

ILLINOIS POLLUTION CONTROL BOARD
March 31, 2004

BARBARA and RONALD STUART,)
)
Complainants,)
)
v.) PCB 02-164
) (Citizens Enforcement – Noise)
FRANKLIN FISHER and PHYLLIS FISHER,)
)
Respondents.)
)

HEARING REPORT

On March 9, 2004, a hearing in this matter was held at the Bolingbrook Village Hall, 375 West Briar Cliff Road, Bolingbrook, Illinois. Complainants Barbara and Ronald Stuart appeared and represented themselves *pro se*. Attorney David Harding appeared and participated on behalf of the respondents.

Preliminary Matters

This report addresses only motions received prior to March 9, 2004, as well as events at the hearing itself.

As reflected in the hearing officer order of August 21, 2003, complainants were directed to provide the report of their expert, Greg Zak, to the respondents on or before September 10, 2003. On September 11, 2003, the complainants filed Zak's report. Among other observations that Zak made after visiting the site on August 2, 2003, the report includes a chart of ambient noise levels Zak took at the site. Nowhere in the report are the propane sound measurements taken at the site by the complainants.

On or about March 1, 2004, the hearing officer as well as the respondents received a document entitled Testimony Outline by Greg Zak, along with the complainants' log of cannon sound measurements. As reflected in Zak's report received March 1, 2004, Zak was to testify, among other things, that the sound measurements taken by the complainants on July 28, 2002, July 31, 2002, August 4, 2002, August 15, 2002, and August 25, 2002, constitute nuisance noise.

The respondents objected to Zak's second report on the grounds that they would be prejudiced should the second report be allowed where they had no time to prepare for the areas that Zak's second report delves into.

The hearing officer sustained respondents' objection to the extent that any testimony given by Zak referencing the complainants' log of cannon sound measurements would be allowed only as an offer of proof.

On January 30, 2004, complainants filed a motion to incorporate portions of the transcript in the PCB 00-219 hearing and certain documents in 79-CH-48, a Knox County circuit court case. On February 6, 2004, respondents filed its objections to complainants' motion to incorporate.

On March 9, 2004, the hearing officer found that the documents from the Knox County case were not from another Board docket as required by Section 101.306 of the Board's procedural rules and denied the requested incorporation. The hearing officer also ruled that the portions of the transcript in PCB 00-219 that complainants sought to have incorporated were not relevant to this case and denied the requested incorporation. The motion and the attached documents, however, were taken with the case as an offer of proof.

It is noted that respondents motion to incorporate portions of the transcripts in PCB 99-82, and PCB 99-38 was granted in a January 13, 2004 hearing officer order.

On March 9, 2004, respondents offered a videotape of the Judge Mathias television show in which the parties in the above-captioned matter appeared (hearing officer exhibit 1). The complainants objected on the grounds of relevance.

The hearing officer has now reviewed the videotape and the transcript and finds that it is sufficiently relevant to this case to be admitted into evidence.

Witness Credibility

Based upon my legal judgment, experience, and observations at the hearing, I find that the credibility of the witnesses is not an issue in this matter.

Exhibits

The parties offered exhibits as evidence at the hearing. An exhibit list itemizing the offered exhibits and summarizing their status is attached to this order.

Briefing Schedule

A briefing schedule was discussed and agreed to at the hearing. The complainants post-hearing brief is due to be filed on or before May 3, 2004. Respondents post-hearing brief is due to be filed on or before June 15, 2004. Complainant's reply, if any, is due to be filed on or before July 15, 2004. Public comment is due to be filed on or before April 23, 2004. The Will County State's Attorney's *amicus curiae* brief, if any, is due to be filed on or before May 3, 2004.

At the request of the parties, the hearing officer designated April 16, 2004 as the due date to appeal any of the rulings made at the hearing, including the ruling regarding the Judge Mathis video tape.

IT IS SO ORDERED.

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

PCB 02-164
March 9, 2004, Hearing

Exhibit List

Exhibit	Description	Status
Complainants' Group Exhibit 1	Letters, medical diagnosis relating to Michael Stuart's hearing status	Denied. Taken with the case as an offer of proof
Complainants' Exhibit 2	Maps, photographs, diagrams and propane cannon pamphlet attached to large cardboard	Admitted
Complainants' Exhibit 3	Letter to Helen Gehring from the IEPA, dated September 27, 1979	Admitted
Complainants' Exhibit 4	Log of cannon sound measurements	Denied. Taken with the case as an offer of proof
Complainants' Group Exhibit 5	A collection of articles regarding noise, hearing loss, wildlife, letters, maps/diagrams and a uniform residential appraisal report.	Denied. Taken with the case as an offer of proof
Respondents' Exhibit 1	Complainants' answers to request to admit with attached exhibits	Admitted
Respondents' Exhibit 2	Complainants' responses to respondents second set to request to admit with attached exhibits	Admitted with exception to the attached exhibit c, which was taken as an offer of proof
Respondents' Exhibit 3	Complainants' responses to interrogatories and requests for production	Admitted
Respondents' Exhibit 4	Letter dated August 15, 2001 to Frank Fisher from Barbara Stuart	Admitted
Respondents' Exhibit 5	Letter dated November 14, 2001 to Franklin Fisher from Barbara and Ronald Stuart	Admitted
Respondents' Exhibit 6	Arbitration agreement for the Judge Mathis show	Admitted

Respondents' Exhibit 7	Appearance agreement for the Judge Mathis show	Admitted
Respondents' Exhibit 8	Undated letter to Frank Fisher from a fellow farmer	Admitted
Respondents' Exhibit 9	Complainants' objection to set discovery schedule and hearing date	Admitted
Respondents' Exhibit 10	Letter dated July 21, 2002 from Barbara Stuart	Admitted
Respondents Exhibit 11	Letter dated March 27, 2003, from Barbara Stuart to Bradley Halloran and David Harding	Admitted
Respondents' Exhibit 12	Letter dated April 25, 2003, from Barbara Stuart to David Harding	Admitted
Respondents' Exhibit 13	Letter dated April 25, 2001, from Barbara Stuart to Bradley Halloran	Admitted
Respondents' Exhibit 14	Letter dated May 12, 2003, from Barbara Stuart to Bradley Halloran and David Harding	Admitted
Respondents' Exhibit 15	Letter dated August 28, 2003, from Barbara Stuart to David Harding	Admitted
Respondents' Exhibit 16	Letter dated September 3, 2003, from Barbara Stuart to David Harding	Admitted
Respondents' Exhibit 17	Letter dated September 20, 2003, from Barbara Stuart to David Harding	Admitted
Respondents' Exhibit 18	Letter dated October 10, 2003, from Barbara Stuart to David Harding	Admitted
Respondents' Exhibit 19	Letter dated November 18, 2003, from Ronald and Barbara Stuart to Bradley Halloran	Admitted
Respondents' Exhibit 20	Undated newspaper article regarding crows	Admitted
Respondents' Exhibit 21	Letter/agreement from the Judge Mathis show	Admitted
Respondents' Exhibit 22	Photograph of watermelons	Admitted
Respondents' Exhibit 23	Photograph of watermelons	Admitted
Respondents' Exhibit 24	Undated letter to editor from Barbara Stuart	Admitted
Respondents' Exhibit 25	April 24, 2003, letter to editor from Barbara Stuart	Admitted
Respondents' Exhibit 26	Undated letter to editor from Barbara Stuart	Admitted
Respondents' Exhibit 27	Undated letter to editor from Barbara Stuart	Admitted
Hearing Officer Exhibit 1	Video tape of Judge Mathis show	Admitted

Hearing Officer Exhibit 2	Complainants motion to incorporate with attached documents	Taken with the case as an offer of proof
Public Comment 3	Affidavit of Wayne Genis	Taken as public comment
Public Comment 4	Affidavit of David Pilotto	Taken as public comment
Public Comment 5	Affidavit of David Stuart	Taken as public comment
Public Comment 6	Affidavit/petition of Barbara and Ronald Stuart	Taken as public comment