

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Doug and Geri Boyer,	)	
	)	
Complainants,	)	
	)	PCB #22-9
v.	)	
	)	(Enforcement)
MRB Development, LLC d/b/a	)	
Copper Fire, Renae Eichholz, and	)	
Mark Eichholz	)	
	)	
Respondents	)	

**RESPONDENTS' JOINT MOTION FOR SUMMARY JUDGMENT**

COMES NOW Respondents, MRB Development, LLC d/b/a Copper Fire, Renae Eichholz, and Mark Eichholz, by and through counsel, pursuant to 35 Ill. Adm. Code § 101.516, 735 ILCS 5/2-1005, and Illinois Supreme Court Rule 191, move this Court to enter judgment on their behalf and against Complainants, as to all relief sought in the Complaint. In support of their motion, Respondents state as follows:

**INTRODUCTION**

This enforcement action presents a unique question of law. Can the Illinois Pollution Control Board find a noise violation of its laws and/or regulations, when the Respondent is unquestionably compliant with 35 Ill. Adm. Code Section 900.102, AND both parties agree the noise level in Complainants apartment is less between 34 dBA and 39 dBA? The answer must be no, as a matter of law. Otherwise, Illinois residents can use their best efforts to comply with Illinois noise laws and regulations and still be fined because of one person's subjective complaints. Compliance with the only objective law or regulation at issue in this case must be a legal defense.

1. On September 30, 2021, Complainants Doug and Geri Boyer filed the Complaint with 38 paragraphs and one prayer for relief.

2. On March 3, 2022, this Board struck as frivolous paragraphs 33 through 38, because this Board has no authority to hear the alleged violations of local rules such as the Belleville City Code and the St. Clair County Zoning Code.

3. Discovery has proceeded in this case, including depositions of experts.

4. Complainants' expert, Mike Biffignani, conducted sound testing and his results confirm that Respondents are in compliance with 35 Ill. Adm. Code § 901.102 (b).

5. Respondents' expert, Gary Brown, conducted sound testing and his results confirm that Respondents are in compliance with 35 Ill. Adm. Code §901.102(b).

6. Geri Boyer plead in the Complaint (¶ 26) and admitted at her deposition that she believes 35 Ill. Adm. Code §901.102(b) is the regulation Copper Fire is violating in this lawsuit.

7. Complainants' expert, Mike Biffignani's, objective number confirm compliance with 35 Ill. Adm. Code §901.1012(b).

8. Mr. Biffignani wants this Board to "normalize" the decibel levels set forth in 35 Ill. Adm. Code §901.102(b) to find non-compliance.

9. There is nothing in 35 Ill. Adm. Code 900.100 et. seq. to give this board the authority to "normalize" and/or reduce the decibels in 35 Ill. Adm. Code §901.102(b).

10. Summary judgment is proper when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005 (c) (2020), *Gauthier v. Westfall*, 639 N.E.2d. 994, 999 (Ill.App.2<sup>nd</sup> 1994).

11. While the evidence should be strictly construed against the movant, “if what is contained in the papers on file would constitute all of the evidence before a court and would be insufficient to go to a jury but would require a court to direct a verdict, summary judgment should be entered.” *Id. citing, Pyne v. Witmer*, 129 Ill.2d 351 (1989).

12. All evidence in this case proves Respondent’s compliance with 35 Ill. Adm. § 901.102(b).

13. The Leq standards in 35 Ill. Adm. §901.102(b) are the maximum permissible limits. 415 ILCS 5/24 (2020)

14. Respondents are within those limits.

15. As a matter of law, this board cannot find sound levels compliant with its regulations to “unreasonably interfere with the enjoyment of life.”

16. This board should not and does not have the authority to “normalize” the decibel results by looking only at peak numbers.

17. Furthermore, Respondents are entitled to summary judgment even if the facts set forth in 415 ILCS 5/33 (2020) are analyzed.

18. Respondents have filed, contemporaneous with the filing of this motion, their Legal Memorandum in Support of their Motion for Summary Judgment and supporting exhibits which are incorporated herein by reference.

WHEREFORE, for each of the foregoing reasons, Respondents are entitled to summary judgment in their favor and against Complainants, and for any other relief this Board deems just and proper.

Respectfully submitted,

Dated: April 11, 2023

GREENSFELDER, HEMKER & GALE, P.C.



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Mark Eichholz

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served on the date of April 11, 2023, Respondents' Joint Motion for Summary Judgment upon the following persons by depositing the document in a U.S. Postal Service mailbox by 6:00 p.m., with proper postage prepaid to:

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