

AUG 12 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

BARBARA STUART)	
RONALD STUART)	
)	Complainants
)	v.
)	PCB 02-164
FRANKLIN FISHER)	
PHYLLIS FISHER)	
)	Respondents

August 11, 2003

**AMENDED REPORT: COMPLAINANTS RESPONSE TO RESPONDENTS
MOTION TO COMPEL COMPLIANCE WITH DISCOVERY**

Complainants Barbara Stuart and Ronald Stuart are hereby complying to respondents request to compliance with discovery, pursuant to 35 Ill. Adm. Cod 101.610 and in support thereof, states as follows:

RESPONDENTS INTERROGATORY REQUEST FOR PRODUCTION

Please note: It was an oversight on the part of Complainant, Barbara Stuart who did not have the previous sent responses, sworn under oath or notarized. Not being an attorney and trying the best to follow all regulations, I simply failed to complete that requirement of the IPCB. However, I will be willing to sign an affidavit that all previous filed responses to Mr. Harding were the truth, and were mailed on the dates as stated on the certificates of service. I apologize to the board for my lack of thoroughness.

1. On October 10, 2002, Complainants responded to Respondent's Interrogatory 23, providing the name, address and telephone number of Gregory Zak, as an expert/opinion witness, but failed to provide, as requested, the expert's report, stating that is was still being prepared.

Response: Production of Information Section 101.614.c. All discovery must be completed at least 10 days prior to the scheduled hearing in the proceeding unless the hearing officer orders otherwise. After to speaking to Mr. Zak about typing up his report for the board, he wishes to inform Mr. Halloran and Mr. Harding that there is no report as of yet. Mr. Zak knows that no hearing date is set, although the one in January 2003 was cancelled. He is very much involved in this case. Because I am in a financial situation Mr. Zak wanted to hold off making the report, hoping that the respondent Mr. Fisher would agree to offer a type of settlement and a hearing would not be necessary. The report is costly and Mr. Zak wanted to save me the expense. However, he will comply with Mr. Halloran's request if he decides to set a deadline. Mr. Halloran if you need to speak with Mr. Zak please feel free to contact him. 217-483-3507. He is quite busy now due to other pending noise pollution cases in courts in Illinois. I am sure he will be able to settle on a final date of a report.

1. Contacting the expert directly in early April of 2003, Respondent's attorney was told that no report had been prepared, but that Mr. Zak had been retained.

Response: Mr. Zak stated to me, Barbara Stuart, that Mr. Harding never once asked him about a report.

2. On April 25, 2003 Complainants broadcast to Dorothy Gunn, Bradley Halloran, Bobby Petrungarro and Greg Zak a libelous letter misrepresenting the content of that conversation and alleging unethical conduct against Respondent's counsel, including violation of an inapplicable rule which some of the recipients may not have know was applicable.

Response: This letter sent to the above was not libelous. Mr. Harding's conduct was unethical, and the rule mentioned is applicable. Mr. Zak was contacted about the above matter and he has offered to sign an affidavit regarding the conversation between he and Mr. Harding on that day in April. Mr. Zak is a man of high standards, and takes his job seriously and always obeys the rules.

3. Given Respondent's inability to obtain Mr. Zak's report without running the risk of further such conduct by Complainants and the damage to an otherwise exemplary reputation for ethical conduct which would naturally result from further informal, although legitimate, attempts to obtain the report, an order compelling production of the report seems the only appropriate alternative.

Response: We cannot produce a report which Mr. Zak has not yet written. Although he has readings of the quietness of our area without the propane cannons being used. Again it is solely up to our hearing officer Mr. Halloran to make this decision on a deadline for Mr. Zaks report. It is the right of the Illinois pollution control board and our hearing officer to delegate what type of action should be sought. Again Mr. Zak has been holding off typing his report in hope a settlement would be reached by the respondents, saving us money, if this case was not to go to a hearing.

To summarize the documents which were sent along with the "Interrogatories and Request for Production to Complainants", the following is a list given to Mr. Harding.

Exhibit A: Sgt. Nudera, Evidence tech Will County Sheriff Office no. 2001-013853

Exhibit B: Officer Spiegel, Will County Sheriff Dept. Incident report 7-26-02

This was the day Mr. Fisher made threatening remarks to me and a neighbor.

Exhibit C: Petition of neighbors wanting respondent to stop using cannon.

Exhibit D: **Amended: The VHS Tape from the Will County Sheriff/ and Will County dept.Land Use, is no longer available as an exhibit. The tape was accidentally erased by my children while they were trying to record something.**

Exhibit E : Letters written by Dr. Battista, on behalf of my son Michael Are actually two letters. One from Dec. 2002 requesting Mr. Fisher to stop Using the cannons requested by Dr. Battista to the Will County States Attorney office in Joliet, Illinois. Michael's hearing ability decreased over the summer of

Exhibit E : (cont) 2002 when the cannons were operating. His hearing loss is Sensorneural. Letter was sent to the Will County States attorneys office.

Exhibit F: Letter from Veterinarian stating sedation has been prescribed for two healthy Golden retrievers who are terrified of the gunshot like sound from cannons.

Exhibit G: Copy of C.T. head report to rule out pathology from Dr. Battista. Also Were 2 Audiograms from Ingalls Calumet City Audiology department. And there are 3 audiograms and consultation reports regarding Michael's hearing loss from Dr. Battista to Dr. Lofchy. Dating up to 9-27-02.

Exhibit H: A letter from Dr. Marquis who treats my sons for problems. He was also treating me for anxiety and problems related to the cannon noise.

Exhibit I: Letter from Dr. Trudeau (veterinarian) who treated dog Samantha who died Due to compressed discs in the back. She died the very same day that Mr. Fisher started the cannons. The purpose of this letter is to show how petrified My dogs are of the propane cans. It is not being used to compensation reasons Because nothing can ever replace her.

Exhibit J: Another letter from Dr. Battista to the States Attorney Office requesting Stopping of the cannons for Michael. Michael was complaining of ringing In the ears in October. At the visit with Dr. Battista in December of 2001. Michael has not been able to go outdoors during the summer when the Cannons are running. It is painful for him as well as damaging to his hearing.

Exhibit K: Unfortunately I was not able to correlate my cam corder recording of the Decibel levels of the cannons and transfer them on a tape for this exhibit.

AMENDED: Exhibit K may have to be eliminated.

As far as Greg Zak and his report regarding the "normal background sounds, without a propane cannon", Mr. Halloran please notify him and establish a cut off time for obtaining a report. I really don't know his schedule. Thank you for your help in this situation.

This should complete all my obligations to establish proof and documents for discovery. However, I will be submitting data which I have obtained from reliable sources including Universities of Agriculture, IDNS, the Dept. of Agriculture, Orinthologists, and the Institute for hearing disorders. Along with studies and documented findings related to hearing problems. I will be requesting to use this information to present facts related to propane cannons. If the copies are too numerous I will include information on where I have found the documents. Copies will be sent to Mr. Harding, Mr. Halloran, the IPCB, as well as the States Attorney's office. I will have this information out to everyone before our next tele conference on August 20th.

RECEIVED
CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL

AUG 12 2003


STATE OF ILLINOIS
Pollution Control Board

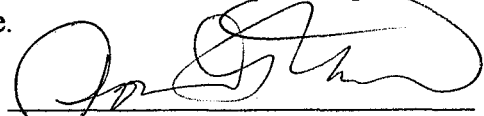
BARBARA STUART and)
RONALD STUART)
Complainants)
v.)
FRANKLIN FISHER and)
PHYLLIS FISHER)
Respondents)

No. PCB-02-164
Citizen Enforcement/noise

NOTICE OF FILING OF DOCUMENTS WITH THE HEARING OFFICER

PLEASE TAKE NOTICE that we the complainants filed with the Office of the Clerk of the Pollution Control Board, Dorothy Gunn, and hearing officer Bradley Halloran, David Harding, attorney for respondents. A corrected letter to Mr. Halloran originally dated July 29, 2003. Also filed was an AMMENDED REPORT, concerning the July 29, 2003 production of "The complainants response to respondents motion to compel compliance with discovery". We apologize for any inconvenience.


Barbara Stuart date 8/11/03

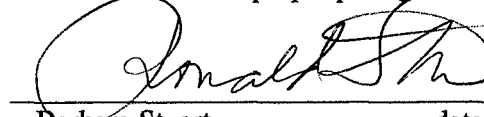

Ronald Stuart date 8/11/03

Ronald and Barbara Stuart
213 E. Corning Rd.
Beecher, Illinois 60401
708-946-9546

CERTIFICATE OF SERVICE

We, Barbara Stuart and Ronald Stuart, certify that on August 11, 2003 we served the attached documents under the above Caption to Dorothy Gunn, Bradley Halloran and David Harding at their addresses listed below. These documents were sent via U.S. mail with proper postage for handling.


Barbara Stuart date 8/11/03


Barbara Stuart date 8/11/03
RON STUART

Copies to:

David Harding
Lopez and Harding
100 N. La Salle St.
Suite 1107
Chicago, Illinois 60602

Bradley P. Halloran
Suite 11-500
100 W. Randolph St.
Chicago, Illinois 60601

Dorothy Gunn
Clerk of the IPCB
100 W. Randolph St.
Chicago, Il. 60601

THIS FILING WAS SUBMITTED ON RECYCLED PAPER