

BEFORE THE ILLINOIS
POLLUTION CONTROL BOARD

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JAN 08 2010

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
JOSEPH & VICTORIA MORRISSEY,)
)
Complainants,)
)
v.)
)
GEOFF PAHIOS and ALPINE)
AUTOMOTIVE,)
)
Respondents.)

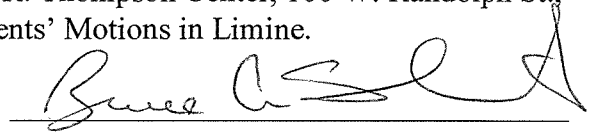
PCB 09-10

ORIGINAL

NOTICE OF FILING

To: Joseph & Victoria Morrissey
32 S. Chestnut Court
Hawthorn Woods, Illinois 60047

PLEASE TAKE NOTICE that on January 8, 2010, the undersigned filed with the Clerk of the State of Illinois Pollution Control Board, James R. Thompson Center, 100 W. Randolph St., Suite 11-500, Chicago, Illinois 60601, the Respondents' Motions in Limine.



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MOTIONS IN LIMINE

NOW COMES the Respondents, GEOFF PAHIOS and ALPINE AUTOMOTIVE, INC. improperly noted as ALPINE AUTOMOTIVE, by and through their attorneys, Paul J. Oleksak and Bruce A. Slivnick and as and for its Motions in Limine respectfully requests that the Honorable Board enter an Order relative to the following evidentiary matters at the onset of the hearing as follows:

1. Preventing non-party participants that live in the neighborhood of the Complainants from providing oral and/or written statements on the record as to any aspects of the noise they allege to emanate from the Respondents' location under Pollution Control Board Rule 101.628, 35 Ill. Admin Code 101.629 (Westlaw 2010). The Complainants failed to name any of their neighbors as witnesses or as people having knowledge of the noise pollution in their responses to the Respondents' discovery. Allowing any such unnamed individuals to provide any written and/or oral statements is tantamount to rewarding the Complainants for circumventing the discovery process and the discovery rules of this Honorable Board in that the names of such

individuals were known to the Complainants but not disclosed to the Respondents. Allowing any such statement into the record would be prejudicial to the Respondents in that it would undermine the Respondent's rights to cross-examination of such witnesses as the failure to disclose any such individuals prevented the Respondents from taking their discovery depositions. Such actions would violate the Respondent's rights to due process of law under the 14th Amendment to the United States Constitution and Article I, Section 2 of the Illinois Constitution.

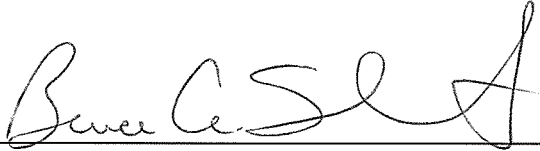
2. To treat the introduction of any report prepared by Greg Zak in accordance with Pollution Control Board Rule 101.628(b) as a written statement without the availability of cross-examination. The Complainants have consciously chosen not to call Mr. Zak as a witness on in support of their complaint. As such, this failure effectively denies the Respondents their rights of cross-examination of Mr. Zak's opinions in this matter.

3. To exclude any evidence of the video tapes prepared by the Complainants as they are undated and/or inaccurately dated. Additionally the video tapes do not indicate the method of recording and that the audio was a true and accurate representation of the noise level in light of potential audio gain built into the recording device nor the source of the noise on the recordings. Therefore, the Complainants can not establish an appropriate foundation for the introduction of said tapes.

4. To exclude any video/audio tapes intended to be introduced by the Complainants. Such audio/video tapes were obtained without the consent of the Respondents and thereby obtained in violation of the Illinois Eavesdropping Act. The Complainants knowingly and intentionally used an eavesdropping device, the audio/video recorder, knowing attempting to intercept and/or record noise including conversations occurring on the Respondents' premises. 720 ILCS 5/14-1 et.seq.; 720 ILCS 5/14-2(a)(1). (Westlaw 2010). Furthermore, according to said

Act, any evidence obtained in violation of the act is not admissible in any trial or administrative proceeding. 720 ILCS 5/14-5 (Westlaw 2010); People v. Rodriguez, 313 Ill. 877, 886, 730 N.E.2d 1188, 1195-1196 (2nd Dist. 2000).

WHEREFORE, the Respondents, GEOFF PAHIOS and ALPINE AUTOMOTIVE, INC. improperly noted as ALPINE AUTOMOTIVE respectfully pray that this Honorable Board enter an Order at the onset of the hearing herein in accordance with the above-described requests and for such further and other relief deemed just and reasonable under the circumstances.

By: 
One of Respondents' Attorneys

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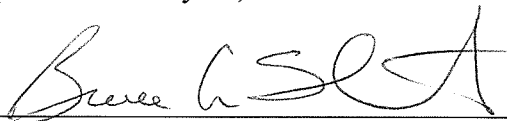
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Certificate of Service

Bruce A. Slivnick, an attorney hereby certify that I served this Notice and Motions in Limine to each person to whom it is directed by depositing the same in the Regular First Class U.S. Mail from Deerfield, Illinois 60015 prior to 5:00 p.m. on January 10, 2010.



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