

ILLINOIS POLLUTION CONTROL BOARD
August 8, 2024

DOUG AND GERI BOYER,)
)
Complainants,)
)
v.) PCB 22-9
) (Citizens Enforcement – Noise)
MRB DEVELOPMENT, LLC d/b/a)
COPPER FIRE, RENAE EICHHOLZ AND)
MARK EICHHOLZ,)
)
Respondents.)

INTERIM OPINION AND ORDER OF THE BOARD (by M. Gibson):

On September 30, 2021, Doug and Geri Boyer (complainants) filed a complaint against Renae and Mark Eichholz, individually, and MRB Development, LLC d/b/a Copper Fire (respondents). The complaint concerns the Copper Fire bar, restaurant and live music venue owned and operated by Renae and Mark Eichholz’s company, MRB Development, LLC, located at 200 East Main Street in Belleville, St. Clair County. On April 11, 2023, respondents filed a motion for summary judgment.

For the reasons discussed below, the Board finds that there is no genuine issue of material fact and summary judgment is appropriate for the sound emission standard violation claim. The Board grants respondents’ motion for summary judgment on that issue. The Board finds that there is a genuine issue of material fact for the nuisance noise pollution claim. The Board denies respondents’ motion for summary judgment on that issue. The Board directs the hearing officer to proceed to hearing on the nuisance noise pollution claim.

The Board’s interim opinion begins below with the procedural history and the undisputed facts of this matter. After providing the legal background, the discusses the issues and whether summary judgment is appropriate for each issue. The Board concludes by reaching its decision and issuing an interim order.

PROCEDURAL BACKGROUND

Complainants filed this complaint on September 30, 2021 (Comp.). On December 6, 2021, respondents filed a motion to dismiss, a motion to strike, and an answer to the complaint. On March 3, 2022, the Board struck as frivolous paragraphs 33 through 38 of the complaint, along with the complaint’s request for injunctive relief, denied respondents’ motion to dismiss, and denied as moot respondents’ motion to strike. The Board accepted the complaint for hearing, as modified by the order. On March 25, 2022, the respondents filed their answer to the modified complaint.

On April 11, 2023, respondents filed a motion for summary judgement (Mot.) and a memorandum in support of their motion (Memo.). Complainants filed a response to respondents' motion on June 16, 2023 (Resp.). On June 30, 2023, respondents filed a reply to complainants' response (Reply).

FACTS

On September 30, 2021, complainants filed this complaint against respondents. Resp. at 3. Respondent MRB Development, LLC is the owner of Copper Fire restaurant, located at 200 E. Main Street, Belleville, Illinois. Resp. at 4; *see* Mot. Exh. C.

Geri and Doug Boyer live at 208 E Main Street, Belleville, Illinois. Comp. at 1.

Geri Boyer agrees that downtown Belleville is vibrant, that she wanted to be part of the redevelopment of Belleville, and that there were other bars and restaurants in downtown Belleville. Resp. at 3-4; *see* Mot. Exh. B at 5-7.

Within two blocks of Copper Fire there are seven other bars and restaurants. Resp. at 4; *see* Mot. Exh. C. Copper Fire participates in Live Music Row, which promotes live music on Main Street in Belleville and helps the redevelopment of downtown Belleville. Resp. at 4-5; *see* Mot. Exh. C.

"Complainants' expert, Mike Biffignani, conducted sound testing inside [c]omplainants' loft." Resp. at 5; *see* Mot. Exh. D. "Respondents' expert, Gary Brown, conducted sound testing inside Copper Fire, inside [c]omplainants' loft, and outside Copper Fire." Resp. at 6; *see* Mot. Exh. E.

Complainant's expert, Mr. Biffignani, found that "the average daytime ambient sound level inside the loft was 30 dBA [A-weighted decibels]." Resp. at 10; *see* Mot. Exh. D. Mr. Biffignani also found that "the average nighttime ambient sound level inside the loft was 29 dBA." *Id.* On April 23, 2021, while music was playing at Copper Fire, "Mr. Biffignani found the evening Leq [time-averaged sound level] inside the loft to be 38 dBA during a time period from 10:26 to 11:00 p.m." *Id.*

On April 24, 2021, while music was playing at Copper Fire, "Mr. Biffignani found the evening Leq inside the loft to be 39 dBA from 10:00 p.m. to 11:25 p.m." Resp. at 11; *see* Mot. Exh. D. On November 21, 2021, while music was playing at Copper Fire, "Mr. Biffignani found the daytime Leq inside the loft to be between 33 dBA and 37 dBA." Resp. at 11; *see* Mot. Exh. J.

Respondents' expert, Gary Brown found that the average background noise inside the loft during the day was 30.2 dBA. Resp. at 11; *see* Mot. Exh. E. Mr. Brown found that "the average sound pressure level inside the loft during an afternoon band was 34.5 dBA to 35.5 dBA." *Id.* Mr. Brown also found that "the average sound level inside the loft during the evening band was 38 dBA to 39 dBA." *Id.*

LEGAL BACKGROUND

The Board first describes the standards it applies when considering motions for summary judgment. After that, the Board sets forth the Board regulations allegedly violated, along with pertinent definitions.

Summary Judgement

Summary judgment is appropriate when the pleadings, depositions, admissions, affidavits, and other items in the record show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Adames v. Sheahan, 233 Ill. 2d 276, 295, 909 N.E.2d 742, 753 (2009); Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998); 35 Ill. Adm. Code 101.516(b). A genuine issue of material fact precluding summary judgment exists when “the material facts are disputed, or, if the material facts are undisputed, reasonable persons might draw different inferences from the undisputed facts.” Adames, 233 Ill. 2d at 296, 909 N.E.2d at 753; Adams v. Northern Illinois Gas Co., 211 Ill. 2d 32, 43, 809 N.E.2d 1248, 1256 (2004).

When determining whether a genuine issue of material fact exists, the record “must be construed strictly against the movant and liberally in favor of the opponent.” Adames, 233 Ill. 2d at 295-96, 909 N.E.2d at 754; Purtill v. Hess, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986). Summary judgment “is a drastic means of disposing of litigation, and therefore, should be granted only when the right of the moving party is clear and free from doubt.” Adames, 233 Ill. 2d at 296, 909 N.E.2d at 754; Purtill, 111 Ill. 2d at 240, 489 N.E.2d at 871. “Even so, while the nonmoving party in a summary judgment motion is not required to prove [its] case, [it] must nonetheless present a factual basis, which would arguably entitle [it] to a judgment.” Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2d Dist. 1994).

Alleged Violations

As detailed below, complainants allege that respondents 1) violated the sound emission standards in Section 901.102(b) of the Board’s rules, and 2) caused a nuisance noise pollution violation. *See* 35 Ill. Adm. Code 901.102(b); 35 Ill. Adm. Code 900.102.

Statutory and Regulatory Authorities

Section 33(c) of the Act states:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;

3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance. 415 ILCS 5/33(c) (2022).

" L_{eq} " means "equivalent continuous sound pressure level in decibels: 10 times the logarithm to the base 10 of the ratio of a time mean square sound pressure, during the specified time period, to the square of reference sound pressure. The reference sound pressure is 20 micronewtons per square meter or equivalent continuous frequency-weighted sound pressure." 35 Ill. Adm. Code 900.101.

"Noise pollution" means "the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity." 35 Ill. Adm. Code 900.101.

Section 900.102 states that a "person must not cause or allow the emission of sound beyond the boundaries of that person's property, as defined in Section 25 of the Environmental Protection Act [415 ILCS 5/25], that causes noise pollution in Illinois or violates any provision of this Chapter." 35 Ill. Adm. Code 900.102.

Section 900.103(b)(1) provides that:

- 1) All measurements and all measurement procedures to determine compliance with 35 Ill. Adm. Code 901, except for measurements to determine compliance with 35 Ill. Adm. Code 901.109, must be based on L_{eq} averaging, as defined in Section 900.101, using a reference time as follows:
 - A) Except as specified in subsection (b)(1)(B) for steady sound, use a reference time of at least 1 hour for all sound measurements and measurement procedures.
 - B) For measurement of steady sound as defined in Section 900.101, use a reference time of at least 10 minutes. 35 Ill. Adm. Code 900.103(b)(1).

Section 901.101(b) states that "Class A land includes all land used as specified by LBCS Codes 1000 through 1340, 2410 through 2455, 5200 through 5230, 5500, 6100 through 6145, 6222, 6510 through 6530, and 6568 through 6600." 35 Ill. Adm. Code 901.101(b).

Section 901.101(b) states that “Class B land includes all land used as specified by LBCS Codes 2100 through 2336, 2500 through 2720, 3500 through 3600, 4220 through 4243, 5100 through 5160, 5300 through 5390, 5400, 6147, 6210 through 6221, 6300 through 6320, 6400 through 6430, 6560 through 6567, 6700 through 6830, and 7100 through 7380.” 35 Ill. Adm. Code 901.101(c).

Section 901.102(b) provides that:

Except as provided elsewhere in this Part, person must not cause or allow the emission of sound during nighttime hours from any property-line noise source located on any Class A, B or C land to any receiving Class A land that exceeds any allowable octave band sound pressure level specified in the following table, when measured at any point within the receiving Class A land. Sound pressure levels must be measured at least 25 feet from the property-line noise source.

Octave Band Center Frequency (Hertz)	Allowable Octave Band Sound Pressure Levels (dB) of Sound Emitted to any Receiving Class A Land from		
	Class C Land	Class B Land	Class A Land
31.5	69	63	63
63	67	61	61
125	62	55	55
250	54	47	47
500	47	40	40
1000	41	35	35
2000	36	30	30
4000	32	25	25
8000	32	25	25

35 Ill. Adm. Code 901.102(b).

Section 910.105 provides states:

To determine a noise source's compliance with 35 Ill. Adm. Code 901, sound pressure level measurements are obtained using the following measurement techniques:

- a) Site Selection
 - 1) One or more outdoor microphone positions may be chosen within the boundaries of the receiving land, as long as the positions are at least 25 feet (7.6 meters (m)) from the property-line noise source. The 25-foot setback distance is from the noise source and not the property line unless the noise source is contiguous to the property line. 35 Ill. Adm. Code 910.105(a)(1).

* * *

- c) Measurement Site Operation and Instrument Calibration
- 7) While measurements are being taken, make visual and aural surveillance of extraneous sound sources and varying wind conditions to ensure that the conditions of measurement are accurately known. Record any variations in these parameters that may affect data. Record the number and basis for the affected data block. When using a tape recorder, record voice commentary concerning conditions on the cue track. 35 Ill. Adm. Code 910.105(c)(7).

DISCUSSION

The first issue the Board will discuss is the sound emission standard violation claim. Then the Board will discuss the nuisance noise pollution claim.

Sound Emission Standards Violation

Complainants Noise Measurements

The Complainants' expert, Mike Biffignani, measured sound levels emanating from Copper Fire restaurant at 200 E. Main St, Belleville, IL, inside Complainants' loft at 208 E Main St, Belleville, IL, which is located adjacent to the restaurant on April 23, 24, and 25, 2021, and November 21, 2021. Resp. at 5; *see* Mot. Exh. D and F. The building walls are separated by an air space of 10-12 inches. Mot. Exh. D at 1. He measured the sound levels emanating from Copper Fire by setting up his monitoring equipment inside the Complainants loft on the second floor. The Complainants allege that the noise emanating from Copper Fire exceeds the nighttime numeric sound limits under 35 Ill. Adm. Code § 901.102(b). Comp. at 10.

Applicable Numeric Noise Limits.

The Board has numeric sound limits for daytime hours and for nighttime hours for sound emissions from any property line noise sources located on any Class A, B or C land to any receiving Class A land. 35 Ill Adm Code 901.102. The numeric limits for daytime hours are less stringent than for nighttime hours. *See* 35 Ill Adm. Code 901.102(a) and (b). In this case, both parties agree that Copper Fire (noise source) is Class B land and the Complainants' loft is Class A land under Section 900.101. Memo at 12, *see also* Comp. at 10. Further, the Complainants allege violation of the Board's numeric nighttime standards. Thus, Copper Fire is subject to the nighttime standards for receiving Class A land from Class B land under Section 901.102(b).

Noise Measurement Procedures.

The Board has previously found that the sound measurements from the property-line-noise-source must be taken with “strict adherence to applicable measurement procedures” under Sections 900.103(b) and 910.105 of the Board’s rules. See Marek Kruk v New Trier High School, PCB 20-10, slip op. at 11; Charter Hall, PCB 98-81, slip op. at 19; 35 Ill. Adm. Code 900.103(b), 910.105. Section 900.103(b) requires that all sound measurements and all measurement procedures used to determine compliance with numeric limits of 35 Ill. Adm. Code 901, except for measurements to determine compliance with 35 Ill. Adm. Code 901.109 and steady state sound under Section 900.103(b)(1)(B), must be based on Leq averaging, as defined in Section 900.101, using a reference time of at least 1 hour. 35 Ill Adm Code 900.103.

Further, Section 900.103(b)(2) requires all sound measurements used to determine compliance with numeric limits of 35 Ill. Adm. Code 901 to be corrected for the presence of ambient or background noise in compliance with the procedures in Part 910. Finally, Section 910.105 specifies requirements for sound measurement techniques to be used when conducting time-averaged sound level (Leq) measurements to determine whether a noise source is compliant with 35 Ill. Adm. Code 900 and 901.

The Respondents argue that the Complainant’s expert, Mr. Biffignani, ignored certain basic requisites for sound measurement like one-hour Leq averaging. They assert that instead of using one-hour Leq averaging for sound levels, Mr. Biffignani relied on “normalized” sound levels using peak values and A-weighted sound levels to demonstrate violation of the numeric limits. Mot. at 2-3. The Respondents contend that the Board cannot accept Mr. Biffignani’s “normalization” argument because it requires the Board to ignore its own rules addressing noise measure procedures and requirements. *Id.* at 15.

The Complainants assert that Mr. Biffignani employed multiple means of “normalizing” the indoor sound values because the limits in Section 901.102(b) apply to outdoor sound measurement. Reply at 32.

April 2021 Sound Measurements.

Mr. Biffignani’s report notes that he took sound measurements on April 23, 2021, from 7:30 pm to 2:33 am (4/24/21) and on April 24, 2021, from 10:51 am to 1:51 am (4/25/21) inside the Complainant’s second story loft. Mot. Exh. D at 1. The microphone was placed inside the loft, 6 feet from the wall adjacent to Copper Fire. *Id.* at 3. While it was difficult to determine the actual 25ft. distance from the microphone to the source, as required by Section 901.102(b), the distance from the soundstage was estimated to be about 30ft. *Id.* at 3. Further, Mr. Biffignani stated that the sound measurements were corrected for ambient (background) sound as required by Section 900.103(b)(2). Mot. Exh. F (Biffignani Dep.) at 19-20. However, he admitted that he did not rely on 1-hour Leq values to show exceedance of the numeric limits under Section 901.102(b) because indoor measurement of Leq sound levels cannot be compared with the limits intended for outdoor sound levels. *Id.* at 33. He normalized the sound measurement data following the World Health Organization (WHO) guidelines to compare the indoor sound levels with the Board’s numeric limits under Section 901.102(a). *Id.* at 35. He relied on peak values based on 1-second Leq values to demonstrate exceedances of the Board’s numeric nighttime limits. *Id.* at 52-54, Mot. Exh. D at 4, Figure 2.

Mr. Biffignani also compared A-weighted (dBA) nighttime sound levels inside the loft of 38 dBA on April 23rd and 39 dBA April 24th with WHO recommended sleep level of 30 dBA. Mot. Exh. D at 4, Figure 3. He asserts that the average nighttime sound levels do not meet the WHO guidelines. *Id.* at 4.

The noise measurement requirements under 35 Ill Adm Code 900 and 910 do not permit “normalization” of the sound measurement data like using A-weighted sound levels or peak instantaneous (1-second Leq) values to show exceedances of the numeric octave band center frequency limits under Section 901.102. According to Section 900.103(b)(1), the sound levels must be based on Leq averaging using a reference time of at least one hour. Mr. Biffignani did not comply with this requirement.

Next, for determining a noise sources’ compliance or non-compliance with 35 Ill. Adm. Code 901.102, Section 910.105(a)(1) requires sound pressure level measurements to be obtained using one or more *outdoor* microphone positions within the boundaries of the receiving land if the positions are at least 25 feet (7.6 meters (m)) from the property-line noise source. 35 Ill Adm Code 910.105(a)(1). Thus, the rule is clear that sound measurements must be taken outdoors to compare with the limits under Section 901.102. As noted above, Mr. Biffignani measured levels inside the Complainants loft. He also admitted that sound levels measured inside a building cannot be compared with the numeric noise limits of Section 901.102 to determine exceedances without normalizing the sound levels measurements. Mot. Exh. F at 33-34. Thus, the sound level measurements taken by Mr. Biffignani do not comply with Section 910.105(a)(1).

Finally, the record also indicates that Mr. Biffignani did not comply with Section 910.105(c)(7), which requires the person taking measurements to be present at the monitoring location while measurements are being taken. 35 Ill Adm Code 910.105; *see also Charter Hall*, PCB 98-81, slip op. at 19. Mr. Biffignani stated that he left the room after setting up the sound measuring equipment. Mot. Exh. F at 23-24. Mr. Biffignani contends that Section 901.105(c)(7) applies only to outdoor conditions, so he made observations outside the building. *Id.* 24-25. However, this requirement applies to surveillance of extraneous sound sources and wind conditions and recording any variations data, including the number and basis of affected data blocks. Thus, compliance with this requirement would require the person taking sound measurements to be present near the sound monitoring equipment.

Additionally, while the A-weighted sound levels may be helpful in evaluating the noise impact on receiving land, they cannot be used to determine violation of the Board’s numeric standards under Section 901.102. However, they may be considered as corroborating evidence in assessing violation of the Board’s nuisance noise prohibition.

November 21, 2021 Sound Measurements.

Mr. Biffignani took sound measurements on November 21, 2021, from 2:00pm-5:00pm inside the Complainant’s second story loft. Mot. Exh. J at 1. He states that the measurement process and procedure were the same as those used on April 23-24, 2021. *Id.* at 3. Mr.

Biffignani compared the *maximum sound levels* for octave bands measured on November 21st during daytime (2-5pm) with the nighttime (10-11:30pm) measurements from April 24th. *Id.* at 3. Based on this, he concluded that the maximum levels were very similar between the DJ music on April 24th and the live band on November 21st. *Id.* A comparison of the maximum octave band sound levels measured on November 21st with the Board's daytime numeric limits under Section 901.102(a) indicates that none of the measured *maximum values* exceed the numeric limits.

Mr. Biffignani also compared both Leq averaged octave band sound levels and A-weighted sound levels measured on November 21st (daytime) with those measured April 24th (nighttime). Mot. Exh. J at 4. He concludes that while "average 2-5 pm Leq level is approximately 3dB higher on Sunday 11/21 than on Saturday 4/24", "the average 2-5 pm LeqA level is about 3dBA lower." Mot. Exh. J at 4. While the report does not make any comparisons with the Board's numeric limits to show exceedances, a comparison shows none of the Leq averaged octave band sound levels exceed the numeric limits under Section 901.102.

Like the April 2021 measurements, the November 2021 sound level measurements do not comply with Section 910.105(a)(1) because the sound levels were measured inside a building and not outdoors as required. Additionally, there is no mention in the report that the measured sound levels were corrected for the presence of ambient or background noise in compliance with the Section 900.103(b)(2).

Board Finding.

The information in the record indicates that the complainants' expert did not strictly comply with the Board's noise measurement requirements. Specifically, the sound measurements do not comply with the requirements pertaining to 1-hour Leq, location of sound microphone, and person taking sound measurements not being present while measurements are being taken. Thus, the sound measurements submitted by the Complainants may not be used to establish that the Respondents violated the Board's nighttime numeric sound limits of 35 Ill. Adm. Code 901.102(b).

For violations of numeric sound limits, the Board must strictly adhere to applicable measurement procedures. *See Charter Hall Homeowner's Ass'n v. Overland Transportation Syst., Inc.*, PCB 98-81, slip op. at 19 (October 1, 1998); *Discovery S. Group, Ltd. v. Pollution Control Board*, 275 Ill. App. 3d 547, 559 (1st Dist. 1995). Because the complainants did not properly conduct the noise measurements as a matter of law, complaints cannot establish a violation of the Board's noise emission standards.

Conclusion

The Board finds that there is no genuine issue of material fact and grants respondents' motion for summary judgment on complainants' noise emission standard violation claim.

Nuisance Noise Pollution

Parties' Arguments

Respondents' Initial Arguments

Respondents contend that “[t]here has never been an enforcement action in front of this Board where the respondent proved compliance with 901.102 and this Board then moved on to determine if the sound level was noise pollution.” Memo at 16. Even so, respondents argue that the noise does not rise to the level of noise pollution under the Section 33(c) factors. *Id.*; see 415 ILCS 5/33(c) (2022).

According to respondents, both experts confirmed the sound levels in Complainant’s loft to be 33 to 39 dB, which is “far below the noise levels of most appliances found in homes, and below the average ambient noise level in an urban environment.” Memo at 17. Therefore, respondents believe that the “character and degree of any injury is minimal” and that the first factor supports the respondents’ position. *Id.*

Respondents also allege that the City of Belleville is trying to redevelop the downtown area and “[l]ive music at bars and restaurants is part of this redevelopment.” Memo at 18. Respondents contend that there are seven bars and restaurants within two blocks of Copper Fire. *Id.*, citing Mot. Exh. C. According to respondents, Geri Boyer admitted that “she lives in a vibrant downtown” and she “moved into the area with the full understanding that there were bars and restaurants in the area.” Memo at 18, citing Mot. Exh. B at 5-7. Therefore, Respondents argue that the second and third factors weigh in their favor.

In terms of the fourth factor, respondents contend that they have “taken multiple significant steps to lower the sound in Copper Fire and escaping Copper Fire.” Memo at 18. On the other hand, complainants have an exposed brick wall with holes in their loft, according to respondents. *Id.*

Lastly, respondents argue that they “have been in compliance since measurements have been taken.” Memo at 19. Respondents allege that they “continued to take steps to lower the sound” even though they were in compliance. Therefore, according to respondents, the last factor supports respondents’ position.

Complainants' Response

Complainants argue that “numerical evidence of decibel readings is not an absolute defense against a complaint of nuisance noise pollution.” Resp. at 27, citing Charter Hall Homeowner’s Ass’n, PCB 98-81, slip op. at 1; Fiser v. Henry’s Double K, LLC, PCB 19-84, slip op. at 4 (Jan. 21, 2021); Discovery South Group Ltd, 275 Ill. App. 3d 547; Roti v. LTD Commodities, 355 Ill. App. 3d 1039 (2nd Dist. 2005).

According to complainants, they “have provided uncontested testimonial accounts regarding the unreasonable interference with their lives caused by respondents’ music events.” Resp. at 30. Complainants point to their testimony stating that they can hear the music inside

their residence and it “interferes with their ability to sleep, converse with one another or guests, or even watch television.” *Id.*

Complainants contend that they “can establish [r]espondent’s noise emissions interfere with their lives” and that respondents “failed to establish there are no genuine issues of material fact.” Resp. at 33. Complainants argue that respondents’ noise pollution is unreasonable under the Section 33(c) factors.

In terms of the first factor, complainants allege that “evidence of ambient noise in the area is not dispositive.” Resp. at 35, *citing Roti*, 355 Ill. App. 3d 1039. Therefore, according to complainants, “the existence of ambient noise has no bearing on the first factor” and the first factor favors the [c]omplainants. Resp. at 35

Complainants argue that respondents did not provide evidence to establish the “social and economic value of loud music at Copper Fire” or to demonstrate the “positive financial impact created by Copper Fire for the community.” Resp. at 35. Therefore, complainants believe that the second factor is neutral. *Id.*

For the third factor, complainants contend that “Copper Fire is not suitable to its location regardless of the other restaurants and bars in the area, and [c]omplainants clearly have priority at the location.” Resp. at 36. Complainants therefore allege that the third factor weighs against respondents.

Complainants assert that the fourth factor weighs in their favor. Resp. at 36. According to complainants, there are “several practical and economically feasible measures respondents have refused to implement or explore in order to reduce the effect of their noise pollution.” *Id.* Complainants argue that respondents have not established that the steps they took to reduce or eliminate the sound have stopped the “unreasonable interference with [c]omplainants’ enjoyment of life.” *Id.*

Finally, complainants allege that “the noise problems are ongoing, primarily due to [r]espondents refusal to reduce decibel levels to a reasonable level, install sound deadening devices, and not amplify bands.” Reps. At 37. Therefore, complainants claim that the fifth factor also weighs in their favor.

Respondent’s Reply

In their reply, respondents reiterate their argument the noise levels in the complainants’ residence is not noise pollution. Reply at 2.

Board Discussion

The Board has previously found a nuisance noise pollution violation when the sound levels standards were not violated. *See Charter Hall Homeowner’s Ass’n*, PCB 98-81, slip op. at 1. Therefore, the Board agrees with complainants that compliance with sound level standards is not the definitive factor when deciding nuisance noise pollution cases.

The Board follows a two-step inquiry to determine whether noise emissions rise to the level of a nuisance noise pollution violation: 1) whether the noise constitutes an interference in the enjoyment of complainant's life; and 2) whether the interference is unreasonable considering the factors outlined in Section 33(c) of the Act. *See Charter Hall Homeowner's Ass'n*, PCB 98-81, slip op. at 19-21.

The Board finds that there is a genuine issue of material facts about whether the noise pollution is unreasonable. The evidence provided by the parties did not clearly show the extent of the interference with complainants' enjoyment of life. Additionally, the Board finds that there is a genuine issue of material fact about the technical and economic reasonableness of reducing or eliminating the noise emissions, as well as any subsequent compliance. The respondents did not clearly establish what steps they have taken to reduce the noise pollution, nor how technically feasible and economically reasonable any additional steps would be. Therefore, the Board finds that summary judgment is not appropriate for this issue.

Conclusion

The Board denies respondent's motion for summary judgment on complainant's nuisance noise pollution claim. The Board finds that a hearing is needed to further explore and investigate certain issues pertaining to the nuisance noise pollution claim, for example, the extent of the interference with complainant's enjoyment of life, the technical and economic reasonableness of reducing or eliminating the noise emissions, and any noise reduction steps respondents have taken.

CONCLUSION

The Board finds that there is no genuine issue of material fact and summary judgment is appropriate for the sound emission standard violation claim. The Board grants respondents' motion for summary judgment on that issue. The Board finds that there is a genuine issue of material fact for the nuisance noise pollution claim. The Board denies respondents' motion for summary judgment on that issue. The Board directs the hearing officer to proceed to hearing on the nuisance noise pollution claim.


This opinion constitutes the Board's interim findings of fact and conclusions of law in this matter.

ORDER

1. The Board grants respondents' motion for summary judgment on the complainants' sound emission standard violation claim.
2. The Board denies respondents' motion for summary judgment on the complainants' nuisance noise pollution claim.

3. The Board directs the hearing officer to proceed to hearing on the nuisance noise pollution claim.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above interim opinion and order on August 8, 2024, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk
Illinois Pollution Control Board