

ILLINOIS POLLUTION CONTROL BOARD
January 24, 2002

REBECCA S. LAWRENCE,)
)
 Complainant,)
)
 v.) PCB 02-10
) (Citizens Enforcement - Noise)
 NORTH POINT GRADE SCHOOL c/o UNIT 5)
 DISTRICT OFFICE,)
)
 Respondent.)

ORDER OF THE BOARD (by S.T. Lawton, Jr.):

On July 25, 2001, complainant, Rebecca Lawrence, filed a complaint with the Board. The complaint alleges that North Point Grade School (North Point) operates air conditioning units on the roof of the school at 2602 East College Avenue in Bloomington, McLean County, in violation of noise provisions of the Environmental Protection Act and Board regulations. North Point filed a written request to produce discovery on November 21, 2001. Lawrence did not disclose discovery within 28 days from the date of the motion to produce discovery. On December 24, 2001, North Point consequently filed a motion to dismiss this case for her failure to disclose discovery in a timely fashion. Lawrence has also filed a motion to change hearing officers in this matter.

The Board first addresses North Point's motion to dismiss for failure to produce discovery. Section 101.800(c) of the Board's procedural rules states that the Board will consider certain factors when determining whether to impose sanctions. 35 Ill. Adm. Code 101.800(c). Those factors include: "the relative severity of the refusal or failure to comply; the past history of the proceeding; the degree to which the proceeding has been delayed or prejudiced; and the existence or absence of bad faith on the part of the offending party or person." *Id.* Based on the above criteria, the Board finds that the sanction of dismissal is not warranted in this matter. The Board accordingly denies the motion to dismiss.

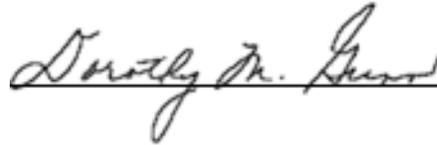
The Board next addresses the complainant's motion to change Board hearing officers. On January 14, 2002, complainant raised several arguments in a letter that we construe as a motion to change hearing officers. The Board decides this without response from North Point¹ to avoid undue delay and material prejudice. The Board notes that the hearing previously scheduled for January 30, 2002, must be postponed in light of this order.

¹ Section 101.500(d) of the Board's procedural rules provides in relevant part that "[w]ithin 14 days after service of a motion, a party may file a response to the motion. . . . Unless undue delay or material prejudice would result, neither the Board nor the hearing officer will grant any motion before the expiration of the 14 day response period. . . ." 35 Ill. Adm. Code 101.500(c).

The Board has no question concerning the impartiality of its hearing officer, who makes no findings of fact or conclusions of law. However, in the interest of ensuring fairness, the Board grants this motion. The Board directs the new hearing officer to set a schedule for expeditious completion of discovery and hearing in this matter. The Board orders the parties in this proceeding to comply with the discovery schedule set by the hearing officer in this matter.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 24, 2002, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control