

State of Illinois
Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601
<http://www.ipcb.state.il.us/>

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STATE OF ILLINOIS
Pollution Control Board

FORMAL COMPLAINT

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In The Matter Of:)
Anne McDonagh & David Fishbaum)
1464 Linden Avenue)
Highland Park, IL 60035)
(Insert your name(s) in the space above))
Complainant(s),)
)
)
v.)
Richard and Amy Michelon)
1474 Linden Avenue)
Highland Park IL 60035)
(Insert name(s) of alleged polluter(s)))
Respondent(s))

PCB 20 **08 - 76**
(For Board use only)

Note: If you do not use this formal complaint form and instead draft and type your own, it must contain all of the information requested by this form. All items must be completed. If there is insufficient space to complete any item, you may attach additional sheets, specifying the number of the item you are completing. Once completed, you must file the original and nine copies of the formal complaint, notice to respondent, and certificate of service with the Clerk of the Board at the above address.

1. Your Contact Information

Name: Anne McDonagh and David Fishbaum
Street Address: 1464 Linden Avenue
Highland Park
County: Lake
State: Illinois
Phone Number: (847) 433 - 6971

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

Name: _____
Street Address: _____
County: _____
State: _____
Phone Number: _____

3. Name and address of respondent (alleged polluter)

Name: Richard and Amy Michelin
Street Address: 1474 Linden Avenue
Highland Park IL 60035
County: Lake
State: Illinois
Phone Number: (847) 433 - 8321

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 Michelin's three 5-ton air conditioners are located eight feet from our property line. This is their residence.

The units are on 170 days per year, 24 hours a day. The units operate/make noise about 30-50% of the time. The units' decibel rating is 79 decibels each.

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

State of Illinois Noise Code: ref: 35 Ill. Adm. Code Subtitle H.
Section 901.102.a, which pertains to residential noise radiated to another residential property during daytime hours.

The octave level of the Air Conditioner at 250 Hz, which is 65 dB, far exceeds the Illinois daytime limit of 57 dB, as well as the nighttime limit of 47 dB.

Furthermore, when the daytime limit is corrected for the presence of a Prominent Discrete Tone (-10dB), it exceeds the allowable limit by 18 dB. (The background noise is far below the measurement level (greater than 10 dB difference) at 250 Hz.)

This is the noise generated by only one unit running. A second unit is the same as the first, so a 3dB increase can be expected when the second unit is running at the same time as the first. The 3rd unit is not the same, so there is likely an increase when all units are running but it is unclear how much louder.

See attached report from Acoustic Associates, Ltd.

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.

Loud noise is emitted when the air conditioners kick on. It is of a high-pitched nature that is impossible to tune out, whether awake or asleep. The noise permeates our entire house and all our land. The noise is powerful enough to enter every part of our older home so we are unable to relax for six months a year.

The units kick on about six to ten times per hour in the summer, run loud for 2-3 minutes, run quieter for 2-3 minutes, then go off. Then, about two minutes later, the cycle of loud noise starts again.

Three of our four bedrooms and five of our six common rooms are most affected by the noise. We have alleviated the noise in those two quiet rooms only by closing all doors and windows all year round.

There are no products or materials available to us to cost-effectively stem this noise.

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).

We noticed the noise on April 20, 2006, when we returned from Florida. This was the first time their air conditioners went on, as they moved into the newly built home around Thanksgiving of 2005. We tried to live with it but it soon became apparent that that was impossible.

In 2006 and 2007, the air conditioners have run every day for 170 days each year, 24 hours a day.

2006: April 20th to about Oct 11th. Early snowfall that year.

2007: May 10th to November 1st.

The units go on about 6 times per hour, every hour in the summer time, and about 3-4 times per hour during the spring and fall. The air conditioners run even when the air temperatures are in the 40s. So the noise "alarms" us about 15-20,000 times per year. (6 times/hour X 24 hrs X 70 days (hotter) plus 3 times/hr X 24 hrs X 100 days (cooler)= 17,280 times per year.

We expect the noise to start up again soon when temperatures get above 60 degrees or so.

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
- 1. It wakes homeowner up repeatedly at night, in guest room and in master bedroom, even with windows closed. Guest room is too loud even with fans running and white noise machines. There is no way to get used to it.**
 - 2. Once it wakes us up, its "alarm-like" tone keeps us awake until it stops. We have to hope we'll fall asleep again in the next minute or two before it starts up.**
 - 3. It disrupts all thinking all day, as the high-pitched tone cannot be ignored or deadened, even with headphones.**
 - 4. It interrupts meals, inside or out.**
 - 5. Our home office is frequently loudly interrupted, like a leaf blower going on every few minutes.**
 - 6. Watching television in our family room or attic necessitates the use of headphones to stop the outside noise.**

7. Our outside area is virtually unusable due to the noise. We don't play outside very often any more and cannot sit in our backyard or on our front porch without constant noise.

8. Homeowner has suffered episodic high blood pressure, nervous twitching, inability to complete tasks or concentrate, sleep disruption.

9. We cannot have overnight guests due to the loud noise. Father-in-law complained about how loud noise is—"you can't shut it out."

10. In 2007, we used insulation to seal off all ventilation to the outside from our bathrooms and kitchen in order to reduce noise.

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))

1. Order Michelons to reduce noise emissions to State mandated levels both daytime and at night as measured from same location within three weeks of order.

2. Ensure the Prominent Discrete Tone is abated to State Levels.

3. To alleviate noise pollution, in 2007, we had to buy a grill to cook outdoors as lost ability to use kitchen ventilation. In 2008, in order to use some rooms, we are rebuilding interior walls on north side, installing noise reducing windows along north and taking other steps to alleviate the noise. These steps will NOT stop noise in all rooms but will lessen impact in some key areas. Costs incurred will be assessed soon. We would expect reimbursement for these "clean up" costs.

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 of.

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.)

We are representing ourselves as individuals. We not currently represented by an attorney.

12. Anne McDonagh David Fishbaum
(Complainant's signature)

CERTIFICATION
(optional but encouraged)

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

Anne McDonagh David Fishbaum
(Complainant's signature)

Subscribed to and sworn before me

this 10 day

of APRIL, 2008

Barry Duke
Notary Public



My commission expires: 02/23/2012

Acoustic Associates, Ltd.



Specialists in Hearing and Acoustics

1278 W. Northwest Hwy - Suite 904, Palatine, Illinois 60067
Office: 847-359-1068 • Fax: 847-359-1207
Website: www.AcousticAssociates.com
E-mail: into@AcousticAssociates.com

Tom Thunder, AuD, FAAA, INCE - *Principal*
Roger Harmon, BSEE, PE - *Acoustical Engineer*
Steve Hallenbeck, AuD, FAAA - *Audiologist*
Steve Thunder, BSE Cand. - *Engineering Intern*

June 8th, 2007

Anne McDonagh
1464 Linden Ave.
Highland Park, IL 60035

Re: Noise Emissions

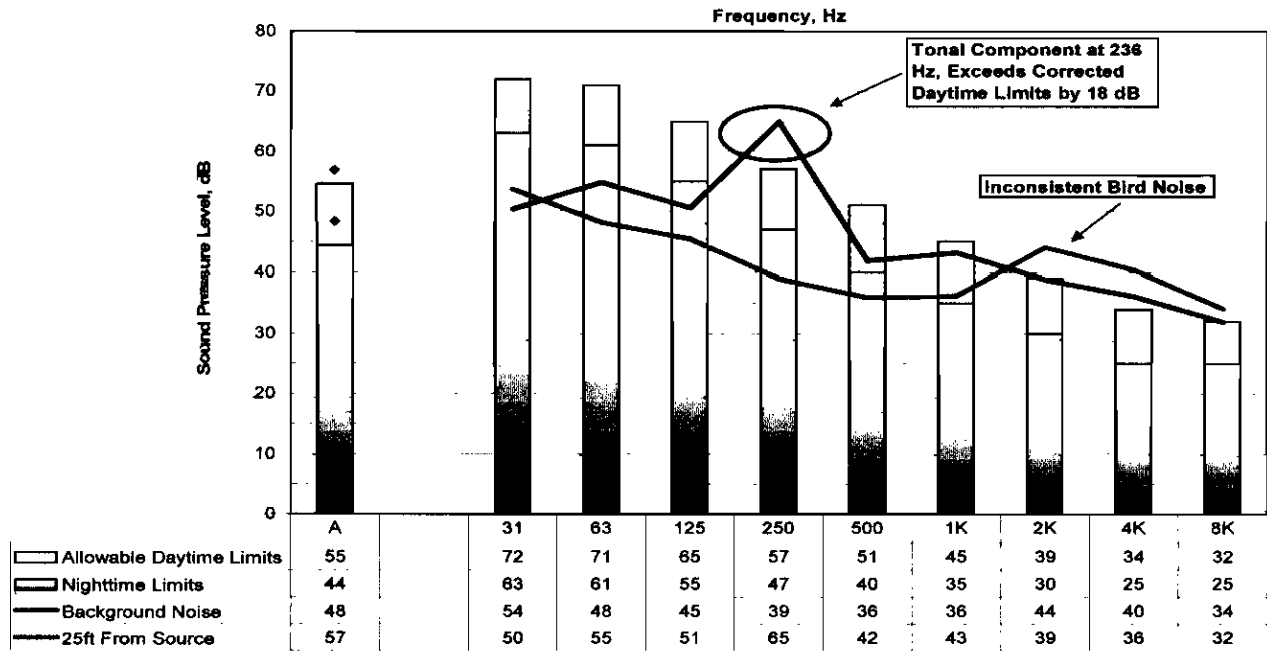
Dear Mrs. McDonagh:

This letter reports the findings of our recent noise assessment of the A/C units next to your property. As you asked we have assessed this noise relative to the State of Illinois noise code (ref: 35 Ill. Adm. Code Subtitle H). Under this code, your residence is classified as Class A (residential) land and the neighboring home from which the noise is emitting is also classified as Class A (residential) land. Since the measurements were taken at approximately 11:30 AM, the applicable code here is Section 901.102a which pertains to residential noise radiated to another residential property during daytime hours (7am – 10pm). Although the limits are specified in each of nine octave frequencies, the overall (total) limit often used for simple monitoring purposes is 55 dBA. Also, it was found that there was a Prominent Discrete Tone. Accordingly, Section 901.106 of the code also applies. This applies a -10 dB correction to the frequency at which the tone occurs.

To conduct our study, we set up our equipment next to the house that was being disturbed, 25 ft from the source. Our equipment consisted of a high precision sound level meter connected to a digital recorder. A calibration tone was placed on the recording so that the recording could be accurately analyzed in our laboratory. The recording began around 11:30 AM on Tuesday, May 29, 2007. Our intern was on site documenting his recordings and observing acoustic surroundings. It was indicated that the noise being recorded at the time was representative, although it was even louder on other occasions.

In our lab analysis, we generated 1/3-octave and octave frequency spectra. The 1/3-octaves were used to determine the presence on a Prominent Discrete Tone, as required by IL code. And the octave bands were used to present the data in a simplified form. The resultant octave band frequency spectrum is shown in FIGURE 1. The overall level of this spectrum is 57 dBA. As seen in the figure, the octave level at 250 Hz (65 dB) far exceeds the Illinois daytime limit of 57 dB, as well as the nighttime limit of 47 dB. Furthermore, when the daytime limit is corrected for the presence of the prominent discrete tone (-10 dB), it exceeds the allowable limit by 18 dB. It is also necessary to correct the levels due to background noise. In this case the correction was 0 dB. As shown in FIGURE 1, the background noise is far below the measurement level (greater than 10 dB) at 250 Hz.

Figure 1- A/C Noise



There are a total of 3 A/C units. But at the time of the measurement, there was only one unit running. The second unit was the same as the first, so a 3 dB increase in the noise level can be expected when the second unit is running at the same time as the first unit. The 3rd unit, however, was not the same as the other two. Therefore, an increase in the noise when all three units run is likely, but we can not predict by how much. At the time of the test, it was 80 degrees outside and the units were determined to have about a 50% duty (on-off) cycle after an hour of measurement /observation. On hotter days it can be assumed that the duty cycle will increase therefore increasing the noise. During the measurements one unit ran part of the time and two units ran part of the time. Therefore, data from only one unit running was taken and then extrapolated to an equivalent of a 1-hour measurement.

The character of this noise can also contribute to the nuisance. In addition to the annoyance of the tonal quality of the noise, there is also an acoustic beating characteristic where the level of the hum oscillates. This characteristic exacerbates the nuisance. The beating is likely caused by the 2 A/C units running at nearly the same speed creating the beating effect. Note, that there is no beating when just one unit is running.

I hope this report meets your expectations in addressing this noise issue. We appreciate the opportunity of working with you and ask that you call us if you have any questions.

Sincerely,

Steve Thunder
Purdue University Acoustical Engineering Intern

Reviewed by,

Tom Thunder, AuD, INCE
Acoustical Engineer and Audiologist

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.

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 APRIL 10, 2008, I served the attached formal complaint and notice on the respondent by

X 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)

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APR 18 2008

**STATE OF ILLINOIS
Pollution Control Board**

at the address below:

RESPONDENT'S ADDRESS:

Name RICHARD + AMY MICHELON

Street 1474 LINDEN AVE

City, state, zip code HIGHLAND PARK IL 60035
(list each respondent's name and address if multiple respondents)

[Signature]
Complainant's signature

Street 1464 LINDEN AVE.

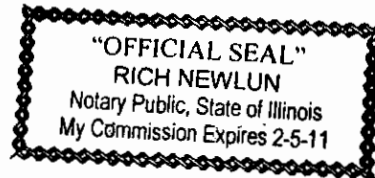
City, state, zip code HIGHLAND PARK IL
60035

Subscribed to and sworn before me

this 10 day

of April, 2008

[Signature]
Notary Public

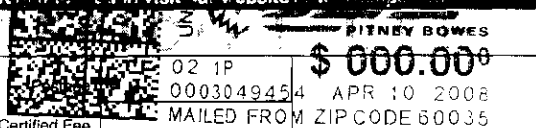


My commission expires: 2-5-11

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Sent To: RICHARD + AMY MICHELOW
 Street, Apt. No., or PO Box No.: 1474 LINDEN AV
 City, State, ZIP+4: HIGHLAND PK IL 60035