

**ILLINOIS POLLUTION CONTROL BOARD**

**RECEIVED**  
CLERK'S OFFICE

AUG 05 2008

**ORIGINAL** STATE OF ILLINOIS  
Pollution Control Board

KYLE NASH,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 07-97
	)	
LOUIS JIMENEZ,	)	(Citizens Enforcement - Noise)
	)	
Respondent.	)	

**NOTICE OF FILING AND PROOF OF SERVICE**

TO: Kyle Nash  
1630 W. 33<sup>rd</sup> Place  
Chicago, IL 60608

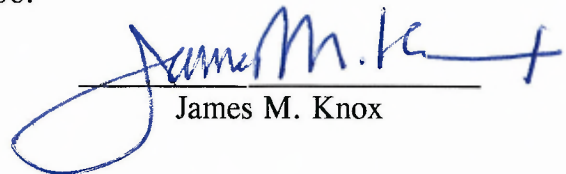
PLEASE BE ADVISED that on the 5<sup>th</sup> day of August, 2008, Respondent Luis A. Jimenez, by his attorney James M. Knox, filed Respondent's Appearance and Motion to Dismiss herein, with the Clerk's Office, State of Illinois, Pollution Control Board, copies of which are attached hereto and herewith served upon you.

NAME: James M. Knox, Attorney for Luis A. Jimenez  
ADDRESS: 121 W. Chestnut, #3104, Chicago, IL 60610  
TELEPHONE: 312/587-1356

**CERTIFICATE OF SERVICE**

Under penalties as provided by law pursuant to Sec. 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that a copy of this Notice of Filing and Proof of Service, with attached Appearance and Motion to Dismiss, was served on the Complainant, Kyle Nash, at the address shown above, by depositing true and correct copies thereof in a sealed, properly addressed, postage pre-paid envelope, and depositing the same in the USPS drop box located at 121 W. Chestnut Street, Chicago, IL 60610, before 4:30 p.m., on August 5, 2008.

Witnessed and certified to this 5<sup>th</sup> day of August, 2008.

  
James M. Knox

**LAW OFFICES OF JAMES M. KNOX**

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ORIGINAL

PCB 07-97

(Citizens Enforcement - Noise)

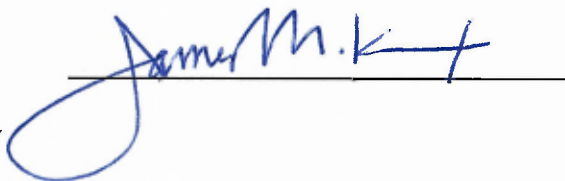
APPEARANCE BY ATTORNEY

ATTORNEY APPEARANCE

I HEREBY FILE MY APPEARANCE AS ATTORNEY FOR:  
THE RESPONDENT

\_\_\_\_\_ Luis A. Jimenez, (incorrectly named herein as "Louis Jimenez")

\_\_\_\_\_  
IN THE ABOVE ENTITLED CAUSE.

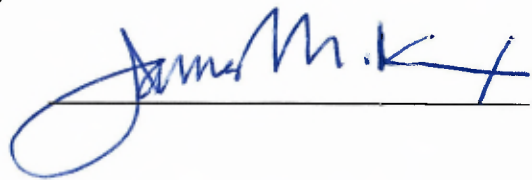


Name: James M. Knox, Attorney at Law  
Address: 121 W. Chestnut St. #3104  
Chicago, IL 60610  
Telephone: 312-587-1356  
Date: August 5, 2008

PROOF OF SERVICE

Under penalties as provided by law pursuant to Sec. 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that a copy of this Notice of Filing with all attachments was mailed to Kyle Nash, 1630 W. 33<sup>rd</sup> Place, Chicago, IL 60608, postage pre-paid, on August 5, 2008, before 4:30 p.m.

Witnessed and certified to this 5<sup>th</sup> day of August, 2008.





that 1) “[t]he second (backyard) windchime was removed several weeks after the Respondent was served...” and, 2) “[t]he Respondent removed the front porch chime after the initial status hearing on August 9, 2007...”

5. Nothing in complainant’s amended pleadings, in either her amended Formal Complaint, or in her amended Motion for Summary Judgment, suggests that the “polluting,” viz noise emitting wind chimes allegedly located on respondent’s property, was continued, or is continuing, or that there was at any time since the admitted voluntary removal of these devices from respondent’s property, a repetition of this noise emitting phenomena on respondent’s property, since August 9, 2007, in violation of 415 ILCS 5/24, 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 this Act,*” nor has complainant cited any regulation or standard adopted by the Board under the act that was allegedly violated.

6. Therefore, the only relief that complainant can be seeking in this proceeding is an Order from this Board that the respondent cease and desist hanging, using, or in anyway allowing the installation or use of wind chimes on his property in the future, since, by complainant’s own admission in her amended pleadings, these devices were voluntarily removed from respondent’s property on August 9, 2007, which was in direct response to complainant’s proceedings before this Board and they have never been reinstalled (see copies of photographs taken of the respondent’s property on August 3, 2008, attached hereto).

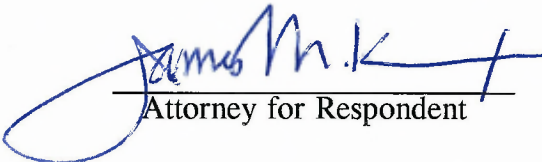
7. There is thus no “case in controversy” before this Board regarding noise pollution on respondent’s property, and there is thus no relief that this Board can provide in the premises in that the subject of complainant’s complaint has by her own admission been removed one year ago, as of August 9, 2008, thus her pleadings request relief for only a purely hypothetical nuisance, which is speculative only, because the noise complained of was voluntarily abated by respondent, based on complainant’s own admission in her pleadings, and thus her continued proceeding before this Board is without merit in that the issue raised is moot.

8. Accordingly, respondent respectfully requests that the Board not accept the

amended pleadings for hearing, and that the Board find that the amended pleadings are 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), because the amended pleadings fail to state a cause of action upon which the Board can grant relief. While the Board unquestionably has the authority to order a respondent to stop polluting, or to implement abatement measures, the amended pleadings fail to make out a prima facie case for a continuing violation, where abatement was voluntarily completed over one year ago by complainant's own admission, and there is no polluting occurring for the Board to order to stop.

WHEREFORE, based on the foregoing, respondent respectfully requests that the Board dismiss these proceedings, with prejudice.

Respectfully submitted,

  
\_\_\_\_\_  
Attorney for Respondent

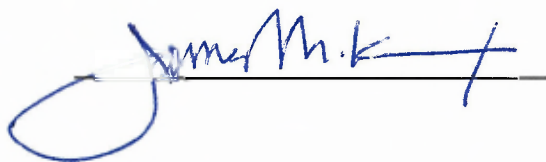
James M. Knox  
Attorney for Respondent  
Chestnut Tower  
121 W. Chestnut, #3104  
Chicago, Illinois 60610  
312/587-1356

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**AFFIDAVIT**

NOW comes James M. Knox, the affiant herein, and competently states from his personal knowledge that the attached copies of photographs of respondent's property, located at 1628 W. 33<sup>rd</sup> Place, Chicago, Illinois, were taken by your affiant personally on August 3<sup>rd</sup>, 2008, in the front and rear of respondent's home, and that no "wind chimes" were in evidence on said date.



**Name:** James M. Knox  
**Address:** 121 W. Chestnut St. #3104  
Chicago, IL 60610  
**Telephone:** 312-587-1356  
**Date:** August 5, 2008

