

ILLINOIS POLLUTION CONTROL BOARD  
April 6, 2000

MICHAEL PAWLOWSKI and DIANE K. )  
PAWLOWSKI, )  
 )  
Complainants, )  
 )  
v. ) PCB 99-82  
 ) (Enforcement – Citizens, Noise)  
DAVID JOHANSEN and TROY QUINLEY, )  
individually and d/b/a BENCHWARMERS )  
PUB, INC., )  
 )  
Respondents. )

INTERIM OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On December 18, 1998, Michael and Diane Pawlowski (complainants) filed a complaint against David Johansen and Troy Quinley individually and d/b/a Benchwarmers Pub (respondents). In that complaint, the complainants allege that the respondents violated Sections 23 and 24 of the Environmental Protection Act (Act) (415 ILCS 5/23 and 24 (1998)) and 35 Ill. Adm. Code 900.102 (the Board's noise regulations). Complainants charge that noise generated in Benchwarmers Pub on West Locust Street in Fairbury, Livingston County, Illinois, has unreasonably interfered with complainants in an adjacent building.

Hearing was held on November 8 and 9, 1999, in Fairbury, Illinois, before Board Hearing Officer Amy Muran Felton. Complainants filed a posthearing brief on December 13, 1999, and a reply on January 5, 2000. Respondents filed their posthearing brief on January 3, 2000.

Based on the evidence presented in this proceeding, the Board finds that the noise emanating from Benchwarmers Pub unreasonably interferes with the enjoyment of the complainants' property. The Board directs respondents to file a report within 60 days detailing how respondents will reduce the noise levels.

STATUTORY BACKGROUND

Section 24 of the Act provides:

No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under the Act. 415 ILCS 5/24.

Section 33(c) of the Act provides that:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

- i. The character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- ii. The social and economic value of the pollution source;
- iii. The suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
- iv. The technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- v. Any subsequent compliance. 415 ILCS 5/33(c).

#### Section 900.101 Definitions

Noise pollution: the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity. 35 Ill. Adm. Code 900.101.

#### Section 900.102 Prohibition of Noise Pollution

No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the Illinois Environmental Protection Act, so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter. 35 Ill. Adm. Code 900.102.

### BACKGROUND

In March 1995, complainants purchased the property at 105 West Locust, Fairbury, Illinois. Comp. Exh. 5; Tr. at 101. Complainants rehabilitated the property, developing an apartment on the second floor of the building. Tr. at 103. The complainants moved in sometime during March 1998.<sup>1</sup> Tr. at 103, 272. At the time complainants purchased the property, there may have been an arcade next door at 103 West Locust. Tr. at 102.

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<sup>1</sup> Although, there is testimony that complainants received a water bill for service at a previous residence until May 2, 1998, that bill was for minimum service. Tr. at 376.

Respondents gained use and occupancy rights over 101-103 West Locust, Fairbury, Illinois in late March 1998. Tr. at 437, 455. Respondents received a liquor license on April 2, 1998, (Resp. Exh. 6) and opened for business on June 29, 1998. Tr. at 118.

The properties at 101-105 West Locust Street abut one another. The record indicates that there is a brick wall that is approximately 22 inches thick with an air space between the buildings. Tr. at 434-435.

Prior to respondents' opening for business, Michael Pawlowski discussed the business with David Johansen. In that conversation, Michael Pawlowski expressed concern about noise or sound, and Johansen indicated that there would be noise or sound. Tr. at 109-110, 488-489. In addition to this exchange, complainants visited two other restaurant/bar establishments owned by the respondents in Cooksville and Colfax, Illinois. Tr. at 111. At approximately 10:00 p.m., Michael Pawlowski visited the establishment located in Colfax, Illinois for a second time that evening. Michael Pawlowski was concerned by the noise which could be heard from the business. Tr. at 113-114.

Also prior to respondents opening for business, Michael Pawlowski made numerous statements to third parties indicating his opposition to the business. Tr. at 326, 327, 349, 351, and 361. Michael Pawlowski allegedly told Sharon Walter, executive secretary of the Association of Commerce for Fairbury, that Michael Pawlowski "wanted Benchwarmers to not be there." Tr. at 326. Michael Pawlowski also allegedly stated to Michael White, a member of the Fairbury Association of Commerce, that "he'd [Michael Pawlowski] stop at nothing to - - I know he said - - not to let them open." Tr. at 351.

On June 29, 1998, the night that Benchwarmers Pub opened for business, Michael Pawlowski testified he heard extremely loud music that was "penetrating the wall between" the structures. Tr. at 118. Michael Pawlowski called the police and the officer indicated that he would place the complaint in his log. Tr. at 118-119. Michael Pawlowski began keeping a log at the instruction of an attorney. Tr. at 119, Comp. Exh. 1. Michael Pawlowski testified that he called the police on several occasions because of the noise. Tr. at 129. Michael Pawlowski testified that the noise has had "an impact on numerous facets" of his life. Tr. at 152. The noise has disrupted his sleep (Tr. at 152), he and his wife have been unable to sleep in the master bedroom and some nights not in any room according to Michael Pawlowski. Tr. at 153. The noise has affected the ability to watch television (Tr. at 154) and the noise has affected their marriage (Tr. at 155). Michael Pawlowski also testified that the noise has altered he and his wife's plans to adopt or foster a child. Tr. at 155.

Diane Pawlowski also testified that on June 29, 1998, there was noise, although she was able to sleep that night. Tr. at 277-278. Diane Pawlowski testified that her husband was not able to sleep. *Id.* She also testified that there were other nights when she was unable to sleep. *Id.* Diane Pawlowski also kept a log. Tr. at 278, Comp. Exh. 2. Diane Pawlowski testified that the noise from Benchwarmers Pub affected her work. Tr. at 284. Diane Pawlowski further testified that on December 4, 1998, she had to stay at a hotel in order to get a good

nights sleep before a hectic day at work. Tr. at 285-286. She was unable to sleep at home. Tr. at 286-287.

Diane Pawlowski also testified that the noise has affected the “general enjoyment” of their home. Tr. at 289. She stated that they have postponed an open house because of the noise. Tr. at 289-290. Finally, she indicated that the noise has placed a strain on her relationship with her husband and has affected their decision to adopt or foster a child. Tr. at 290-291.

Alan Snedden, a co-worker of Michael Pawlowski, testified on behalf of complainants. Snedden testified that he had visited the home of complainants in approximately October 1998. Tr. at 30. Snedden stated that it was a Friday evening and he arrived at around 10:15-10:30 p.m. and stayed for about an hour. Tr. at 30. Snedden stated that the apartment was very nice and that it was a “very noisy environment.” Tr. at 30-31. He indicated that it was noisy in the apartment and “very loud music, incredibly loud” was coming from the east wall of the apartment. Tr. at 31. Snedden testified that it was “rather intolerable almost to even have a conversation in the room” and that “it didn’t matter where you went in the apartment, the noise level was still very loud.” Tr. at 31, 32. Snedden stated that he could feel vibrations in his feet “obviously coming from this - - wall . . . the arms of the chairs themselves, I could actually feel the vibrations and the - - like the beat of the music in the arms through the chair.” Tr. at 32. On cross-examination, Snedden did admit that conversation could be heard, while sitting at a table together, in regular conversational tones. Tr. at 52.

Snedden also testified that he went into the Benchwarmers Pub at 11:00 to 11:15 p.m. that same evening. Tr. at 32-33. Snedden stated that “what kind of flabbergasted me was why all the loud music with literally six or eight individuals in that establishment.” Tr. at 33. He left within seconds of entering Benchwarmers Pub. Tr. at 33.

Finally, Snedden testified that Michael Pawlowski works with him and has worked with him for the last five and one-half years. Tr. at 27. Snedden testified that Michael Pawlowski is an individual who is distracted, who is seemingly lacking sleep and who has other things on his mind. Tr. at 35. Snedden indicated that Michael Pawlowski told him that he was like this because of the noise emanating from Benchwarmers Pub. Tr. at 37.

John Yerges, an acoustical consultant, also testified on behalf of complainants. Yerges testified that he went to the complainants’ residence to look at the construction of the residence and to listen to a “noise problem” they were having. Tr. at 53-54. Yerges noted “that there was a substantial amount of noise, music coming through the wall into his bedroom space and the rest of the residence as well.” Tr. at 54. Yerges measured the “ambient noise level in the bedroom on one occasion . . . and . . . in the absence of noise from next door or traffic in the street, anything of that sort, the typical decibels in the bedroom were 25 to 26 dBa, which is pretty quiet.” Tr. at 55.

Yerges also performed sound measurements on Saturday, September 25, 1999, between 9:30 p.m. and midnight. Tr. at 56. Yerges found that the music from Benchwarmers Pub was

“clearly louder than ambient.” Tr. at 56. Yerges stated that the average levels were up on the order of 10 dBa louder, and the louder portion of the music spiked up to about 20 dBa louder than ambient. Tr. at 56.

Michael Pawlowski also showed Yerges two sound measuring devices he had purchased for monitoring noise. Tr. at 54. Yerges calibrated the two meters and found that one unit was “right on the button, calibrated at 94 dBa exactly, and the other one calibrated at 93.” Tr. at 63. Yerges also testified about a barrier that complainants constructed to mitigate sound in their bedroom. Tr. at 65-67. Yerges stated that “the difficulty in a situation like this is the sound from the space next door is literally driving the entire wall. And by placing a small enclosure around part of the bed, you can’t get much noise reduction from that.” Tr. at 66.

Complainants introduced at hearing a video tape. Hearing Officer Muran Felton excluded segments 3A and 8 from admission into evidence. Comp. Exh. 16. Generally, the video tape shows the two sound measuring devices Michael Pawlowski had set up in the complainants apartment. In general the readings shown on the video tape are also higher than the ambient levels measured by Yerges.

Robert Walter, Jr., the mayor of Fairbury, testified on behalf of respondents. Robert Walter indicated that the area of Fairbury where Benchwarmers Pub and the complainants’ residences are located is a commercially zoned area. Tr. at 180-182. He testified that the area had traffic and that he had heard loud noise from traffic. Tr. at 177. Walter stated that there were other bars and restaurants in downtown Fairbury, located on Locust Street. Tr. at 188. Walter indicated that he would describe Fairbury’s downtown as noisy. Tr. at 186-187. Walter also testified that he had never been in complainants’ residence. Tr. at 173.

Sharon Walter, executive secretary of the Association of Commerce for Fairbury, testified on behalf of respondents indicating that respondents had sponsored events with the chamber and also charitable events on their own. Tr. at 317. Sharon Walter also testified that a 24-hour restaurant (Golden Cup) operated across the street from the complainants’ residence. Tr. at 320. She also testified that she had personally been in the restaurant portion of Benchwarmers Pub for both lunch and dinner. Tr. at 329. When asked if the noise coming from the pub ever had an effect on her ability to hold a conversation in the restaurant, she indicated that it did not. Tr. at 329. Sharon Walter also indicated that the music never created a physical discomfort for her. Tr. at 331.

Michael White also testified that he had been a customer at Benchwarmers Pub and the music did not cause him discomfort or problems with conversations. Tr. at 346-347.

Kevin Ryan, a Fairbury police officer, was called to testify for respondents. Ryan testified that the Golden Cup restaurant served “mostly bar patrons” on Friday and Saturday nights. Tr. at 381. The Golden Cup opened at 10:00 p.m. and stayed open until 4 or 5 a.m. Tr. at 382.

Ryan testified that he was called to Benchwarmers Pub on July 7, 1998, by complainants. Tr. at 386. He stated he was called because of “loud music” but he did not “hear anything until he got up to the front of Benchwarmers door.” Tr. at 386. Ryan testified that he entered Benchwarmers Pub and asked the bartender to turn down the music. The bartender said she would turn down the music. Tr. at 386. Ryan indicated on cross-examination that he had not ever been on the second floor of the complainants’ residence. Tr. at 387-388.

Michael Frickey, another Fairbury police officer, was called to testify for respondents. Frickey testified that he was called to Benchwarmers Pub on July 1, 1998, on a complaint of loud music. Tr. at 417. Frickey testified that he did not hear music from Benchwarmers Pub on the sidewalk and did not hear music until he was inside the door of the complainants’ residence. Tr. at 418-419. Frickey stated that he could not hear lyrics but could hear real loud bass. Tr. at 419. Frickey testified that he did not think the noise was unreasonable for “where it is coming from. It was a commercial business.” Tr. at 419.

Frickey also testified that the Golden Cup attracted “everybody else’s drunks.” Tr. at 421. He stated that people would congregate outside waiting for tables and sometimes the people in the cars were playing loud music. Tr. at 422.

Larry Quinley, father of Troy Quinley, testified as to the layout of Benchwarmers Pub. He testified that the brick wall between Benchwarmers and the complainants building is approximately 22 inches thick with air space between the bricks. Tr. at 434-435. Larry Quinley testified that he had eaten in the restaurant portion several times and the music from the jukebox did not create any disturbance in the restaurant. Tr. at 439.

Respondents Troy Quinley and Johansen also testified. In general they discussed their business and Johansen discussed his encounters with Michael Pawlowski. Tr. at 489. Both Troy Quinley and Johansen stated that there had been no other complaints regarding noise from Benchwarmers Pub other than those by complainants. Tr. at 443, 490.

## DISCUSSION

Complainants allege that respondents have violated Section 24 of the Act and 35 Ill. Adm. Code 900.102. These two provisions constitute a prohibition against “nuisance noise” pollution. Charter Hall Homeowner’s Association and Jeff Cohen v. Overland Transportation System, Inc., and D. P. Cartage, Inc. (October 1, 1998), PCB 98-81 (Charter Hall), citing to Zivoli v. Prospect Dive and Sport Shop, Ltd. (March 14, 1991), PCB 89-205, (Zivoli) slip op. at 8. In determining whether noise emissions rise to the level of a nuisance noise pollution violation, the Board performs a two-step inquiry. First, the Board determines whether or not the noise constitutes an interference in the enjoyment of complainants lives and second, considering the factors enunciated in Section 33(c) of the Act, the Board determines whether or not the interference is unreasonable. Charter Hall slip op. at 19-21. The following discussion will address whether complainants have established that the noise emanating from Benchwarmers Pub constitutes an unreasonable interference in their lives.

### Interference with Enjoyment of Life

The Board has stated that if there is no interference there can be no nuisance noise violation. Zivoli slip op. at 9. Accordingly the Board must first determine whether the sounds have interfered with the enjoyment of life. Furlan v. University of Illinois School of Medicine (October 3, 1996), PCB 93-15, slip op. at 4. The Board has held that the following disturbances constitute interference: sleeplessness from nightclub noise (Manarchy v. JJJ Associates, Inc. (July 18, 1996), PCB 95-73, slip op. at 10); noise interfering with sleep and use of yard (Hoffman v. Columbia (October 17, 1996), PCB 94-146, (Hoffman) slip op. at 5-6, 17); and, trucking operation noise impacting sleep, watching television and conversing (Thomas v. Carry Companies of Illinois (August 5, 1993), PCB 91-195, slip op. at 13-15).

Complainants testified that the sound coming through the walls affected their ability to sleep in their master bedroom and in the other rooms of their home. Diane Pawlowski testified that they have delayed an open house because of the sound. Both complainants testified that the sound has caused a strain in their relationship and delayed plans to adopt or foster a child. Based on these facts the Board finds that the sound emanating from Benchwarmers Pub has interfered with the lives of complainants. The Board will now evaluate whether the interference was unreasonable.

### Unreasonable Interference, Section 33(c) factors

The remaining issue is whether the noise from Benchwarmers Pub has unreasonably interfered with the complainants' enjoyment of life. Whether an interference is unreasonable is determined by examining the factors set forth in Section 33(c) of the Act. The Board need not find against respondent on each factor to find a violation. See Wells Manufacturing Company v. Pollution Control Board, 73 Ill. 2d 226, 233, 383 N.E.2d 148, 151 (1978) (Wells Manufacturing v. PCB); Processing and Books, Inc. v. Pollution Control Board, 64 Ill. 2d 68, 75-77, 351 N.E.2d 865, 869 (1976); Incinerator, Inc. v. Pollution Control Board 59 Ill. 2d 290, 296, 319 N.E.2d 794, 797 (1974). The Board will now consider each of the Section 33(c) factors.

### The character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people

In assessing the character and degree of interference that the noise from Benchwarmers Pub caused, the standard applied by the Board is whether the noise "substantially and frequently interferes" with the enjoyment of life, "beyond minor or trifling annoyance of discomfort." Charter Hall, slip op. at 21, citing Kvatsak v. St. Michael's Lutheran Church (August 30, 1990), PCB 89-182, slip op. at 9.

The complainants introduced logs which indicate that on 104 occasions, from June of 1998 to October of 1999, they were disturbed by noise from Benchwarmers Pub. Comp. Br. at 6, citing Comp. Exh. 1, 2, 3. Michael Pawlowski testified that he called the police on

several occasions because of the noise. Tr. at 129. Both complainants testified that the noise affected their ability to sleep and on one occasion, Diane Pawlowski left her home to obtain a good night's sleep. Michael Pawlowski also testified that the noise interfered with watching television.

The complainants also presented the testimony of Snedden and Yerges. Snedden indicated that the music was very loud and he could feel vibrations through the arms of the chair and his feet. Snedden also testified that Michael Pawlowski has been distracted at work and that the reason for that distraction, according to Michael Pawlowski, is the noise. Yerges testified that the noise levels in the complainants' master bedroom, when music was coming from Benchwarmers Pub, was on the average 10 dBa higher and spiked at 20 dBa higher than background noise.

In response to this testimony, respondents offered testimony indicating that the noise from Benchwarmers Pub did not disturb restaurant patrons. Also, two police officers testified that they were unable to hear music outside of Benchwarmers Pub and that the music was turned down upon request. Respondents also offered testimony concerning other potential sources of noise pollution.

The Board is convinced that the sound emanating from Benchwarmers Pub substantially and frequently interferes with the lives of complainants. Although the record does indicate some possibility of negative feelings by complainants concerning Benchwarmers Pub, the testimony of Snedden and Yerges supports their claims. And although this is an alleged nuisance violation and not an alleged numerical violation of the Board's regulations, the test results may be used to substantiate or refute a nuisance noise claim. See Discovery South Group v. Pollution Control Board, 275 Ill. App. 3d 547, 549,, 656 N.E.2d 51, 59 (1st Dist. 1995), Charter Hall slip op. at 21. Thus, the noise measurements taken by Yerges and the video tape of measurements taken by complainants substantiate a noise problem.

Further, even respondents' own witness, Frickey, testified that he could hear "real loud bass" on the first floor of complainants' residence. None of the remaining witnesses for respondents have even been inside the complainants' residence. Therefore, the Board finds that the record supports a finding that the noise substantially and frequently interfered with the lives of complainants.

#### The social and economic value of the pollution source

In assessing this factor, the Illinois Supreme Court has looked to the number of persons that the respondent employed and whether respondent is an important supplier to a particular market. Wells Manufacturing v. PCB, 73 Ill. 2d at 235-236. The Board has similarly looked to such factors as the number of employees at a facility and the total wages and taxes that a respondent paid. Charter Hall slip. op. at 23-24.

The complainants concede that Benchwarmers Pub has social and economic value in the community. Comp. Br. at 8. However, complainants maintain that the value would "expire

daily at 8 p.m.” Comp. Br. at 8. Complainants base this contention on the statements of Johansen that less than 20% of the respondents’ business revenues result after 8 p.m. Comp. Br. at 8. Complainants maintain that respondents’ value as taxpayers also drops because of the decreased business after 8 p.m. Comp. Br. at 8.

Respondents reply that the significance of 20% of its revenue could be the difference between profit and loss. Resp. Br. at 7. Respondents assert that they provided “uncontroverted proof of the social and economic value of Benchwarmers Pub.” Resp. Br. at 7. Benchwarmers provides employment for 15 to 20 individuals and pays sales taxes of approximately \$15,000 a year. Tr. at 467-469. Benchwarmers has also supported several events including charitable events. Tr. at 317.

The Board finds that Benchwarmers Pub does have social and economic value in the community. The record shows that Benchwarmers Pub is an employer who pays sales taxes each year. In addition, Benchwarmers participates in local events and sponsors charitable events.

The suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved

All parties agree that the complainants’ residence and Benchwarmers Pub are located in a commercially zoned area. However, the record does indicate that the complainants purchased their property first and were living at 105 West Locust Street when Benchwarmers Pub opened next door at 101-103 West Locust. Therefore, the Board finds that the complainants had priority of location. However, the Board also finds that Benchwarmers is suitably located in a commercially zoned area.

The technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source

In considering this factor, the Board must determine whether technically practicable and economically reasonable means of reducing or elimination noise emissions from Benchwarmers Pub are readily available to respondents. See Charter Hall slip op. at 24.

Complainants offer several suggestions which they maintain would alleviate the noise. Comp. Br. at 10. Complainants suggest that respondents reverse the layout of Benchwarmers Pub and place the bar portion at 101 Locust Street and the dining room at 103 Locust Street. Comp. Br. at 10. Complainants assert that this option could have been taken at no cost to respondents when the respondents first learned of complainants’ concerns. Comp. Br. at 10. Complainants also maintain that respondents could permanently remove all noise sound amplification devices. Comp. Br. at 11.

Respondents offer no potential solutions; rather, respondents maintain that the existing structure offers the same protection as previously recommended by Yerges in Manarchy v. JJJ Associates, Inc. (July 18, 1996), PCB 95-73.

The Board finds that there are technically practicable and economically reasonable solutions available to respondents. Complainants correctly point out that it may have been possible to alter the layout when respondents undertook remodeling of the buildings at 101-103 West Locust prior to opening Benchwarmers Pub. Such alteration may have helped to alleviate potential noise problems. Also, the testimony of respondents' witnesses indicate that the bartenders have turned down the music when asked by the police officers.

#### Any subsequent compliance

The record before the Board contains no evidence of subsequent compliance. The Board does note that on March 22, 2000, complainants filed a new enforcement action alleging violations in the year 2000. Pawlowski v. Johansen and Quinley PCB 00-157. The record in this case demonstrates that respondents have not made good faith efforts to reduce the effects of noise on their neighbors.

#### Summary of Findings on Unreasonable Interference

The Board finds that the noise from Benchwarmers Pub has unreasonably interfered with the complainants' lives. Although Benchwarmers Pub is suitably located and has social and economic value, the noise substantially interferes in the lives of complainants and complainants have priority of location. Finally, there are practical solutions which are economically reasonable to alleviate the interference. Having found that there was an unreasonable interference, the Board finds that respondents violated Section 24 of the Act and 35 Ill. Adm. Code 900.102.

Having found a violation of the Act and Board regulations, the Board now must determine the appropriate remedy.

#### Remedy

Complainants do not seek a civil penalty in this proceeding. Rather, they seek to "simply eliminate the noise." Comp. Br. at 13. Complainants request an order for the permanent removal of all sound amplification equipment from 101-103 West Locust Street and a permanent injunction against replacement of such equipment. Comp. Br. at 13.

The Board is not convinced that the record supports permanent removal of all sound amplification equipment from 101-103 West Locust Street. However, as noted above, the Board believes that technically practicable and economically reasonable solutions are available to the respondents. While the complainants have suggested several remedial options for mitigating noise pollution, the record in this proceeding is not sufficient for the Board to determine what steps are reasonable to reduce the noise emissions. Therefore, the Board will direct that the respondents file a report prepared by a qualified acoustical consultant detailing a plan for reducing the sound levels reaching the complainants' residence and reducing the vibrations through the floor and walls of complainants' residence.

Such a report must describe, evaluate, and analyze all methods of sound control that would be effective for reducing noise emanating from Benchwarmers Pub, including but not limited to the options discussed at hearing. Each control option should include anticipated noise reduction, cost of implementation, and an estimate of a reasonable time for implementation. The respondents must file the report with the Board and the complainants within 60 days of the date of this order. After the respondents file such a report, the complainants will have 30 days to respond. The Board will retain jurisdiction in this matter pending the receipt of the report and final disposition of this matter.

### CONCLUSION

Based on the record before the Board, the Board finds that respondents violated Section 24 of the Act and 35 Ill. Adm. Code 900.102. The Board finds that sound emanating from Benchwarmers Pub unreasonably interfered with the complainants' enjoyment of their lives and property at 105 West Locust, Fairbury, Illinois. Therefore, the Board directs the respondents to file a report within 60 days detailing how respondents will reduce the noise levels.

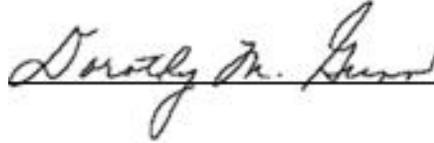
### ORDER

1. The Board finds that David Johansen and Troy Quinley individually and d/b/a Benchwarmers Pub have violated Section 24 of the Act (415 ILCS 5/24(1998)) and 35 Ill. Adm. Code 900.102.
2. David Johansen and Troy Quinley individually and d/b/a Benchwarmers Pub are hereby ordered to submit a report prepared by a qualified acoustical consultant detailing sound control methods that can be implemented to alleviate the sound levels and vibrations reaching complainants' residence. Such a report, at a minimum, must:
  - a. describe, evaluate, and analyze all methods of sound control that would be effective for reducing noise emanating from Benchwarmers Pub, including but not limited to changing the layout of Benchwarmers Pub and placing the bar portion at 101 Locust Street and the dining room at 103 Locust street; application of soundproofing material to Benchwarmers Pub's interior walls and ceiling, reduction of volume of sound amplification system, and restricted use of sound amplification system; and
  - b. include for each control option anticipated noise reduction, cost of implementation, and an estimate of a reasonable time for implementation
3. The report required under paragraph 2 of this order must be filed with the Board and served on complainants by June 5, 2000. Complainants may file a response

to such report by July 5, 2000.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above interim opinion and order was adopted on the 6th day of April 2000 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board