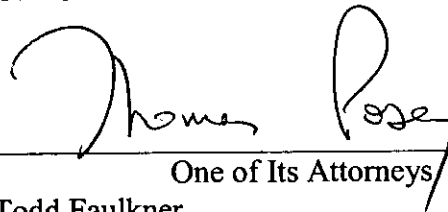
9. The Agreement does not negatively impact the public and will result in compliance with the applicable limits for noise emissions.

WHEREFORE, Complainants and Respondent respectfully request that the Board grant their Agreed Motion to Supplement their February 27, 2007 Stipulation and Settlement Agreement. In the event that the Board does not grant the parties' motion, they request a hearing before the Board to present whatever specific additional stipulations that the Board deems necessary to satisfy the Section 33(c) factors. Complainants also request that the Board schedule further proceedings in this case in the event that it does not approve the Settlement.

Respectfully submitted,

ELMHURST PUBLIC SCHOOLS DISTRICT 205

By: _____



One of Its Attorneys

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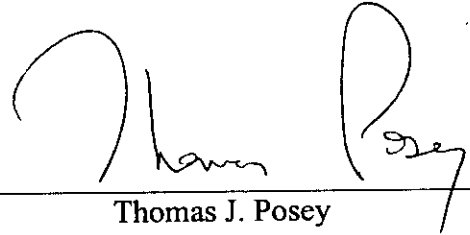
Dated: June 18, 2007

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he caused a copy of the foregoing **AGREED MOTION TO SUPPLEMENT SETTLEMENT AGREEMENT** to be served upon the parties listed below by facsimile and by depositing a true and correct copy of same, postage prepaid, in the U.S. Mail chute at 300 South Wacker Drive, Chicago, Illinois, prior to 5:00 p.m. on this 18th day of June, 2007:

David E. Bennett
Vedder, Price, Kaufman & Kammholz
222 North LaSalle Street
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Facsimile: 312-609-5005

Joseph F. Vosicky, Jr.
Law Offices of Joseph F. Vosicky
53 West Jackson Boulevard
Suite 1025
Chicago, IL 60604
Facsimile: 312-939-4714



Thomas J. Posey

Exhibit A

ILLINOIS POLLUTION CONTROL BOARD

YORK HIGH NEIGHBORHOOD
COMMITTEE, et al.

Complainants,

v.

ELMHURST PUBLIC SCHOOLS,
DISTRICT 205,

Respondent

PCB No. 05-93
(Citizens Enforcement – Noise)

SUPPLEMENTAL STIPULATIONS REGARDING SETTLEMENT AGREEMENT

Complainants, Janet Hodge, Fred Hodge, Jean Conroy, Peter Conroy, Elizabeth Laliberte, Charles Laliberte, David E. Bennett, Patricia Bennett, Joseph Reamer, Frank Soldano, Sheila Trant, Mike Trant, Joseph Vosicky and Respondent, Elmhurst Public Schools, District 205, submit these supplemental stipulations in connection with the Settlement Agreement they entered into on February 23, 2007. The stipulations and assertions herein are submitted in response to the Pollution Control Board's April 19, 2007 Order indicating that the parties' Agreement failed to address the reasonableness of the circumstances surrounding Complainant's alleged violations and the potential impact on the public resulting from its alleged noncompliance with the Illinois Pollution Control Act.

The parties hereby Stipulate to the following facts for purposes of supporting the Settlement Agreement only and for no other purpose:

Section 33(c) of the Act, 415 ILCS 5/33(c)(2004), provides:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with, the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. 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;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties state:

1. The Character and Degree of Injury to or Interference With the Protection of the Health, General Welfare and Physical Property of the People.

Complainants alleged that the chiller and cooling tower components of the air conditioning system (the “Chillers”) at York High School, 355 W. St. Charles Road, Elmhurst, IL 60126 (“York”), a public educational institution operated by Respondent, produced noise emissions that exceeded both the Daytime and Nighttime Limits established by Illinois Pollution Control Board Regulations, Sections 900.102, 901.102a, 901.102b and 901.106 (35 Ill. Admin. Code, Subtitle H, Chapter I). Specifically, Claimants allege their evidence would show that the noise emissions emanating from the Chillers prior to the equipment modifications that Respondent implemented (described in Paragraph 4 below) were as follows:

Octave Band <u>Frequency in Hz</u>	Actual Sound ¹ <u>Level in dB</u>	EPA Reg. ² <u>Daytime Limit</u>	EPA Reg. ³ <u>Nighttime Limit</u>
500	54	51	40
1000	50	45	35
2000	43	39	30
4000	38	34	25

Complainants, all neighbors who live in close proximity to York, further alleged that these noise emissions constituted a nuisance and interfered with their use and enjoyment of their respective properties, and in some circumstances, with their health. Complainants would testify to this effect and offer testimony of other persons who live near the school to the same effect.

Respondent denies that the emissions violated any applicable Regulations.

2. The Social and Economic Value of the Pollution Source.

The parties agree that York, a public educational institution, has social and economic value to the city of Elmhurst. The parties further agree that the air conditioning system at York provides a social value by improving its students' academic experience.

3. 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.

The air conditioning system is suitable to the general area in which it is located – on the grounds of a public educational system. Claimants allege that the specific location, on the north end of the roof of the academic building in close proximity to their residences, is not a suitable area for the Chillers that emit the noise in question, and that the Chillers should have been, and

¹ Source: Report of Acoustic Associates, Inc. dated October 28, 2004, prepared at Complainants' request, (Bates No. C0408)

² EPA Regulations § 901.102a (EPA Website)

³ EPA Regulations § 901.102b (EPA Website)

could be, located on another portion of the school property, which would not emit noise that exceeds the applicable Limits.

Respondent contends that the roof of York is a suitable location for the Chillers, and further contends that the Chillers cannot feasibly be relocated elsewhere on the property.

4. The Technical Practicability and Economic Reasonableness of Reducing or Eliminating the Emissions, Discharges or Deposits Resulting from Such Pollution Source.

a. Compliance with Daytime Limits for Noise Emissions

Subsequent to the commencement of this case, Respondent installed new and different blades and motors in the Chillers that resulted in operation that conforms with the Daytime Limits for noise emissions. This was a technically practicable and economically reasonable method to reduce the noise emissions to comply with the Daytime Limits.

b. Compliance with Nighttime Limits for Noise Emissions

Claimants contend that it would be technically practicable and economically reasonable to modify or relocate the Chillers so that the noise they emit would fall within the Nighttime Limits for noise emissions. Respondent contends that it is not technically practicable or economically reasonable to relocate the Chillers or to modify them beyond the modifications already implemented.

Accordingly, Respondent agreed in the Settlement Agreement that it 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 hours during which Nighttime Limits apply) except in certain limited circumstances as described in paragraph 1(d) of the Settlement Agreement.

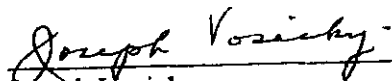
5. Any Subsequent Compliance.

As summarized in Paragraph 4 above, Respondent has installed new fan blades and motors in the Chillers which have brought them into substantial compliance with the Daytime

Limits, and has voluntarily ceased operating the Chillers between 10:00 p.m. and 7:00 a.m., thereby ensuring compliance with the Nighttime Limits (as no sound is emitted by the Chillers during those hours).

The parties submit that the Settlement Agreement is a reasonable compromise of their respective positions that does not negatively impact the public and will result in compliance with the applicable limits for noise emissions. Under the Agreement, Claimants retain all rights to institute another proceeding if Respondent does not remain in compliance.

Claimants



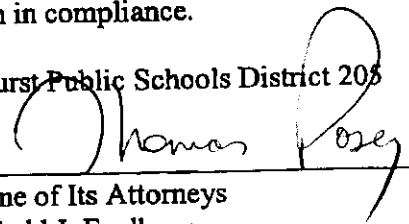
Joseph Vosicky

On Behalf of Himself and the other
Claimants

Dated: June 18, 2007

Elmhurst Public Schools District 208

By:



One of Its Attorneys
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Dated: June 18, 2007