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STATE OF ILLINOIS
Pollution Control Board

State of Illinois
POLLUTION CONTROL BOARD
JAMES R. THOMPSON CENTER
100 W. RANDOLPH STREET, SUITE 11-500
CHICAGO, ILLINOIS 60601

FORMAL COMPLAINT

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

YORK HIGH NEIGHBORHOOD COMMITTEE

(a voluntary organization)

Janet and Fred Hodge, Patricia and David

Bennett, Sheila and Mike Trant, Joe Vosicky,

Jean and Peter Conroy, Frank Soldano,

Joseph Reamer,

Elizabeth and Charles Laliberte

Complainant(s),

v.

ELMHURST PUBLIC SCHOOLS,
DISTRICT 205

Respondent(s).

PCB 0593

(For Board use)

1. Your name, street address,
county, state:

<u>Name</u>	<u>Address</u>	<u>Phone</u>
Janet Hodge	435 Elm Park, Elmhurst, IL 60126	(630) 279-9643
Fred Hodge	435 Elm Park, Elmhurst, IL 60126	(630) 279-9643
Patricia Bennett	346 Elm Park, Elmhurst, IL 60126	(630) 279-9349
David Bennett	346 Elm Park, Elmhurst, IL 60126	(630) 279-9349
Sheila Trant	251 Berkley, Elmhurst, IL 60126	(630) 941-1879
Mike Trant	251 Berkley, Elmhurst, IL 60126	(630) 941-1879
Joe Vosicky	345 Elm Park, Elmhurst, IL 60126	(630) 530-1542
Jean Conroy	448 Elm Park, Elmhurst, IL 60126	(630) 833-6246
Peter Conroy	448 Elm Park, Elmhurst, IL 60126	(630) 833-6246
Frank Soldano	446 Elm Park, Elmhurst, IL 60126	(630) 834-9978
Joseph Reamer	215 Fairview, Elmhurst, IL 60126	(630) 279-3016
Elizabeth Laliberte	481 Alma, Elmhurst, IL 60126	(630) 832-9010
Charles Laliberte	481 Alma Elmhurst, IL 60126	(630) 832-9010

2. Place where you can be
contacted during normal
business hours (if different
from above):

Contact person:

David Bennett
222 N. LaSalle St.
Suite 2400
Chicago, IL 60601
Phone: 312-609-7714

3. Name and address of respondent
(alleged polluter):

Dr. Joel W. Morris
Superintendent
Elmhurst Public Schools
130 West Madison Street
Elmhurst, Illinois 60126-4838
Phone: (630) 834-4530

4. Describe the type of business or 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:

Operation of air conditioner chillers and ventilation fans located on the roof near the
northwest corner of York High School located at 355 W St. Charles Road, Elmhurst, IL
60126

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

415 ILCS 5/23 (formerly Ill. Rev. Stat. 1991, Ch. 111¹/₂, Par. 1023

415 ILCS 5/24 (formerly Ill. Rev. Stat. 1991, Ch. 111¹/₂ Par. 1024

35 Ill. Admin. Code, Subtitle H, Chapter I, Section 900.102

35 Ill. Admin. Code, Subtitle H, Chapter I, Section 901.102,a)

35 Ill. Admin. Code, Subtitle H, Chapter I, Section 901.102,b)

35 Ill. Admin. Code, Subtitle H, Chapter I, Section 901.106

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, as caused by the operation of air conditioner chillers and ventilation fans located near the northwest corner of the roof of York High School, 355 W. St. Charles Road, Elmhurst, IL 60126. The noise pollution source is located in the proximity to the Complainants' properties.

7. Describe the duration and frequency of the alleged pollution. Be as specific as you reasonably 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 times of day if known):

The noise pollution originated during the summer of 2002, following the installation of the air conditioner chillers and ventilation fans as part of the construction and modernization of the York High School facility. Noise from the chillers has continued during periods of warm weather when the chillers are in operation. Noise is generated continuously during the day but has also been produced during early morning hours, night time hours, and on weekends and holidays. The ventilation fans operate continuously seven days a week, throughout the year.

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:

The noise generated by the school constructed and operated by the Respondents has resulted in an unreasonable interference with the use and enjoyment of Complainants' properties, endangerment of the physical and emotional health and well-being of the Complainants.

9. Describe the relief that you seek from the Board (*e.g.*, an 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 the Board cannot order the respondent to pay your attorney fees or any out-of-pocket expenses that you incur by pursuing an enforcement action)):

The Complainants request that the Board enter an Order directing the Respondents to cease and desist from further violations of applicable statutes and regulations and, more specifically, order the Respondents to permanently reduce the noise produced by the air conditioner chillers and ventilation fans. Further, the Complainants request that the Board enter an order according such further, or other, relief as it may deem appropriate in the circumstances.

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 known to the complainants. Previously, Complainants registered their complaints with the Superintendent of the School District. However no resolution of the noise pollution issue has been achieved.

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.):

In reference to Item 1, all are representing themselves as individuals.

David Bennett and Joe Vosicky are attorneys and licensed and registered to practice law in Illinois

12. Janet Hodge *Janet A. Hodge*
(Complainant's signature)
- Fred Hodge *Fredrick G. Hodge*
(Complainant's signature)
- Patricia Bennett *Patricia J. Bennett*
(Complainant's signature)
- David Bennett *David Bennett*
(Complainant's signature)
- Sheila Trant *Sheila Trant*
(Complainant's signature)
- Mike Trant *Mike Trant*
(Complainant's signature)
- Joe Vosicky *Joseph H. Vosicky*
(Complainant's signature)
- Jean Conroy *Jean Conroy*
(Complainant's signature)
- Peter Conroy *Peter Conroy*
(Complainant's signature)

Frank Soldano Frank Soldano
(Complainant's signature)

Joseph Reamer Joseph Reamer
(Complainant's signature)

Elizabeth Laliberte Elizabeth Laliberte
(Complainant's signature)

Charles Laliberte Charles Laliberte
(Complainant's signature)

CERTIFICATION (optional but encouraged)

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

Janet A. Hodge
(Complainant's signature)

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

Fredrick S. Hodge
(Complainant's signature)

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

Patricia J. Bennett
(Complainant's signature)

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

David Bennett
(Complainant's signature)

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

Sheila Trant
(Complainant's signature)

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

Michael C. Trant
(Complainant's signature)

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

Joseph J. Vosicky
(Complainant's signature)

Subscribed to and sworn before me
this 12th day
of November, 2004

Victoria M. McMonigle
Notary Public

My commission expires: June 3, 2008



CERTIFICATION (optional but encouraged)

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

Jean Conroy
(Complainant's signature)

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

Peter Conroy
(Complainant's signature)

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

Frank Soldano
(Complainant's signature)

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

Joseph Reamer
(Complainant's signature)

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

Elizabeth Laliberte
(Complainant's signature)

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

Charles Laliberte
(Complainant's signature)

Subscribed to and sworn before me
this 12th day
of November, 2004

Victoria M McMonigle
Notary Public

My commission expires: June 3, 2008



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.

The Clerk's Office will provide you, upon request, with a list of *pro bono* attorneys. These individuals or organizations may, in certain circumstances, represent citizens before the Board without charge. The Board does not review the qualifications of these attorneys and makes no representations about their credentials, abilities, or willingness to act as your attorney. No attorney on the list is required to accept any particular case. If you wish to contact any of these attorneys, you must do so on your own.