

## ILLINOIS POLLUTION CONTROL BOARD

March 5, 2009

ANNE MCDONAGH and DAVID	)	
FISHBAUM,	)	
	)	
Complainants,	)	
	)	PCB 08-76
v.	)	(Citizens Enforcement – Noise)
	)	
RICHARD and AMY MICHELON,	)	
	)	
Respondents.	)	
	)	
	)	

**HEARING OFFICER ORDER**

On March 5, 2009, the parties participated in a telephonic status conference with the hearing officer. The respondents represented that they will not be filing a response to complainants' interlocutory appeal, filed February 20, 2009. The complainant, Anne McDonagh, was informed the interlocutory appeal will not stay the proceedings. It appears that the complainants wish to proceed with their interlocutory appeal.

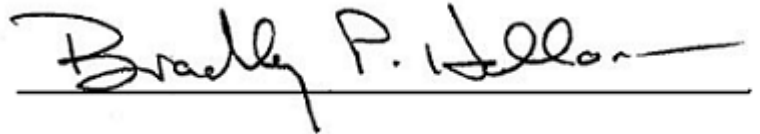
Further discussions centered on the briefing schedule, including the tentative hearing date set forth in the February 2, 2009, hearing officer order. It was agreed by all parties that the discovery schedule, including the respondents' expert report due date and the hearing date are revised as follows. The respondents' expert report, if any, is due to be served and filed on or before April 17, 2009. All discovery, including any depositions, must be completed on or before May 1, 2009. Ms. McDonagh represented that the due date of the expert's report on April 17, 2009, will give her ample time to review the report and conduct any depositions prior to the discovery cut-off date of May 1, 2009. All pre-hearing motions must be filed on or before May 8, 2009. Any responses to pre-hearing motions are due to be filed on or before May 15, 2009. The agreed upon hearing date is May 28, 2009. The May 28, 2009, hearing date is contingent upon David Fishbaum's availability. The mailbox rule will not apply to the expert report or the pre-hearing motions or the responses, and all electronic or approved telefax filings must be received by the Clerk's Office no later than 4:30 p.m. of the due date. It was also agreed that if any testing is done by the respondents' expert, the complainants be given a 48 hour notice.

The respondents represented that they anticipate that a permit to move the air-conditioning units will be issued at the April 2, 2009, Village Zoning Board meeting. The respondents opined that moving the units may or may not resolve the above-

captioned matter. The respondents also represented that the complainants' expert report may have to be revised and further testing needed if the units are moved.

The parties or their legal representatives are directed to appear at a telephonic status conference with the hearing officer on April 14, 2009, at 10:00 a.m. The telephonic conference must be initiated by the complainant, but each party is nonetheless responsible for its own appearance. At the conference the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Bradley P. Halloran". The signature is written in a cursive style and is positioned above a solid horizontal line.

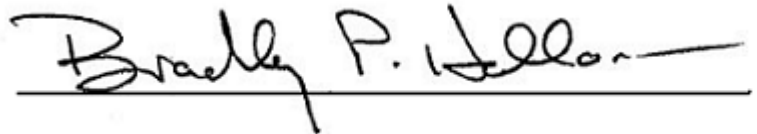
Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
Chicago, Illinois 60601  
312.814.8917

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on March 5, 2009, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on March 5, 2009:

John T. Therriault  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St., Ste. 11-500  
Chicago, Illinois 60601

A handwritten signature in black ink that reads "Bradley P. Halloran". The signature is written in a cursive style and is positioned above a solid horizontal line.

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601  
312.814.8917

PCB 2008-076  
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