

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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CLERK'S OFFICE

AUG 29 2007

PCB No. 2008-13

Citizen's Complaint
STATE OF ILLINOIS
Pollution Control Board

Chad A. Gifford,
Citizen Complainant

v.

American Metal Fibers, Inc..
Respondent

TO:

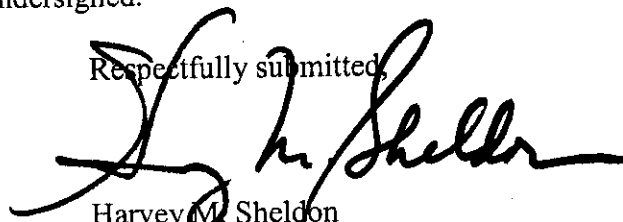
Mr. Chad A. Gifford
1126 Foster Avenue
Lake Bluff, IL 60044

Illinois Pollution Control Board, Attn: Clerk
James R. Thompson Center, Suite 11-500
100 W. Randolph
Chicago, Illinois 60601-3218

APPEARANCE OF COUNSEL

The undersigned hereby files his appearance and that of his firm as counsel for Respondent American Metal Fibers, Inc. in the above-captioned matter. All future notices, correspondence, pleadings and orders in this matter or otherwise intended for the Respondent should be addressed and sent to the undersigned.

Respectfully submitted,



Harvey M. Sheldon
One of Respondent's Attorneys

Dated: August 29, 2007

Harvey M. Sheldon
Hinshaw & Culbertson LLP
222 North LaSalle Street, 3rd Floor
Chicago, IL 60601

Telephone: 312-704-3504
Facsimile: 312-704-3001

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Citizen Complainant

v.

American Metal Fibers, Inc.,
Respondent

PCB No. 2008-13

(Citizen's Complaint)

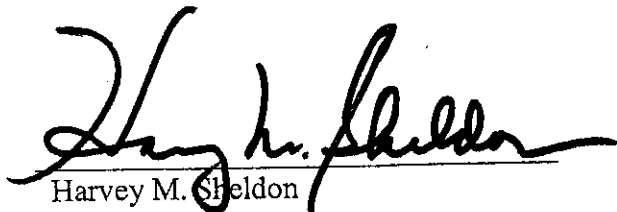
CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that I have today prior to 5:00 PM served each of the following documents:

- Appearance of Counsel
- Motion of the Respondent To Dismiss The Complaint As Fundamentally Defective And Incomplete Or Alternatively To Order Its Completion And Extend The Respondent's Time To File A Motion Or Otherwise Plead
- Notice of Appearance of Counsel and Notice of Motion

by causing actual filing of an original and nine copies of each with the Clerk of the Board and by mailing a true copy thereof, with U.S. postage prepaid, to the following persons, together with a copy of this Certificate of Service:

Mr. Chad A. Gifford
1126 Foster Avenue
Lake Bluff, IL 60044


Harvey M. Sheldon

Dated: August 29, 2007

Harvey M. Sheldon
Hinshaw & Culbertson LLP
222 North LaSalle Street, Suite 300
Chicago, IL 60601-1081
Tel. 312-704-3504; Fax 312-704-3001

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AUG 29 2007

Chad A. Gifford,
Citizen Complainant

v.

American Metal Fibers, Inc..
Respondent

STATE OF ILLINOIS
Pollution Control Board
PCB No. 2008-19

(Citizen's Complaint)

TO:

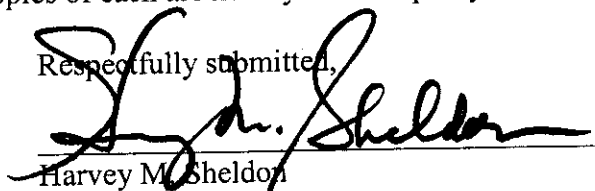
Mr. Chad A. Gifford
1126 Foster Avenue
Lake Bluff, IL 60044

Illinois Pollution Control Board, Attn: Clerk
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100 W. Randolph
Chicago, Illinois 60601-3218

NOTICE OF APPEARANCE OF COUNSEL AND NOTICE OF MOTION

PLEASE TAKE NOTICE that on August 29, 2007 I caused to be filed with the Clerk of the Illinois Pollution Control Board my APPEARANCE OF COUNSEL for Respondent in the above matter. Please also take Notice that on the same date I caused to be filed with the said Clerk the MOTION OF RESPONDENT TO DISMISS THE COMPLAINT AS FUNDAMENTALLY DEFECTIVE AND INCOMPLETE OR ALTERNATIVELY TO ORDER ITS COMPLETION AND EXTEND THE RESPONDENT'S TIME TO FILE A MOTION OR OTHERWISE PLEAD. Copies of each are hereby served upon you.

Respectfully submitted,



Harvey M. Sheldon
An Attorney for American Metal Fibers, Inc.

August 29, 2007

Hinshaw & Culbertson LLP
222 North LaSalle Street, 3rd Floor
Chicago, IL 60601
Tel. 312-704-3504 Fax 312-704-3001

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Citizen Complainant

v.

American Metal Fibers, Inc..
Respondent

PCB No. 2008-13

(Citizen's Complaint)

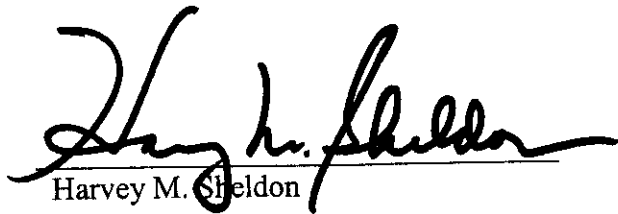
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Lake Bluff, IL 60044


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RECEIVED
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AUG 29 2007

Chad A. Gifford,
Citizen Complainant

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American Metal Fibers, Inc..
Respondent

PCB No. 2008-15
STATE OF ILLINOIS
Pollution Control Board
Citizen's Complaint

TO:

Mr. Chad A. Gifford
1126 Foster Avenue
Lake Bluff, IL 60044

Illinois Pollution Control Board, Attn: Clerk
James R. Thompson Center, Suite 11-500
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Chicago, Illinois 60601-3218

MOTION OF RESPONDENT TO DISMISS THE COMPLAINT AS FUNDAMENTALLY DEFECTIVE AND INCOMPLETE OR ALTERNATIVELY TO ORDER ITS COMPLETION AND EXTEND THE RESPONDENT'S TIME TO FILE A MOTION OR OTHERWISE PLEAD

NOW COMES RESPONDENT, American Metal Fibers, Inc., and respectfully moves this Board to dismiss the Complaint as substantially incomplete and defective in form, or alternatively moves this Board to order the correction of the Complaint and to enlarge the time in which Respondent may file a Motion challenging the Complaint as Duplicative or Frivolous or otherwise plead to at least thirty days after the Complaint is certified by Respondent as complete. In support of this Motion, Respondent submits as follows:

1. A copy of the Complaint in the above matter was delivered and served on Respondent on August 3, 2007. A Motion to Dismiss under 35 IAC 103.212(b) would ordinarily be due on September 4 (due to Labor Day weekend falling on the 30th day after service). However, no

responsive Motion or other pleading can be responsibly or appropriately prepared due to the incompleteness of the Complaint. A reading of the Complaint and a check of the file at the office of the Clerk of the Pollution Control Board indicates that the Complaint is inherently incomplete, because allegedly key "Attachments" are not attached nor on knowledge and belief were they served upon Respondent. Neither a Map (alleged by Paragraph 6) nor "police reports and video evidence" (as alleged by Paragraph 7) are believed to have been served, nor are they on file.

2. Respondent and its attorneys are unable to reasonably determine whether to file a Motion to Dismiss as frivolous given the incompleteness of the Complaint, although an initial review of the Complaint indicates many points of incredibility, and it appears that the Complaint may well be "frivolous" within the meaning of the Board's rules¹. For example:

a). The Complaint alleges a nuisance and violation of noise regulations, but it is inherently unbelievable because it asserts and admits that there is an alleged violation when the Respondent's plant is not in operation. See paragraphs 6 and 7, containing preposterous attribution of loud pneumatic pops from the factory (a supposed sound like a "combination of a freight train and an airplane taking off") when not in operation.

b). The Complaint asserts a serious nuisance exists but alleges and admits that the Complainant only first noticed the alleged noise three months after moving into his home, even though the plant has been in operation since 1985, many years before Respondent's home purchase.

¹ Respondent files this Motion to Dismiss under 35 IAC §101.506 due to its serious inability to respond reasonably to the present Complaint, however it certainly would not object to this Board deciding to dismiss the present Complaint as "frivolous" given its defective condition.

c). The Complaint is incredible in claiming that sealing windows and other soundproofing efforts have no effect. (Paragraph 6).

d). The decibel levels cited by Complainant and alleged to be a terrible nuisance or violative of regulations are within the range of normal conversations between people and are common in offices or suburban streets.

e). The Complainant omits mention in his Complaint of the fact that Respondent's operations are on Class C industrial zone property, that the property immediately next to Respondent in the direction of Complainant's home is a busy freight railroad line, and that there is then also an intervening high tension power line as well as the "wetland" mentioned. The Complaint incredibly omits mention of high background noise from the Illinois Tollway running nearby and fails to mention noise from an asphalt manufacturing plant and other private industrial facilities nearby that on knowledge and belief emit noise audible at Complainant's property.

f). The Complaint seeks relief that the Board does not have authority to grant.

g). The Complainant declined to file the Complaint under oath, which under the circumstances of its incompleteness and incredibility is further reason for distrust of the veracity of the Complaint or honor its filing.

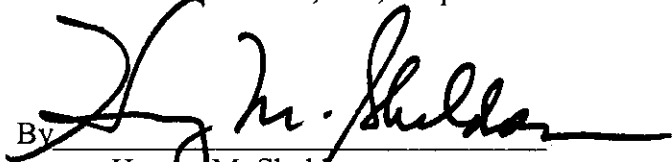
3. The cost of preparation of a response is high, and would be an unfair burden upon a Respondent in the face of such a careless, inherently incomplete and incredible Complaint.

WHEREFORE, your Respondent respectfully moves this Board for an Order that dismisses the Complaint as defective and incomplete, or alternatively for an Order that stays

indefinitely the time for Respondent to make any further Motion to Dismiss or otherwise plead until at least thirty (30) days after the Complaint is corrected, filed under oath and certified as being complete by Complainant.

Respectfully submitted,

American Metal Fibers, Inc., Respondent

By 
Harvey M. Sheldon
One of its Attorneys

Dated: August 29, 2007

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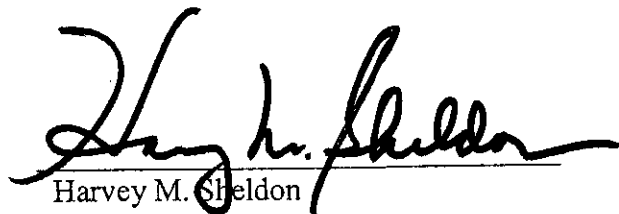
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