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STATE OF ILLINOIS  
Pollution Control Board

PCB 04-79

Post Hearing Brief  
PCB 04-79  
(Citizens Enforcement-Noise)

Complainants: Richard M. Saxbury  
Bonita K. Saxbury

Respondent: Archer Daniels Midland  
Lee Cunningham, Attorney

On November 6, 2003, Richard and Bonita Saxbury (brother and sister), residing at 260 West Miller St., Hull, Illinois, filed a formal complaint against Archer Daniels Midland (hereafter known as ADM) alleging ADM was violating Environmental Pollution Act 415 ICS 24 as well as 35 ILL 900.102.

The complaint was filed as a last resort. We have tried many avenues to resolve this problem. We started pursuing answers to the noise pollution problem in late 2000. We had been advised by the Environmental Protection Agency to send a good neighbor letter, which was sent to Wayne Andreas, CEO, ADM. In this letter we explained the problem and asked for a time line in which ADM would take care of the said problem. The letter was totally ignored. We had also contacted G. W. Dimmitt of the ADM, Quincy, Illinois Office several times. Mr. Dimmitt was usually rude and uncooperative. There was also a contact with D.J. Smith, an attorney for ADM. I, Bonita, had called to speak with Mr. Andreas, and was referred to Mr. Smith. During the conversation, Mr. Smith told me to do what we had to do. Therefore, the formal complaint was filed.

The noise that we complained about was coming from a fan that was used to dry the grain. The noise from the fan came directly at us, which Mr. Dimmitt said in his own words, but later in the hearing, under oath, denied saying. Mr. Dimmitt also said, under oath, that he had not been in our yard, but he was in our yard, outside our living room window, so close that I, Bonita, could have reached out and touched him. That was when he made the statement about the fan.

The noise was high pitched, shrill and constant. After ADM tried to fix the problem, which was after the formal complaint was filed, there is a different sound coming from the fan, but the sound is just as loud and obnoxious. Kent Thompson, manager of the Hull ADM elevator, said that he could understand where there was a problem with the noise from the fan but he denied making this statement, at hearing, under oath. He did say this to Richard Saxbury while they were standing in the Saxbury yard. He also said that he might have to buy our home to save his retirement, which he also denied under oath. And it must be said, neither of us, the Saxburys, had said that we were willing to sell our home.

ADM says that there is just an on and off switch to this fan. We understand that most machinery does have more settings or controls than just an on and off switch. If there is just an on and off switch, then the other variables are tremendous, such as wind direction, weather, etc., because the volume wavers. At times, the noise is fairly low, then at other times is so loud that it is unbearable.

ADM took possession of the elevator in Hull in the mid to late 1990's. There had been noise at the elevator before, but not to the extent that there was after ADM took over the operations. Before ADM acquired the elevator, we had never once had to leave our home because of the noise. Since ADM has operated the elevator, we have had to leave our home many times because the noise was unbearable.

Today is October 16, 2004, and yesterday, I, Bonita, was taking notes for this brief, and during that time, the elevator fan was running so high and loud that with all the windows and doors closed and with our home being well insulated, the noise was just unbearable. I have been under a doctor's care for an upper respiratory infection and was on medication for that problem. Therefore, I had to just sit and listen to the noise. I was not even able to leave the house to get away from the noise.

We, Richard and Bonita Saxbury have never filed a lawsuit or a formal complaint before this time.

ADM says that there is no problem with the noise from the fan but after the complaint was filed, they spent a great deal of time trying to fix a problem, which they said did not exist. Their statements do not make sense there. If there was truly no problem, why would you spend time and money trying to fix something that didn't exist.

The noise has been detrimental to our well being, as to our mental, emotional and physical health. As said before, we have had to leave our home many times because of the noise coming from the fan at the elevator. This is just not right, it is unlawful. A person has the right to enjoy their own property without exception.

Although this was disputed, under oath, by Mr. Thompson and Mr. Dimmitt, we did have to leave our home on Christmas Eve Day, 2003 because of the noise of the fan at the ADM elevator, this fan ran all day long on Christmas Eve Day. On another day, a Saturday, the fan was running so loud that I, Bonita, called Mr. Dimmitt at home about the noise. He, in a very rude manner, gave me no understanding that I must be hearing things because the elevator was not running today. I told him that Mr. Thompson's truck was over at the elevator, at which time Mr. Dimmitt said he would have to check into it and get back to me.

ADM should not be above the law. They should have to obey the law or take the consequences. Because ordinary citizens cannot afford an attorney or a noise expert, they should not be intimidated and overrode by large companies or corporations that have attorneys on retainer.

We know that we have been bullied by ADM. They have tried to intimidate us with their letters and conversations. If something cannot be done about this situation, then there is something very wrong with the system, and the pollution laws might as well be stricken from the books.

As said before, ADM has professed that they have tried to be good neighbors. That just is not so. Good neighbors would not have treated us as they have treated us. Only after the formal complaint was filed, did we get their full attention. Before that, it was as if we were a little bug that needed to be squashed and even now at and before hearing, it is as if we, the common people, have to be squashed.

At hearing, Mr. Dimmitt said that they need to be running the fans twenty four hours a day, but since the hearing date was set, they have hardly run the fans at all and when they have run them, it was for very short amounts of time and at a very low volume. That was until yesterday, October 15, 2004. That statement from Mr. Dimmitt does not seem to be a consistent statement.

Let it be known that in addition to the stress of the noise pollution coming from the ADM Hull Elevator, the stress of filing the formal complaint and all that process entailed, that has taken nearly a year now, this process has been very hard on us in every way, emotionally, physically and mentally.

ADM should have to abide by the pollution laws. They should not be above the law.

We ask that ADM cease and desist to operate their Hull Elevator until they have solved this noise pollution problem. We are certain, with the right engineers and the output of monies that the problem could be solved. After all, we can put a man into space now, why wouldn't we be able to solve a noise problem with a fan.

We also ask that ADM be fined a one time fine of \$50,000.00 (fifty thousand dollars), a daily fine of \$10,000.00 (ten thousand dollars) retroactive, if possible to the year 2000. We believe that these fines and penalties are in accordance with the law, 415 ILCS Title XII.

In closing, we would like to reiterate that we are common citizens and not attorneys.

*Ms. Bonita K. Saxbury*

Ms. Bonita K. Saxbury

*Richard M. Saxbury*

Mr. Richard M. Saxbury