

JUN 18 2007

STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

YORK HIGH NEIGHBORHOOD  
COMMITTEE, et al.

Complainants,

v.

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

ELMHURST PUBLIC SCHOOLS,  
DISTRICT 205,

Respondent

**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:

<u>Octave Band Frequency in Hz</u>	<u>Actual Sound<sup>1</sup> Level in dB</u>	<u>EPA Reg.<sup>2</sup> Daytime Limit</u>	<u>EPA Reg<sup>3</sup> 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

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

<sup>2</sup> EPA Regulations § 901.102a (EPA Website)

<sup>3</sup> 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.

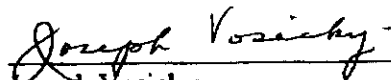
5. Any Subsequent Compliance.

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 205

By:   
\_\_\_\_\_

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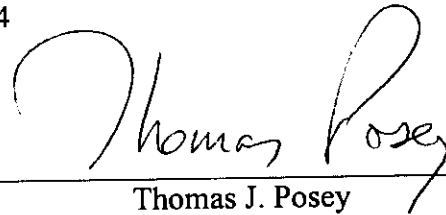
Dated: June 18, 2007

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that he caused a copy of the foregoing **SUPPLEMENTAL STIPULATIONS REGARDING 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:

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Thomas J. Posey