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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**

Kyle Nash)
)
)
)

(Insert your name(s) on lines)
above).)

Complainant(s),)

PCB 0797
(For Board use)

Louis Jimenez)
)
)
)

(Insert name(s) of alleged polluter(s))
on lines above),)

Respondent(s).)

Referrals
1-800-379-5105



ORIGINAL
Jimenez
RELATES TO PCB 07097
4650 N. Port Washington Rd., Milwaukee, WI 53212

1. Your name, street address.

Kyle Nash

county, state:

1630 W. 33rd Place, Chicago

Cook County

Illinois

Phone: _____

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

Phone: _____

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

Louis Jimenez

1628 W. 33rd Place

Chicago, Illinois

60608-6202

Phone: 773.847.3766
(if known)

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:

Residential wind chimes.

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

TITLE VI. NOISE

Section 24. Acts Prohibited.

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 regulations or standard adopted by the Board under this Act.

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.

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:

Source: Wind Chimes (metal)

Size: A number of different windchimes, ranging in size from about two and one half (2.5) feet in length to about twelve (12) inches in length.

Location: These windchimes have variably been hanging on the front porch and/or in the back yard. The houses in our neighborhood, including both houses involved in this matter are only about six (6) feet apart. These neighbors have air conditioning-their windows are closed all year. As we cannot afford air conditioning, our windows are open 6 months out of 12. However, these windchimes can be heard even when our windows are fully shut during the winter months.

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):

Over the years, we have experienced any number of difficult 24/7 noise problems with these neighbors. The first documented incident was in 1997.

As best I can recall, the initial set of wind chimes was audible on their front porch in August of 2004. At some point (I don't recall the date), that set of wind chimes was moved 24/7 into their backyard. Another set of wind chimes was then hung 24/7 on their front porch.

Whenever there is any kind of breeze noise can be heard. At those times, the noise can be heard incessantly 24 hours a day often for days and days at a time. There may then be a break of a day or so when there is no breeze but soon the noise begins all over again. The windchimes remain up 365 days of 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 negative effects my two sons and I experience include, but are not limited to: pain and hearing fatigue; exacerbated hearing impairment problems including tinnitus; annoyance and interference with regular social behavior (e.g., increased irritation, agitation, anxiety, frustration, and helplessness); interference with speech communication; sleep disturbance and the attendant consequences of that on both long and short term bases; cardiovascular effects including heart palpitations and higher blood pressure; gastric, digestive, and nutrition problems, negative hormonal responses (i.e., increased stress hormones) and their consequences on metabolism and the immune system (e.g. headaches, nausea, increased illness); cognitive problems including loss of concentration and memory difficulties; increased sense of alienation and hopelessness; and decreased performance and loss of productivity at work and school. (My older son and I work out of our home; my younger son is a college student who studies at home.)

My sons and I have experienced a marked loss of enjoyment of our lives and enjoyment of our property. As a result of this noise pollution, we often don't want to come home anymore, we don't like being in our home when we are there, and we don't any longer enjoy the neighborhood we've lived in and loved for almost 20 years now.

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)):

I am seeking an order that the respondent stop polluting.

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):

I have no knowledge of any identical or similar cases as described above, except PCB 07-97

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.):

I am representing myself as an individual. I am not an attorney.

12. Kyle Nash
(Complainant's signature)

CERTIFICATION (optional but encouraged)

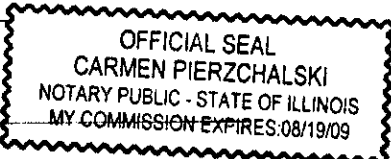
I, Kyle Nash, on oath or affirmation, state that I have read the foregoing and that it is accurate to the best of my knowledge.

Kyle Nash
(Complainant's signature)

Subscribed to and sworn before me this 7th day of March, 2008

Carmen Pierzchalski
Notary Public

My commission expires: _____



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

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.

CERTIFICATE OF SERVICE

I, the undersigned, on oath or affirmation, state that on (month, day, year)
March 7, 2008, 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)

Copy of the receipt is attached.

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 Louis Jimenez

Street 1628 W. 33rd Place

City, state, zip code Chicago, Illinois 60608-6202

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

[Handwritten Signature]
Complainant's signature

Street 1630 W. 33rd Place

City, state, zip code Chicago, Illinois 60608-6202

Subscribed to and sworn before me

this 7th day
of March, 2008

Carmen Pierzchalski
Notary Public

My commission expires: _____



U.S. Postal Service
CERTIFIED MAIL RECEIPT
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CHICAGO IL 60608

7007 3020 0002 4226 1440

Postage	\$ 1.14	0091
Certified Fee	\$2.65	12
Return Receipt Fee (Endorsement Required)	\$0.00	MAR -7 2008
Restricted Delivery Fee (Endorsement Required)	\$0.00	Postmark
Total Postage & Fees	\$ 3.79	03/07/2008

Sent to **LOUIS JIMENEZ**
 Street, Apt. No.,
 or PO Box No. **1628 W. 33RD PLACE**
 City, State, ZIP+4 **CHICAGO IL 60608**

PS Form 3800, August 2006

See Reverse for Instructions

Sincerely,
Kyle Nash
Homeowner

[Click **here** and type your name]
[Click **here** and type job title]