

ILLINOIS POLLUTION CONTROL BOARD

July 12, 2007

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|---------------------------------------|---|-----------------------|
| YORK HIGH NEIGHBORHOOD |) | |
| COMMITTEE (a voluntary organization), |) | |
| JANET HODGE, FRED HODGE, PATRICIA |) | |
| BENNETT, DAVID BENNETT, SHEILA |) | |
| TRANT, MIKE TRANT, JOE VOSICKY, |) | |
| JEAN CONROY, PETER CONROY, FRANK |) | |
| SOLDANO, JOSEPH REAMER, |) | |
| ELIZABETH LALIBERTE, and CHARLES |) | |
| LALIBERTE, |) | |
| |) | |
| Complainants, |) | |
| |) | |
| v. |) | PCB 05-93 |
| |) | (Enforcement - Noise) |
| ELMHURST PUBLIC SCHOOLS, DISTRICT |) | |
| 205, |) | |
| |) | |
| Respondent. |) | |

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

On November 15, 2004, York High Neighborhood Committee, Janet Hodge, Fred Hodge, Patricia Bennet, David Bennet, Sheila Trant, Mike Trant, Joe Vosicky, Jean Conroy, Peter Conroy, Frank Soldano, Joseph Reamer, Elizabeth Laliberte, and Charles Laliberte (complainants) filed a complaint against Elmhurst Public Schools, District 205 (respondent). *See* 415 ILCS 5/31(c)(1) (2006); 35 Ill. Adm. Code 103.204. The complaint concerns alleged sound emissions from respondent's school, York Community High School, at 355 W. St. Charles Road in Elmhurst, DuPage County. The parties now seek to settle. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Section 31(d)(1) of the Environmental Protection Act (Act) allows any person to file a complaint with the Board. *See* 415 ILCS 5/31(d)(1) (2006); 35 Ill. Adm. Code 103.212. In this case, complainants allege that respondent violated certain noise provisions of the Act and the Board's regulations. According to the complaint, excessive noise is caused by the operation of air conditioner chillers and ventilation fans located near the northwest corner of the roof of York Community High School. Complaint at 3.

Under Section 31(d)(2) of the Act:

Whenever a complaint has been filed by a person other than the Attorney General or State's Attorney, the parties may file with the Board a stipulation and proposed settlement accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act [415 ILCS 5/31(c)(1) (2006)]. Unless the Board, in its

discretion, concludes that a hearing should be held, no hearing on the stipulation and proposal for settlement is required. 415 ILCS 5/31(d)(2) (2006); *see also* 35 Ill. Adm. Code 103.301.

On February 27, 2007, the Board hearing officer conducted a hearing at which the parties discussed that they had agreed to the terms of a stipulation and proposal for settlement and that they intended to soon file the document with the Board. *See* Transcript at 4-5. On March 19, 2007, the parties filed the stipulation and proposed settlement, accompanied by a motion for relief from the hearing requirement of Section 31(c)(1) of the Act. Notice of the stipulation and settlement agreement was published on March 23, 2007, in the Elmhurst Press/Liberty Suburban Chicago Newspapers. On April 19, 2007, the Board denied the motion for relief from the hearing requirement as moot because the parties went to hearing.

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of respondent's operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2006)).

On April 19, 2007, the Board declined to accept the proposed stipulation and identified deficiencies in the parties' March 19, 2007 stipulation and proposal for settlement. The Board allowed the parties until June 4, 2007, to file any amended stipulation and proposed settlement addressing the deficiencies identified in the order. On June 4, 2007, the parties filed an "agreed motion for extension of time" until June 18, 2007, to comply with the order. The Board granted this motion.

On June 18, 2007, the parties filed a "Motion to Supplement Settlement Agreement" as well as "Supplemental Stipulations Regarding Settlement Agreement." The Board grants the motion and finds that complainants and respondent have satisfied Section 103.302. Under the proposed stipulation, respondent does not admit the alleged violations but agrees to the terms of the stipulation. The Board accepts the stipulation and proposed settlement.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

The Board accepts and incorporates by reference the stipulation and proposed settlement.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2006); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final

orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 12, 2007, by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

John Therriault, Assistant Clerk
Illinois Pollution Control Board