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STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MILTON C. and VIRGINIA L. KAMHOLZ	)	
	)	
Complainants	)	
	)	
v.	)	PCB 02-41
	)	(Citizens Enforcement – Air, Noise)
LAWRENCE and MARIANE SPORLEDER	)	
	)	
Respondents	)	
	)	

**RESPONDENT'S SUPPORTING BRIEF**

NOW COME the Respondents, LAWRENCE and MARIANE SPORLEDER, by and through their attorneys, MADSEN SUGDEN & GOTTEMOLLER, and in support of their position submit the following brief.

**Allegations**

This action was initiated by KAMHOLZ on November 11, 2001, in which a complaint alleged SPORLEDER violated 415 ILCS 5/9(a), and sections 900.102, 901.102(a), 201.102 and 243.102(a) of the Pollution Control Board's regulations. Each alleged violation is based upon, individually or in combination, the riding of dirt bikes, all-terrain vehicles (ATV) and go-carts by SPORLEDER on their own property.

On January 10, 2002, the Pollution Control Board found KAMHOLZ'S allegations regarding violations of 201.102 and 243.1029(a) to be frivolous, and properly struck them from the complaint.

The surviving allegations are **415 ILCS 5/9(a)**, which reads:

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to

violate regulations or standards adopted by the Board under this Act.

“Air Pollution” is defined under 415 ILCS 5/3.02, as the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property,”

The second surviving allegation is Section 900.102 of the Board’s regulations. This section provides that “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 Act, so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter.”

Noise pollution is defined under Section 900.101 as “the emission of sound that unreasonably interferes with the enjoyment of life with any lawful business or activity.”

The third surviving allegation is Section 901.102(a) of the Board’s regulations. This section prohibits emitting sound above certain numeric limits during daytime hours from a source on Class A, B, or C land, to any receiving Class A Land.

Moreover, Section 951.105 of the regulations establishes the necessary techniques for measuring alleged violations under Section 901 of the regulations.

KAMHOLTZ also conclude in their complaint, that the riding has not allowed them to enjoy their property; that their property has depreciated in value, and; the riding has negatively impacted their physical and mental health. Specifically, KAMHOLTZ allege that they suffered sore throats, headaches, and that the odor from the exhaust fumes has infiltrated their home.

## **Facts**

On November 19, 2002, a hearing was held with regard to the above-alleged violations, and the following facts were established. The parties are neighbors to each other, and live on Sullivan Road, Woodstock Illinois. The surrounding area in which the parties live is rural and agricultural in nature, with SPORLEDER property being zoned as Estate 5 under the County of McHenry (Tr. 285). The SPORLEDER property consists of five acres, which requires the use of certain vehicles for maintenance purposes; specifically a 1993 Polaris 350 ATV, and a 1946 Ellis Chalmer tractor (Tr. 282). Moreover, the surrounding landowners also use similar vehicles, and ride them in the ditch line, which runs parallel with Sullivan Road. (Tr. 286).

Further, it was established that over the past sixteen years, SPORLEDER allowed their grandchild to operate mini-bikes and motorcycles on their own property. That the vehicles were factory built (Tr. 287). The time allowed for said operation was set by SPORLEDER from 11:00 a.m. to 8:00 p.m. and that the grandchild owns one dirt bike at the time of hearing (Tr. 256). In addition, it was undisputed that SPORLEDER has not allowed the use of any truck or car on the property itself since 1997.

SPORLEDER testified that their grandson would educate himself by working on the dirt bikes and/or trucks, and by doing so, he would learn how to fix motors, and learn other mechanical skills (Tr. 253), and that they allowed the riding so that their grandson would keep out of trouble (Tr. 270-71), and because of the rural nature of the area, there was not of other activity for an adolescent (Tr. 286).

After receiving the KAMHOLTZ complaint, and learning that an action was pending, the grandson has not ridden a dirt bike or ATV on the property. Further, SPORLEDER attempted to resolve the alleged problem by restricting the riding of dirt bikes and ATVs so that the riding

avoided the abutting corner of the KAMHOLTZ property. Additionally, evergreen trees were planted to buffer the sound of the vehicles (Tr. 259-60). SPORLEDER testified that the riding did not cause noise, which bothers them (Tr. 286), and that SPORLEDER entertained guests while the riding took place (Tr. 288-89).

In their complaint, KAMHOLTZ complained that the alleged violations were on a continued basis since 1993. Testimony revealed that they have not spoken with SPORLEDER since 1993 (Tr. 248). Moreover it was in 1993, that KAMHOLTZ complained that SPORLEDER had improperly burned material in violation of County Code (Tr. 248).

Further testimony showed that KAMHOLTZ made no attempt to contact SPORLEDER and resolve the alleged riding problem, and that notice of this action was the first time SPORLEDER was aware of the problem (Tr. 289). Moreover, SPORLEDER testified on cross-examination by KAMHOLTZ that they would have stopped the riding if KAMHOLTZ had contacted SPORLEDER (Tr. 269).

Videotape evidence was also introduced by KAMHOLTZ. SPORLEDER directs the Board to important facts revealed by the video. A portion of the video involves the driving of a pick up, which has not occurred in over five years as previously stated. More importantly, KAMHOLTZ make the following comments while the videotape: "ATVs and mini bikes are no problem." (Tr. 90); it has been "a long time since we had riding goin on, this bike is a little quieter." (Tr. 90); "he went up on the other side. That is good. It is not so loud when he goes up there." (Tr. 91).

Further, the video does not show any dust accumulation, nor exhaust pollution. In fact KAMHOLTZ have their windows and door exposed to the natural air during the video.

Finally, the video shows only a limited number of days. Specifically, June 15, 1997; May 25, 1998; May 30, 1998; June 24, 1998; May 13, 2001, May 19, 2001; Mother's Day 2001; June 8, 2001, and; July 24, 2001.

### **Argument**

SPORLEDER will address each alleged violation separately, and demonstrate how KAMHOLZ have not met their burden of proof.

#### **Section 9(a)**

Under the Act and Board regulations, an "air violation has occurred if the complainant has proven that the complained of . . . air pollution has unreasonable interfered with the complainant's enjoyment of life . . . ." *Detlaf v. Boado & EPB Park Services, Inc.*, PCB 92-26 (1993). In *Detlaf* the only air pollution evidence produced at hearing was smoke rising from a cooking area in a neighboring park. The Board concluded that the complainants did not produce adequate evidence of an unreasonable interference due to the smoke.

The present case is very similar to *Detlaf* with regard to air pollution. Complainants produced twelve witnesses, eight of which did not provide any testimony to air pollution. As to the KAMHOLTZS, Mrs. KAMHOLTZ testified that "you can see a *little* dust behind the car" when referring to a picture (TR. 80)(emphasis added). She further concluded, without support, that "where you see ruts like that you know, there is dust." (Tr. 92-93). Her testimony is devoid of any fumes, exhaust, or dust caused by SPORLEDER, which unreasonable interferes with the enjoyment of her property.

Mr. KAMHOLTZ testified that he could not relax because the riding was taking place (Tr. 189). When asked why he replied:

A. I guess it was stress caused, caused a stressful feeling.

Q. Because of?

A. The noise, probably mostly. I probably wasn't as close to the dust and fumes because usually I was working towards the other end of the property.

By his own admission, Mr. KAMHOLTZ demonstrates that he was not near the alleged dust or fumes, and that he was *enjoying his property* by working on the land.

The next witness who testifies to any air pollution is Natalie Secor. Her entire air pollution testimony consists of the following at Tr. 159:

Q. Have you ever seen dust or smelled exhaust fumes while riding takes place?

A. Yes.

There is nothing in Ms. Secor's testimony, which demonstrates that the dust and/or fumes unreasonably interferes with the KAMHOLTZ'S enjoyment of their property. In fact, Ms. Secor does not even testify that the fumes smell bad.

A Similar exchange is found in the testimony of Mike Dworzynski at Tr. 175.

Q. Do you ever smell exhaust fumes and see the dust from these vehicles?

A. Yes.

Again, the testimony is insufficient to support the allegations in the complaint, in that SPORLEDER has caused air pollution, which unreasonably interferes with KAMHOLTZ'S enjoyment of their property.

KAMHOLTZ never put forth evidence or testimony, which demonstrates that SPORLEDER has violated Section 9(a) of the Act. As a result, the Board must find that KAMHOLTZ has not met their burden as to this allegation.

**Section 901.102(a)**

This section prohibits emitting sound above certain numeric limits during daytime hours from a source on Class A, B, or C land, to any receiving Class A Land. Further, Section 951.105 of the regulations establishes the necessary techniques for measuring alleged violations under Section 901.102(a).

KAMHOLTZ offered the expert testimony of Greg Zak (Tr. 202) to assist them in proving their case. However, Mr. Zak admitted that he did not record any decibel reading from the Kamholtz property, nor did he witness any of the alleged violations (Tr. 217).

More importantly Mr. Zak testified that the equipment and methods used by KAMHOLTZ did not satisfy the requirements for measuring violation under 901.102(a) (Tr. 237). Further, the record is devoid of any sound measurements performed by KAMHOLTZ that would satisfy the requirements of Section 951.105.

Regardless of the lack of measuring standards, KAMHOLTZ wishes the Board to believe that SPORLEDER violate 901.102(a), and that KAMHOLTZ has sustained their burden. As a result of the record being devoid of a violation of 901.102(a), the Board must find for SPORLEDER on this charge.

### **Section 900.102**

The issue surrounding the violation under this section, is if the alleged noise created by SPORLEDER unreasonably interfered with the enjoyment of life?

The section provides that “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 Act, so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter.”

Noise pollution is defined under Section 900.101 as “the emission of sound that unreasonably interferes with the enjoyment of life with any lawful business or activity.” “Sounds must *objectively* affect the complainant’s life or business activity.” “The unreasonableness of noise must be determined in light of the factors set forth in Section 33(c) of the Act. (415 ILCS 5/33(c). *Detlaff* (emphasis added).

Addressing each factor under 33(a), it is clear that KAMHOLTZ life and enjoyment of the property has not been interfered with unreasonably.

1) Character and Degree of Injury: The complaint alleges that the noise from SPORLEDER occurred on a continuous basis, and caused harm to their physical and mental health. Specifically, KAMHOLTZ allege that they suffered from sore throats, headaches, and that the odor from the exhaust fumes has infiltrated their home.

However, the record is silent as to any physical ailments suffered by KAMHOLTZ. No physician reports were tendered; no testimony as to physical injury was offered. No witness testified that they suffered sore throats or headaches. In fact, the record shows that KAMHOLTZ hosted parties during the ten years in question, and not one guest to the parties testified that they physically suffered from the alleged pollutants from SPORLEDER.

Moreover, the riding is not continuous. The riding does not occur in the early morning hours, nor does the riding take place late at night. The evidence also demonstrates only nine days of riding activity. Out of a ten year period, nine days is not continuous in nature.

The Complaint also alleges a loss in KAMHOLTZ property value. In order to support this claim, KAMHOLTZ called Lillian Caraucio, a licensed real estate agent as a witness. Ms. Caraucio never witnessed the live riding of any vehicles by SPORLEDER (Tr. 56). Because she had not seen the riding activity in person, Ms. Caraucio had to speculate if someone would



purchase a piece of property which was adjacent to land where mini-bikes and ATVs were ridden (Tr. 58). The Board should take notice that the speculation is not even with regard to the KAMHOLTZ property, but rather a piece of property in the abstract.

Moreover, when asked by KAMHOLTZ if an interested party in the KAMHOLTZ property would be dissuaded by the riding of the vehicles, Ms. Caraucio responded, "Well, I can't say that every buyer would say that." (Tr. 61). Further still, in her own written opinion, Ms. Caraucio stated that the riding of dirt bikes "within 70 feet of the subject property *could* be detrimental to the sale of this property." (Tr. 64)(emphasis added).

The testimony of Ms. Caraucio brought out the fact that alleged problem caused by SPORLEDER is subjective to KAMHOLTZ. When asked why KAMHOLTZ did not purchase another piece of property, Ms. Caracio stated that the neighboring property had motorbikes (Tr. 58). Then, on cross-examination, she testified that two buyers were interested in purchasing the KAMHOLTZ property so that they could ride their motorcycles on the property (Tr. 66-67).

The record is silent as to any physical damage to the property, to KAMHOLTZ, and with regard to any loss property value. As a result, the character and degree of injury is non-existent, and the general welfare of the party and property is not harmed.

2) Social and economic Value of Pollution Source: Testimony at trial revealed that the KAMHOLTZ children operated similar bikes in the past (Tr. 160). In fact, a KAMHOLTZ witness, Mike Dworzynski, testified that he rode motorbikes when he was younger, and that he currently allows his children to ride on their property in Belvidere, Illinois (Tr. 179). Moreover, other residents in the area also use similar vehicles for recreational and maintenance purposes (Tr. 285-86).

In addition to the complainant's witnesses enjoying the social benefit of such activity, SPORLEDER testified that the ATV is used for yard maintenance and for entertaining their grandchildren (Tr. 257). SPORLEDER also testified that their grandson would educate himself by working on the dirt bikes and/or trucks, and by doing so, he would learn how to fix motors, and learn other mechanical skills (Tr. 253), and that they allowed the riding so that their grandson would keep out of trouble (Tr. 270-71), and because of the rural nature of the area, there was not of other activity for an adolescent (Tr. 286).

The social value in the rural setting is very high as evidenced by the number of participants. It is clear from the record that SPORLEDER are not alone in this activity. Riding motorbikes is an activity that the KAMHOLTZ children, in-laws and grandchildren have engaged in, as well as many neighbors.

3) Suitability of the Source: The properties in question are in a rural setting, with many of the lot sizes being five acres or greater. The physical character of the land is most suitable for the engaged activity. The Board is not considering motorbike riding in a highly congested neighborhood, with half-acres lots, with twenty feet between homes.

The tone of the complaint and requested relief, is that the KAMHOLTZ want to live in a quiet residential area. The area is zoned as Estate property, and the riding of motorbikes is a permissible activity. However, if KAMHOLTZ desire a tranquil place to live, perhaps a private community would better suit them. In other words, KAMHOLTZ want the spaciousness of a five-acre parcel, but they do not want to deal with other aspects of owning such land.

4) Technical practicability and economic reasonableness of control: Because the area in question is rural, and therefore without many natural or man-made barriers to block sound, it would be economically burdensome to require SPORLEDER to install a devices to

eliminate the sound. Additionally, KAMHOLTZ has not come forth with the type of barriers, the location of barriers, and the cost of such barriers. Without this information, the Board cannot determine the feasibility of such action.

The record does reflect that SPORLEDER has planted trees to absorb some of the sound, and that they have avoided riding on certain portions of their land (Tr. 259). However, to require SPORLEDER to eliminate all use of the vehicles would be unreasonable and unjust to SPORLEDER.

5) Subsequent Compliance: As discussed *supra*, SPORLEDER has modified their activity, including not riding on the property for the last year. However, SPORLEDER does have right to enjoy his property, and the riding may resume.

Moreover, had KAMHOLTZ contacted SPORLEDER ten years ago to address the alleged pollution, this matter would have been resolved in a more neighborly fashion.

Conclusion on Unreasonable Interference: The record does not show any physical harm to KAMHOLTZ person or property. Moreover, the complaints allowed similar activity to occur on their property in the past. Further, other residents in the neighborhood engage in like activity.

There is no evidence of diminution in value of the KAMHOLTZ property. In fact the record shows that others would purchase the property to ride motorbikes.

The videotapes show that windows to the KAMHOLTZ property are open, and that Mrs. KAMHOLTZ is speaking at a normal level without any throat ailments. The tapes also show that the television can be heard while the riding is taking place.

SPORLEDER contend that KAMHOLTZ have not met their burden of proof to show that the riding has objectively unreasonably interfered with the enjoyment of their property.

## **Conclusion**

This case is not the type of case that should be in front of the Board. Rather, it is a dispute between two neighbors. A dispute that began with something other than riding motorbikes and ATVs. The animosity displayed by KAMHOLTZ arises from a burning issue which occurred ten years ago. Because SPORLEDRER did not commit any burning violations, that matter was dismissed by a court of law.

Unable to prosecute the burning issue, KAHMOLTZ found another SPORLEDER activity that bothered them. KAMHOLTZ became fixated on the activities of SPORLEDER, but never once made any effort to communicate with SPORLEDER. Instead KAMHOLTZ videotaped SPORLEDER, and complained to anyone who would listen: the sheriff, county board, and now the Pollution Control Board.

However, the activity engaged in by SPORLEDER is not pollution. The record is devoid of any evidence of an air pollution violation, or noise pollution under Section 901.102(a). Moreover, there is insufficient evidence to support the remaining allegation: that the riding unreasonably interferes with the KAMHOLTZ enjoyment of the property in an objective manner.

It is clear from the record that the operation of motorbikes has fallen out of KAMHOLTZ favor. KAMHOLTZ allowed their children to ride on their property in the past, but they no longer allow it. They desire to move, but will not purchase a piece of property, because the neighbors may own motorbikes. The KAMHOLTZ in-laws own and ride motorcycles on their property, but will not do so when KAMHOLTZ come and visit.

However, the subjective dislike of motorbikes, and ATVs is not the standard the Board is required to use. Objectively, KAMHOLTZ has not proven that the activity engaged by

SPORLEDER unreasonably interferes with their enjoyment of the property. As discussed *supra*, other people were interested in purchasing the KAMHOLTZ property to engage in similar activity. Moreover, other neighborhood residents operate motorbikes and ATVs. What KAMHOLTZ defines as pollution, is acceptable and desired behavior by others.

WHEREFORE, because KAMHOLTZ have not met their burden of proof, the Board must find in favor of SPORLEDER.

Respectfully submitted,  
LAWRENCE and MARIANE SPORLEDER,

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