

Original

State of Illinois
Pollution Control Board

James R. Thompson Center
100 W. Randolph Street – Suite 11-500
Chicago Illinois 60601

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NOV 13 2014

STATE OF ILLINOIS
Pollution Control Board

FORMAL COMPLAINT

BEFORE THE
ILLINOS POLLUTION CONTROL BOARD)



ORIGINAL

James R. Fiser)
 842 South Jackson Street)
 Mt. Carroll, Illinois 61053)
)
 Complaints(s),)
)
 v.)
)
 James "Henry" Meador)
 834 South Jackson Street)
 Mt. Carroll, Illinois 61053)
)
 Respondent(s))
)

PCB 15-93
(For Board use)

Note: If you do not use this formal complaint form and instead draft and type your own, it request4ed by this form. All items must be completed. If there is insufficient space must contain all of the information to complete any item, you may attach additional sheets, specifying the number if the item you are completing. Once completed, you must file the original and nine copies of the formal complaint, notice to the respondent and certificate of service with the Clerk of the Board at the above address.

**1. Your name, street address,
County, State:**

James R. Fiser
842 South Jackson Street
Mt. Carroll, Illinois 61053
Carroll County
Phone: 815-599-1328

**2. Place where you can be contacted
During normal business hours
(If different from above):**

Phone: 815-281-0278 (cell)

**3. Name and address of respondent
(Alleged polluter)**

James "Henry" Meador
824 South Jackson Street
Mt. Carroll, Illinois 61053
Carroll County
Phone: 815-244-0180

**4. Describe the type of business of activity that you allege is causing or
allowing pollution (e.g. manufacturing company, home repair shop)
and give the address of the pollution source if different than the
address above:**

Bar – Restaurant "Henry's Double K"

**5. List specific sections of the Environmental Protection Act. Board
order, or permit that you allege have been or are being violated:**

(415 ILCS 5/Tit. VI Heading)

TITLE VI: NOISE

(415 ILCS 5/23) from Ch. 111 ½ par 1023)

(415 ILCS 5/24) from Ch. 111 ½ par 1024)

(415 ILCS 5/25) from Ch. 111 ½ par 1025)

- 6. Describe the type of pollution that you allege (e.g., air, odor, noise water, sewer back-ups, hazardous waste) and the location of the alleged pollution. Be as specific as you reasonably can in describing the alleged pollution:**

NOISE POLLUTION:

Loud bands that started outside and now inside the bar. The music emanating from inside the building is very loud causing us sleepless nights when they are playing.

We cannot sleep in our bedroom which is on the North side of the house facing the bar. The noise from the music, car alarms, people hollering obscenities & loud vehicles at the bar prevent us from sleeping in our bedroom and we are forced to sleep on the other side of the house in the sunroom. I sleep on the floor and my wife sleeps on the couch. Sometimes it is so loud we cannot sleep there and are forced to stay awake until they stop, usually at 1:00 AM.

Having our windows open is not an option no matter what room we are in. We can hear it over our TV, heater, and A/C when in use.

- 7. Describe the duration and frequency of the alleged pollution. Be as specific as you reasonable can about when you first noticed the alleged pollution, how frequently it occurs, and whether it is still continuing (include seasons of the year, dates and time of day if known):**

The problem started the 3rd. weekend of July 2013 with an outside band that was very loud and could be heard all over town. The outside bands have ceased and the sound was better this summer, but as soon as the council announced that the NEW ordinance (copy attached) was in effect, it started to get really loud again.

The problem has persisted from July 2013 to date. I have specific documentation i.e.: Bands and dates that is several pages in length and I can forward them to you if needed. The bands usually start at 9:00 PM . We have been working on a resolution to this problem since July of 2013 and have been to numerous city council meetings and have called police. I have not been allowed to sign a complaint.

7. Continued:

The council insists that they do not have to follow EPA or State regulations and they need more "Legitimate Complaints", and if I don't like it "Call the Governor."

8. Describe any bad effects that you believe the alleged pollution has or has had on human health, on plant or animal life, on the environment, on the enjoyment of life or property, or on any lawful business or activity:

I am disabled and have been diagnosed with conjunctive heart failure, cardio vascular disease, have had two heart attacks, a stroke, two open heart surgeries and two ceratoid artery surgeries. I am a class P20 with the State of Illinois. My doctors have recommended a low stress environment and plenty of sleep. This has proven to be impossible as the bar emits noise that prevents me from getting a restful night time sleep. Loud music is recognized as a stress inducer.

When we bought our house we had deer, turkey, screech owls, barn owls, hawks, many birds and I even spotted a horned owl on my property. Shortly after Mr. Meador purchased the building and the adjacent property he cleared the trees. I asked him to reconsider because it acted as a buffer. He wanted it cleared so traffic could see the building from the highway. Now he is harvesting hay from the property. The above mentioned birds and animals are no longer here.

- 9. Describe the relief that you seek from the Board(e.g., and order that the respondent stop polluting, take pollution abatement measures, perform a cleanup reimburse cleanup costs, change its operation, or pay a civil penalty (note that he Board cannot order the respondent to pay your attorney fees or any out-of-pocket expenses that you incur by pursuing an enforcement action):**

We want Mr. Meador and the City Council to abide by the EPA and State regulations. We are not asking for closure of the bar or for a monetary resolution. We would like to be able to sleep in our bedroom with the window open if we choose to do so.

This commercial building is in the middle of a residential area and was "Spot-Zoned" at some point. The building was empty when we moved in, in July 2005 and has not been occupied since approx. 1997. It was originally build as a playhouse in the 60's by Irv Kupcinet .

- 10. Identify any identical or substantially similar case you know of that is already pending before the Board or in another forum against this respondent for the same alleged pollution (note that you need not include any complaints made to the Illinois Environmental Protection Agency or any unit of local government):**

None – to the best of my knowledge

11. State whether you are representing (a) yourself as an individual or (b) your unincorporated sole proprietorship. Also, state whether you are an attorney and, if so, whether you are licensed and registered to practice law in Illinois. (Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. Also, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, an individual who is not an attorney is allowed to represent (a) himself or herself as an individual or (b) his or her unincorporated sole proprietorship, though the individual may prefer having attorney representation.):

Yes

12.

James R Fisher
(Complainant's signature)

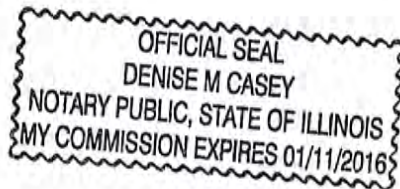
CERTIFICATION (optional but encouraged)

I, JAMES R FISER, on oath or affirmation, state that I have read the foregoing and that it is accurate to the best of my knowledge.

James R Fisher
(Complainant's signature)

Subscribed to and sworn before me this 6th day of November, 2014.

Denise M. Casey
Notary Public



My commission expires: 1-11-16

CERTIFICATE OF SERVICE

I, the undersigned, on oath or affirmation, state that on (month, day, year) November 8, 2014, I served the attached formal complaint and notice on the respondent by: (check appropriate line)

certified mail (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

registered mail (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

messenger service (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

personal service (attach affidavit if available, otherwise you must file affidavit later with Clerk)

at the address below:

RESPONDENT'S ADDRESS:

Name James "Henry" Meador

Street 834 S. Jackson Street

City, state, zip code Mt. Carroll, Ill. 61053

(list each respondent's name and address if multiple respondents)

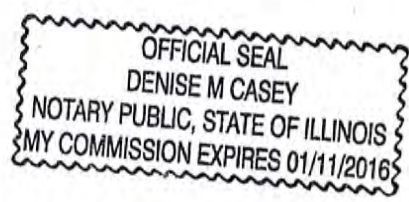
James Meador
Complainant's signature

Street 842 S JACKSON

City, state, zip code MT CARROLL IL 61053

Subscribed to and sworn before me this 6th day of November, 2014.

Denise M. Casey
Notary Public



My commission expires: 1-11-16

AN ORDINANCE RELATING TO NOISES

WHEREAS, the City Code of the City of Mt. Carroll prohibits the creation of any unreasonably loud, disturbing, and unnecessary noise within the City limits as set forth in Section 5-4-3.4, and

WHEREAS, said Section 5-4-3.4 fails to include any provision for the playing of music outside of buildings whether for private or commercial purposes and fails to establish definable and objective standards to apply to loud and disturbing noises including the playing of music, and

WHEREFORE, it is in the best interests of public health, safety, and morals that the City Council adopt legislation to address the issue of loud and disturbing noise including music.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MT. CARROLL, ILLINOIS that the following amendment to Section 5-4-3.4 of the City Code be adopted.

Section 1. That Section 5-4-3.4 (J) of the City Code is hereby repealed.

Section 2. That in lieu thereof, the following is adopted as Section 5-4-3.4 (J).

Section 5-4-3.4 (J) Amplified Sound: Amplified sound emanating from a source located within the corporate limits of the City of Mt. Carroll shall not exceed 70 decibels at the property line of the source of the amplified sound. No amplified sound emanating from a source outside of a structure shall be allowed after eleven o'clock (11:00 o'clock) P.M.

Exception: This section shall not apply to events sponsored by nonprofit organizations or benefits held pursuant to a permit issued by the City Clerk authorized by the Mayor and Council.

Section 3. That all Ordinances in conflict with this Ordinance are hereby repealed.

Section 4. That this Ordinance shall be in full force and effect after its passage, approval, and publication as requested by law.

what is
(J)

NOTICE TO RESPONDENT

NOTE: THIS STATEMENT MUST BE INCLUDED IN THE SERVICE OF THE FORMAL COMPLAINT ON THE RESPONDENT

INFORMATION FOR RESPONDENT RECEIVING FORMAL COMPLAINT

Please take notice that today I filed with the Clerk of the Illinois Pollution Control Board (Board) a formal complaint, a copy of which is served on you along with this notice. You may be required to attend a hearing on a date set by the Board.

Information about the formal complaint process before the Board is found in the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.*) and the Board's procedural rules (35 Ill. Adm. Code 101 and 103). These can be accessed at the Board's Web site (www.ipcb.state.il.us). The following is a summary of some of the most important points in the Act and the Board's procedural rules. It is provided for general informational purposes only and does not constitute legal advice or substitute for the provisions of any statute, rule, or regulation:

Board Accepting Formal Complaint for Hearing; Motions

The Board will not accept this formal complaint for hearing if the Board finds that it is either "duplicative" or "frivolous" within the meaning of Section 31(d) of the Act (415 ILCS 5/31(d)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202). "Duplicative" means that an identical or substantially similar case is already pending before the Board or in court. *See* 35 Ill. Adm. Code 103.212(a) and item 10 of the formal complaint.

"Frivolous" means that the formal complaint seeks relief that the Board does not have the authority to grant, or fails to state a cause of action upon which the Board can grant relief. For example, the Board has the authority to order a respondent to stop polluting and pay a civil penalty, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does not have the authority, however, to award attorney fees to a citizen complainant. *See* 35 Ill. Adm. Code 103.212(a) and items 5 and 9 of the formal complaint.

If you believe that this formal complaint is duplicative or frivolous, you may file a motion with the Board, within 30 days after the date you were served with the complaint, requesting that the Board not accept the complaint for hearing. The motion must state the facts supporting your belief that the complaint is duplicative or frivolous. Memoranda, affidavits, and any other relevant documents may accompany the motion. If you need more time than 30 days to file a motion alleging that the complaint is duplicative or frivolous, you must file a motion for an extension of time within 30 days after service of the complaint. A motion for an extension of time must state why you need more time and the amount of additional time you need. Timely filing a motion alleging that the complaint is duplicative or frivolous will stay the 60-day period for filing an answer to the complaint. *See* 35 Ill. Adm. Code 103.204, 103.212(b).

All motions filed with the Board's Clerk must include an original, nine copies, and proof of service on the other parties. Service may be made in person, by U.S. mail, or by messenger service. Mail service is presumed complete four days after mailing. *See* 35 Ill. Adm. Code 101.300(c), 101.302, 101.304.

If you do not respond to the Board within 30 days after the date on which the complaint was served on you, the Board may find that the complaint is not duplicative or frivolous and accept the case for hearing. The Board will then assign a hearing officer who will contact you to schedule times for telephone status conferences and for hearing. *See* 35 Ill. Adm. Code 103.212(a).

Answer to Complaint

You have the right to file an answer to this formal complaint within 60 days after you receive the complaint. If you timely file a motion alleging that the complaint is duplicative or frivolous, or a motion to strike, dismiss, or challenge the sufficiency of the complaint, then you may file an answer within 60 days after the Board rules on your motion. *See* 35 Ill. Adm. Code 101.506, 103.204(d), (e), 103.212(b).

The Board's procedural rules require the complainant to tell you as respondent that:

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. 35 Ill. Adm. Code 103.204(f).

Necessity of an Attorney

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. *See* 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless wish to have an attorney prepare an answer and any motions or briefs, and present a defense at hearing.

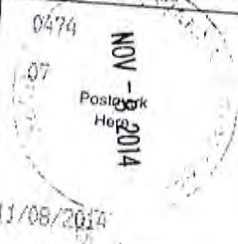
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MOUNT CARROLL IL 61053

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Restricted Delivery Fee (Endorsement Required)		\$5.05
Total Postage & Fees	\$	\$12.45



Sent To
Mr. James Meador
 Street, Apt. No.
 or PO Box No. *834 S. Jackson St.*
 City, State, ZIP+4
Mt. Carroll, Ill. 61053