

COPY

CERTIFIED MAIL  
DELIVERY CONFIRMATION <sup>JC</sup><sub>JC</sub>

Dirk F. Borgsmiller  
1215 East Walnut Street  
Carbondale, IL 62901

March 25, 2006

Dear Mr. Borgsmiller:

Enclosed please find a formal complaint which has been filed with the Illinois Pollution Control Board together with a document titled "Information for Respondent Receiving Complaint" for your review and information. Respondents' attendance at a hearing, at a date set by the board, may be required.

Sincerely,

*James Chew*  
*Lynn Chew*

James and Lynn Chew  
1600 Neal Lane  
Carbondale, IL 62902

Enclosures

cc: Illinois Pollution Control Board  
Mr. Greg Zak, Noise Solutions

RECEIVED  
CLERK'S OFFICE  
MAR 30 2006  
STATE OF ILLINOIS  
Pollution Control Board

KCBole-152

RECEIVED  
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MAR 30 2006

STATE OF ILLINOIS  
Pollution Control Board

## **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](http://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.

### **Costs**

In defending against this formal complaint, you are responsible for your attorney fees, duplicating charges, travel expenses, witness fees, and any other costs that you or your attorney may incur. The Board requires no filing fee to file your answer or any other document with the Board. The Board will pay any hearing costs (*e.g.*, hearing room rental, court reporting fees, hearing officer expenses).

If you have any questions, please contact the Clerk's Office at (312) 814-3629.

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

JAMES CHEW AND LYNN CHEW )  
1600 NEAL LANE )  
CARBONDALE, IL 62902 )

Complainant(s), )

v. )

) PCB 06-152

) (For Board use)

DIRK F. BORGSMILLER )  
SPORTS BLAST, L.L.C. )  
1215 E. WALNUT STREET )  
CARBONDALE, IL 62901 )

Respondent(s). )

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

JAMES CHEW AND LYNN CHEW  
1600 NEAL LANE  
CARBONDALE, IL 62902  
JACKSON COUNTY  
PHONE: 618-457-7911

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

SAME AS ABOVE

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

DIRK F. BORGS MILLER, OWNER OF SPORTS BLAST, L.L.C.  
BUSINESS ADDRESS: 1215 E. WALNUT STREET, CARBONDALE, IL 62902  
BUSINESS PHONE: 618-529-5511

PERSONAL ADDRESS: 3204 FOXBERRY CIRCLE, CARBONDALE, IL 62901  
PERSONAL PHONE: 457-5303

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:

The facility offers "special event hosting" for parties, wedding receptions, fraternities, wrestling, and other various "events" by renting out the facility to paying customers. The facility is equipped with a "state of the art sound system" and has the capacity/occupancy to have up to 1,184 individual participants within the facility. The facility generates amplified sound that extends beyond it's boundaries, and the parking lot generates various sounds and noise from the participants who congregate in the parking lot for extended periods of time.

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 5/24 (formerly Ill. Rev. Stat. 1991, Ch. 111 1/2, Par. 1024)  
35 Ill. Adm. Code, Subtitle H, Chapter 1, Section 900.102  
35 Ill. Adm. Code, Subtitle H, Chapter 1, Section 901.104  
Sec 9A Environmental Protection Act, Nuisance Air Pollution

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 is generated from 2 (two) main sources:

1. Amplified sound from inside the facility from the "state of the art sound system" which travels to the complaintants' property located 1/3 to 1/2 mile from the facility.

2. Parking lot noise from participants outside the facility residing in the parking lot, including but not limited to, yelling, honking of horns, sounding of car alarms without cause, and vehicle stereos.

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 was first noticed by the complaintants during the summer of 2005. The noise varies in it's intensity and duration depending upon what type of event has rented the facility. The facility offers "special event hosting" weekdays and weekends during the evening hours and dependent upon availability of the facility and it's schedule. The required closing time of the facility is 1:59 a.m. according to the Carbondale City ordinance.

The following dates and times have been documented by the complaintants and confirmed by the Carbondale Police Department:

Friday, September 9, 2005 from 11:30 p.m. until Saturday, September 10 at 2:30 a.m.  
Saturday, September 17, 2005 from 11:00 p.m. until Sunday, September 18 at 2:30 a.m.  
Saturday, October 15, 2005 from 10:45 p.m. until Sunday, October 16 at 2:30 a.m.  
Thursday, January 19, 2006 from 11:30 p.m. until Friday, January 20 at 2:30 a.m.  
Saturday, March 18, 2006 from 1:30 a.m. until 2:30 a.m.  
Thursday, March 23, 2006 from 11:00 p.m. until Friday, March 24 at 2:30 a.m.  
Friday, March 24, 2006 from 10:30 p.m. until Saturday, March 25 at 3:30 a.m.

The noise heard by the complainants is not limited to the above times noted. These specific times are those instances which have been collaborated by outside sources. There has been a variety of occasions when the noise levels have been disruptive to the complainants without a police report filed. These occasions are usually occurring during the late evening hours or early morning hours with varying lengths and volumes.

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 Sports Blast facility has resulted in an unreasonable interference with the use and enjoyment of complainants' property which could otherwise be described as quiet and tranquil. The disturbances occurring during the late evening and early morning hours has caused disruption and loss of sleep to the complainants. The disturbance endangers the physical and emotional health and well-being of the complainants and depresses the value of complainants' property.

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):

Complainants' request that the Board enter an Order directing the Respondent to cease and desist from further violations of applicable statutes and regulations and, more specifically order Respondent to either change its operations or construct sound proofing structures to stop noise emissions beyond the boundaries of their property. It is requested that a civil penalty be assessed and ordered. 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 the Complainants have registered their problem with the Carbondale Police Department and the Carbondale City Council members. However, no resolution has been achieved or offered and the noise pollution continues.

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.):

The Complainants represent as (a) himself or herself as an individual at this time.

12. James Chew, Lynn Chew  
(Complainant's signature)

CERTIFICATION (optional but encouraged)

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

James Chew, Lynn Chew  
(Complainant's signature)

Subscribed to and sworn before me this day 27<sup>th</sup> of March, 2006.



Tara Julian  
Notary Public My commission expires: 8/23/08

City, state, zip code Carbondale, IL 62902  
(list each respondent's name and address if multiple respondents)

James Chew, Lynn Chew  
Complainant's signature

Street 1600 Neal Lane

City, state, zip code Carbondale, IL 62902



Subscribed to and sworn before me this day of 27<sup>th</sup> March 2006.

Tara Julian  
Notary Public My commission expires: 8/23/08

**CERTIFICATE OF SERVICE**

I, the undersigned, on oath or affirmation, state that on (month, day, year)

James Chew, Lynn Chew, I served the attached formal complaint and notice on the respondent by: (check appropriate line)

certified mail (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

registered mail (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

messenger service (attach copy of receipt if available, otherwise you must file receipt later with Clerk)

personal service (attach affidavit if available, otherwise you must file affidavit later with Clerk)

at the address below:

RESPONDENT'S ADDRESS:

Name Dirk F. Borgsmiller

Street 1215 E. WALNUT

City, state, zip code CARBONDALE, IL 62902

(list each respondent's name and address if multiple respondents)

James Chew, Lynn Chew  
Complainant's signature

Street 1600 Neal Lane

City, state, zip code Carbondale, IL 62902

Subscribed to and sworn before me

this 27<sup>th</sup> day

of March, 2006

Tara Julian  
Notary Public



My commission expires: 8/23/08



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 03/27/2006

Sent To **DIRK F. BORGS MILLER**  
 Street, Apt. No., or PO Box No. **1215 E. Walnut St.**  
 City, State, ZIP+4 **Carbondale IL 62902**

PS Form 3800, June 2002 See Reverse for Instructions

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 03/27/2006

Sent To **Clerk of the Board, State of IL**  
 Street, Apt. No., or PO Box No. **Pollution Control Board**  
 City, State, ZIP+4 **100 W. Randolph St Suite 11-500 Chicago IL 60601**

PS Form 3800, June 2002 See Reverse for Instructions

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Mail Pickup		Delivered	
Label # 70050390000146767083			
# of Mail Pieces : 1			
Mail Pickup Date: 03/27/2006		09:28 AM	
CARBONDALE IL 62901			\$0.63
First-Class			
2.00 oz.			
Certified			\$2.40
Label #: 70051820000636344513			
Issue PVI:			\$3.03
CHICAGO IL 60601			\$3.27
First-Class			
12.10 oz.			
Certified			\$2.40
Label #: 70051820000636344506			
Issue PVI:			\$5.67

Total: \$8.70

Paid by: Visa \$8.70

Account # XXXXXXXXXXXX5123  
 Approval #: 310945  
 Transaction #: 522  
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