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MAY 04 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD STATE OF ILLINOIS  
Pollution Control Board

BARBARA STUART and RONALD STUART, )  
)  
Complainants, )  
vs. )  
FRANKLIN FISHER and PHYLLIS FISHER, )  
)  
Respondents. )

No. PCB 02-164  
Citizen Enforcement

NOTICE OF FILING

TO: Dorothy M. Gunn, Suite 11-500, 100 W. Randolph St., Chicago, IL 60601  
Bradley P. Halloran, Suite 11-500, 100 W. Randolph St., Chicago, IL 60601  
David G. Harding, Attorney at Law, 100 N. LaSalle St.,  
Suite 1107, Chicago, IL 60602-38030  
Barbara & Ronald Stuart, 213 E. Corning Road, Beecher, IL 60401

PLEASE TAKE NOTICE that I have, on May 4, 2004, filed with the Office of the Clerk of the Pollution Control Board the County of Will's **Amicus Curiae Brief**, a copy of which is herewith served upon you.

  
Bobbi N. Petrunaro, Assistant State's Attorney

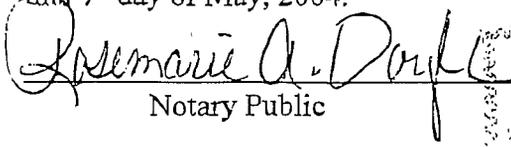
OFFICE OF THE STATE'S ATTORNEY  
Will County, Illinois  
Jeff Tomczak, State's Attorney  
121 N. Chicago St.  
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Telephone: 815-727-8872

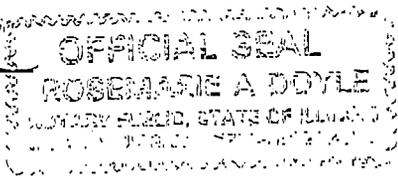
PROOF OF SERVICE

The undersigned certifies that a copy of this instrument and any attachments thereto were served on the above listed parties of record in the above captioned cause by enclosing the same in an envelope parties at their address as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mail Box in Joliet, Illinois, on the 4<sup>th</sup> day of May, 2004.



Subscribed and sworn to before me  
this 4<sup>th</sup> day of May, 2004.

  
Notary Public





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MAY 04 2004

STATE OF ILLINOIS  
Pollution Control Board

Jeff Tomczak, *State's Attorney*

# OFFICE OF THE STATE'S ATTORNEY

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## FAX TRANSMITTAL

**DATE:** 5/04/04

**TIME:** 9:05 a.m.

**TO:** Ill. Pollution Control Board

**FAX:** 312-814-3669

**FROM:** Bobbi Petrunaro

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**TOTAL NUMBER OF PAGES, INCLUDING COVER SHEET: 8**

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD MAY 04 2004

STATE OF ILLINOIS  
Pollution Control Board

BARBARA STUART and )  
RONALD STUART, )  
 )  
Complainants, )  
 )  
vs. ) No. PCB 02-164  
 ) Citizen Enforcement  
FRANKLIN FISHER, )  
 )  
Respondent, )

Amicus Curiae Brief of County Of Will

NOW COMES the County of Will, and for its *amicus curiae brief* states as follows:

The County of Will enacted ordinances with provisions similar to those contained within the Illinois Environmental Protection Act relative to its noise ordinance and vibration ordinance. The County of Will has determined that such ordinances are necessary and proper to protect the health and safety of the residents, as well as to protect their property values. Generally, the County's nuisance ordinance is to assist the public welfare of the people of this county. (A copy of the Noise and Vibration Ordinances is attached hereto as Exhibit A.)

Since 2001, the Will County Land Use Department has received numerous complaints relative to the Respondent's use of propane cannons. Specifically, the Complainants have repeatedly noted that the use of these propane cannons disturbs the peace of their home, their pets, and their children. The Will County Sheriff's Department did take readings of the propane cannons in the summer of 2002. Although the noise and vibration levels of the propane cannons did not register high enough to violate the

technical provisions of the County ordinances, it is the position of the County of Will that these propane cannons violate the spirit of the ordinance. It is further the position of the County of Will that these devices have not been proven to be effective and in fact, that these propane cannons are a nuisance to the health, safety and public welfare of the people of this County.

WHEREFORE, the County of Will respectfully requests that this Board find in favor of the Complainant and against the Respondent.

Respectfully submitted,

A handwritten signature in cursive script, reading "Bobbi N. Petrunaro", with a horizontal line drawn underneath the signature.

Jeff Tomczak  
Will County State's Attorney  
By: Bobbi N. Petrunaro  
121 N. Chicago St.  
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constitute a public nuisance, or in such a manner that the litter may be blown or otherwise carried by the natural elements onto the property of another person. (Res. 92-248, passed 11-19-92; Am. Res. 99-210, passed 5-20-99)

### 93.059 ABANDONMENT OF MOTOR VEHICLE; PRESUMPTION.

No person shall abandon a motor vehicle on any highway or any public property of which he or she is not the owner or tenant in lawful possession in unincorporated areas of the county. The person to whom the certificate of title to the vehicle last was issued by the Secretary of State is presumed to be the person to have abandoned the vehicle, but such presumption may be rebutted.

(Res. 92-248, passed 11-19-92; Am. Res. 99-210, passed 5-20-99)

### § 93.060 VIOLATION; PENALTY.

Persons who violate any of §§ 93.056 through 93.059 are subject to penalties set out in this section.

(A) Any person convicted of a violation of §§ 93.056 through 93.059 is guilty of a Class B misdemeanor. A second conviction for an offense committed after the first conviction is a Class A misdemeanor. A third or subsequent violation committed after a second conviction is a Class 4 felony.

(B) In addition to any fine imposed under this section, the court may order that the person convicted of such a violation remove and properly dispose of the litter, may employ special bailiffs to supervise such removal and disposal, and may tax the costs of such supervision as costs against the person so convicted.

(C) The penalties prescribed in this section are in addition to, and not in lieu of, any penalties, rights, remedies, duties or liabilities otherwise imposed or conferred by law.

(Res. 99-210, passed 5-20-99)

## NOISE

### § 93.070 AUTHORITY.

The provisions of this subchapter are enacted pursuant to authority given by ILCS Ch. 720, Act 5, § 47-5.

(Res. 94-229, passed 1-19-95; Am. Res. 99-210, passed 5-20-99)

### § 93.071 PURPOSE.

The provisions of this subchapter are enacted to define and abate noise as a public nuisance. Noise as defined herein as a public nuisance is detrimental to safety health and public welfare of the people of this county and should be enjoined as necessary to protect the public.

(Res. 94-229, passed 1-19-95; Am. Res. 99-210, passed 5-20-99)

### § 93.072 PUBLIC NUISANCE.

(A) It is hereby declared that any person or business entity who engages in any act which causes to be emitted a loud, unreasonable or unnecessary noise which injures or endangers or diminishes the health, peace, safety or welfare of others is a nuisance for which legal remedies shall be available.

(B) It is further declared that no person or business entity shall cause or allow the emission of sound beyond the boundaries of his or her property as prohibited by the provisions of 35 Ill. Admin. Code, Ch. 1 § 900.1 et seq, as presently enacted or subsequently amended, shall be deemed a public nuisance from which legal remedies shall be available.

(Res. 94-229, passed 1-19-95; Am. Res. 99-210, passed 5-20-99) Penalty, see § 93.999

### § 93.073 DEFINITIONS.

The definitions of 35 Ill. Admin. Code, titled "Environmental Protection," subtitle H, titled

"Noise," Chapter 1, titled "Pollution Control Board," as presently promulgated or hereinafter promulgated, are adopted and incorporated as if fully rewritten herein.

(Res. 94-229, passed 1-19-95; Am. Res. 99-210, passed 5-20-99)

§ 93.074 MEASUREMENT PROCEDURES.

The measurement procedures of 35 Ill. Admin. Code, titled "Environmental Protection," subtitle H, titled "Noise," chapter 1, titled "Pollution Control Board," Part 901, titled "Sound Emission Standards and Limitations for Property Line-Noise-Sources," as presently promulgated or hereinafter promulgated are adopted and incorporated as if fully rewritten herein. (Res. 94-229, passed 1-19-95; Am. Res. 99-210, passed 5-20-99)

§ 93.075 ENFORCEMENT.

The responsibility for the enforcement of the provisions of this subchapter shall be with the Will County Sheriff's Police. The Will County Sheriff shall have the responsibility to enforce division (A) of § 93.072. The enforcement of division (B) of the section shall be with either the Will County Sheriff or the Administrator of the Building and Zoning Code who is hereby designated as the enforcing officer. Any employee of the departments shall have the authority for enforcement authorized by the Sheriff or the Administrator. (Res. 94-229, passed 1-19-95; Am. Res. 99-210, passed 5-20-99)

§ 93.076 REMEDIES.

Any person owning, leasing or possessing of the subject property on which a nuisance, as defined by this subchapter, exists is subject as follows:

(A) May be issued a non-traffic complaint ticket by an authorized person in his or her official capacity. Each day the violation occurs is to be considered a separate violation.

(B) May be subject to injunctive relief brought by Will County through its proper representative and be subject to the assessments of costs and fees associated with such litigation.

(Res. 99-210, passed 5-20-99)

§ 93.077 POWER AND DUTIES OF THE STATE ATTORNEY'S OFFICE.

The State Attorney's Office shall act as an attorney for the county and shall have the following authority:

(A) Prosecute any violations of this subchapter in the circuit court of the county.

(B) Seek injunctive relief against any person owning, leasing or possessing subject property in the circuit court of the county.

(Res. 94-229, passed 1-19-95; Am. Res. 99-210, passed 5-20-99)

VIBRATION

§ 93.090 AUTHORITY.

The provisions of this subchapter are enacted pursuant to authority given by ILCS Ch. 720 Act 5, § 47-5.

(Res. 99-210, passed 5-20-99)

§ 91.091 PURPOSE.

The provisions of this subchapter are enacted to define and abate excessive vibrations as a public nuisance. Excessive vibrations as defined herein are a public nuisance and are detrimental to the safety, health and public welfare of the people of the county and should be enjoined as necessary to protect the public.

(Res. 94-229, passed 1-19-95; Am. Res. 99-210, passed 5-20-99)

### § 93.092 PUBLIC NUISANCE.

It is declared that no person or business entity shall cause or allow the emission of excessive vibrations beyond the boundaries of his property as prohibited by the provisions of this subchapter.

(Res. 94-229, passed 1-19-95; Am. Res. 99-210, passed 5-20-99)

### § 93.093 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**AMPLITUDE.** The maximum displacement of the earth from the normal rest position. Displacement is usually reported as inches or miles.

**DISCRETE IMPULSES.** A ground transmitted vibration stemming from a source where specific pulses do not exceed 60 per minute (or one per second).

**FREQUENCY.** The number of times that a displacement completely repeats itself in one second of time. Frequency may be designated in cycles per second (cps) or Hertz.

**IMPACT.** An earthborn vibration generally produced by two or more objects striking each other so as to cause separate and distinct pulses.

**NIGHTTIME HOURS.** The hours of 10:00 p.m. to 7:00 a.m. local time.

**PARTICLE VELOCITY.** A characteristic of vibration that depends on both displacement and frequency. If not directly measured, it can be computed by multiplying the frequency by the amplitude times the factor 6.28. The particle velocity will be in inches per second, when the frequency is expressed in cycles per second and the amplitude in inches.

**SEISMOGRAPH.** An instrument which measures vibration characteristics simultaneously in three mutually perpendicular planes. The seismograph may measure displacement and frequency, particle velocity, or acceleration.

**STEADY STATE.** A vibration which is continuous, as from a fan compressor or motor.

**VIBRATION.** A reciprocating motion transmitted through the earth, both in horizontal and vertical planes.

(Res. 94-229, passed 1-19-95; Am. Res. 99-210, passed 5-20-99)

### § 93.094 INSTRUMENTATION.

Ground-transmitted vibration shall be measured with a seismograph or complement of instruments capable of recording vibration displacement, particle velocity, or acceleration and frequency simultaneously in three mutual perpendicular directions.

(Res. 94-229, passed 1-19-95; Am. Res. 99-210, passed 5-20-99)

### § 93.095 MAXIMUM PERMITTED VIBRATION LEVELS.

(A) Table 1 designates the applicable lines of Table 2 that apply on or beyond adjacent lot lines within the zone, and on or beyond appropriate district boundaries. Vibration shall not exceed the maximum permitted particle velocities in Table 2. Where more than one set of vibration levels apply, the most restrictive shall govern. Readings may be made at points of maximum vibration intensity. Districts shall be defined as in the Will County Zoning Ordinance as it is presently enacted or hereinafter modified as follows:

R - Residential E1-2, R1-6

C - Commercial C1-6

I - Industrial I1-3

**TABLE 1  
APPLICABLE LINES OF TABLE 2**

Emitting to From	Lot Line Adjacent	District Boundaries		
		R	C	I-1, I-2, 3
	X	X	-	X
I-1	Z	X	Y	-
I-2, 3	-	X	Y	Z

**TABLE 1  
STEADY-STATE VIBRATION LIMITS  
Peak Particle Velocity  
(inches per second)**

Vibration Limit	Daytime	Nighttime
X	0.03	0.01
Y	0.06	0.06
Z	0.26	0.20

(C) The maximum particle velocity shall be in the maximum vector sum of three mutually perpendicular components recorded simultaneously. Particle velocity may also be expressed as 6.28 times the displacement in inches multiplied by the frequency in Hertz (cycles per second).

(D) For purposes of this section, steady-state vibrations are vibrations which are continuous. Vibrations in discrete impulses more frequent than 60 per minute shall be considered impact vibrations. (Res. 94-229, passed 1-19-95; Am. Res. 99-210, passed 5-20-99)

**§ 93.096 ENFORCEMENT.**

The enforcement of these provisions shall be with either the Will County Sheriff or the Administrator of the Building and Zoning Code who is hereby designated as the enforcing officer. Any employee of the department shall have the authority for enforcement if authorized by the Sheriff or Administrator. (Res. 99-210, passed 5-20-99)

**§ 93.097 REMEDIES.**

Any person owning, leasing or possessing of the subject property on which a nuisance as defined by this subchapter exists is subject as follows:

(A) May be issued a non-traffic complaint ticket by an authorized person in his or her official capacity. Each day the violation occurs is to be considered a separate violation.

(B) May be subject to injunctive relief brought by the county through its proper representative and be subject to the assessments of costs and fees associated with the litigation. (Res. 94-229, passed 1-19-95; Am. Res. 99-210, passed 5-20-99)

**§ 93.098 POWER AND DUTIES OF THE STATE ATTORNEY'S OFFICE.**

The State Attorney's Office shall act as an attorney for the county and shall have the following authority:

(A) Prosecute any violations of this subchapter in the circuit court of the county.

(B) Seek injunctive relief against any person owning, leasing or possessing subject property in the circuit court of the county. (Res 94-229, passed 1-19-95; Am. Res. 99-210, passed 5-20-99)

**§ 93.999 PENALTY.**

(A) A violation of § 93.072 (A) is a petty offense for which the violator shall pay a fine of not less than \$25.00 nor more than \$100.00, and the court costs of prosecution.

(B) A violation of § 93.072 (B) is a petty offense for which the violator shall pay a fine of not less than \$100.00 nor more than \$500.00, and the court costs of prosecution. (Res. 99-210, passed 5-20-99)