

ILLINOIS POLLUTION CONTROL BOARD  
November 21, 1996

DOUGLAS AND BARBARA OLTMAN, )  
 )  
Complainants, )  
 )  
v. ) PCB 96-185  
 ) (Enforcement-Noise)  
 )  
TERRY AND KELLY COWAN, )  
 )  
Respondents. )  
 )

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On February 29, 1996, Douglas and Barbara Oltman filed a complaint, pursuant to Section 31(b) of the Illinois Environmental Protection Act (Act). (415 ILCS 5/31.) The complaint (Comp.) alleges that Terry and Kelly Cowan had violated Sections 23 and 24 of the Act by the operation of a window air conditioning unit. The complainants ask that the Board enter an order directing respondents to cease and desist from further violations of the Act and more specifically to permanently reduce the noise produced by the window air conditioner. (Comp. at 4.) Hearing was held before the Board's Chief Hearing Officer Michael Wallace on August 2, 1996 in Rock Island, Rock Island County, Illinois. Other than the Oltmans and Cowans no members of the public were present. The parties did not file briefs.

Based on the record, the Board finds that the operation of a window air conditioner by respondents did not cause an unreasonable interference and therefore the Board finds that a nuisance noise violation of the Act as alleged in the complaint did not occur.

STATUTORY FRAMEWORK

The complainants allege that the respondents have violated Sections 23 and 24 of the Act. (Comp. at 2.) The complainant does not rely on numerical quantification of the noise emissions to prove a violation, therefore, this case is characterized by the Board as a "nuisance noise" case. (See, Ferndale Heights Utilities Co. v. Illinois Pollution Control Board, 44 Ill. App. 3d 967, 358 N.E.2d 1224, 1228 (1st Dist 1976). ).

The Act and Board rules prohibit noise pollution and with regards to "nuisance noise", the prohibitions in the Act and Board regulations turn on the degree to which the noise interferes with a complainant's normal activities. Section 23 of the Act states:

The General Assembly finds that excessive noise endangers physical and emotional health and well-being, interferes with legitimate business and recreational activities, increases construction costs, depresses property values,

offends the senses, creates public nuisances, and in other respects reduces the quality of our environment.

It is the purpose of this Title to prevent noise which creates a public nuisance.

(415 ILCS 5/23.)

Section 24 of the Act prohibits noise pollution stating:

No person shall emit beyond the boundaries of his property any noise 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.

(415 ILCS 5/24.)

Thus, under the Act, a noise violation has occurred if the complainant has proven that the complained of noise has unreasonably interfered with the complainant's enjoyment of life or with the pursuit of any lawful business or activity.

The Board has previously determined in "nuisance noise" proceedings that unreasonable interference is more than an ability to distinguish sounds attributable to a particular source. Rather, the sounds must objectively affect the complainant's life or business activities. See Kvatsak v. St. Michael's Lutheran Church, PCB 89-182, 114 PCB 765, 773 (Aug. 30, 1990) (Kvatsak); Kochanski v. Hinsdale Golf Club, PCB 88-16, 1001 PCB 11, 20-21 (July 13, 1989), rev'd on other grounds, 197 Ill. App. 3d 634, 555 N.E.2d 31 (2d Dist. 1990).

The Illinois Supreme Court has directed that the Board must consider the facts of the case in light of the factors outlined by 33(c) of the Act in determining whether unreasonable interference has occurred under the Act and Board rules. Wells Manufacturing Co. v. PCB, 73 Ill. 2d 226, 232-33, 383 N.E.2d 148, 150-51 (1978) ("nuisance" air pollution; first four factors only); see Ferndale Heights Utilities, 44 Ill. App. 3d at 967-68, 358 N.E.2d at 1228. Those factors as set forth in Section 33(c) of the Act are as follows:

- (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- (ii) the social and economic value of the pollution source;
- (iii) 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;

- (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions...resulting from such pollution source; and
- (v) any subsequent compliance.

(415 ILCS 5/33(c).)

### FACTS

Complainants have lived at 4512 Twenty-first Avenue in Moline, Rock Island County, Illinois for forty-five years. (Tr. at 7.) Respondents moved into the house next door at 4510 Twenty-first Avenue sometime prior to August 28, 1995<sup>1</sup>. (Tr. at 8.) Also, sometime prior to August 28, 1995 an air conditioning unit was installed by previous owners (Tr. at 8) in a window in respondents' home approximately 13 feet from complainants' home<sup>2</sup>. (Tr. at 9-10; Pet. Exh. 6.) The window air conditioner is a 20,000 BTU<sup>3</sup> unit. (Tr. at 49.)

The record is not clear on the exact dates or duration that the window air conditioner was operated. Mrs. Oltman testified that she kept a log of dates, but did not file a copy with the Board. (Tr. at 34.) The Oltmans maintained that operation was "continuous" in the 1994 and 1995 cooling seasons. (Tr. at 9-12, 19-21.) Mrs. Oltman maintains that the air conditioner was operated from May to November in 1994 (Tr. at 20), and from May until the end of October in 1995. (Tr. at 20-21.) Mr. Cowan disagreed with the Oltman's characterization of the nature and duration of the air conditioner's operation. (Tr. at 47.) Mr. Cowan described usage of the unit as "an off and on basis" (Tr. at 48), from May into September during 1994. (Tr. at 48-49.) Mr. Cowan described operation of the unit during 1995 as "full-time" from May to October. (Tr. at 48-49.)

Mr. Oltman described the noise produced by the air conditioner as a "vibration type of noise" which affected his wife's health. (Tr. at 13.) Mr. Oltman stated that since the unit is close to the lot line, the Oltmans' get an excessive amount of vibration from the unit. (*Id.*) The sound is audible throughout the house and the complainants are unable to sleep due to the noise, according to Mr. Oltman. (Tr. at 14-15.)

Mrs. Oltman testified that the noise could be heard through the whole house and that she and her husband could not "even go to bed". (Tr. at 19.) Mrs. Oltman described a night that they were down in their basement trying to escape the noise and she states: "our ears

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<sup>1</sup> There is substantial confusion in the transcript concerning when respondents moved into the house; however it would appear that the move definitely took place before August 28, 1995 and probably in 1994. (Tr. at 9, 13 and 63.)

<sup>2</sup> At one point in the transcript the parties agree that the unit was installed in May of 1994 and removed in the fall. (Tr. 19-21 and 48-49.) The unit was reinstalled in May of 1995 until the fall. (*Id.*)

<sup>3</sup> BTU means British Thermal Units.

were just about ready to pop that it was so loud coming through the basements". (Tr. at 30.) Mrs. Oltman also indicated that the noise was so significant that she and her husband were unable to use the breezeway in their home and that they were unable to have company. (Tr. at 35 and 42.)

Mrs. Oltman indicated that the noise was louder in 1995 and attributed the increased noise to the Cowans running the air conditioning unit on high. (Tr. at 21.) Mrs. Oltman stated that the noise gave her a headache and that she had high blood pressure and the noise "damages your health". (Tr. at 21 and 31.) Mrs. Oltman states:

. . . we cannot live that way. We can't live with an air-conditioner on that side of the house. Noise. We are deprived of having any kind of company. We are deprived of our sleep, emotionally. And the noise - -was something else.

(Tr. at 42-43.)

Mrs. Oltman admitted that she had been diagnosed with a heart condition since she was eight years old and had been treated for high blood pressure since 1990. (Tr. at 31, 34.) The Oltmans also testified that they had contacted Beling Engineering to conduct noise testing. (Tr. at 11.) The Oltmans provided an affidavit (Pet. Exh. 5) which indicates that tests were performed; however there was no testimony from Beling Engineering.

Mr. Cowan testified that the window air conditioner unit had been replaced by a central air conditioner unit which was purchased on July 1, 1996. (Tr. at 51, 61.) The central air unit is located on the west side of the Cowan's home, which is on the opposite side from the placement of the window air conditioner. (Tr. at 6, 52; Pet. Exh. 6.) He also indicated that he did not intend to install any additional units. (Tr. at 51.)

### ANALYSIS

The Board first notes that the alleged violation of Section 23 of the Act must be dismissed. Section 23 of the Act includes findings by the Illinois General Assembly regarding noise, including a finding that excessive noise can reduce environmental quality. However, Section 23 of the Act does not contain any prohibitions which the Board can rule to have been violated by respondents. Therefore, the Board may only find a violation of Section 24 of the Act which prohibits noise beyond the boundary of a person's property. (Metivier et al. v. Kenyon PCB 92-74 (December 16, 1993) (Metivier).)

The testimony of the Oltmans clearly demonstrates that the noise from the air conditioning unit interfered with their lives. To determine if the interference was "unreasonable" the Board must examine the factors enumerated in Section 33(c) of the Act. Although Mr. and Mrs. Oltman did not specifically argue these factors the Board can address the factors based on the testimony of the parties. (See, Hoffman v. City of Columbia, PCB 94-146, (October 17, 1996).)

Section 33 (c)(i): the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people.

In assessing the character and degree of the injury or interference caused by the noise emissions from the air conditioning unit, the Board looked to whether the noise “substantially and frequently interferes with the use and enjoyment of life and property, beyond minor trifling annoyance or discomfort.” (Metivier at 4, *citing* Kvatsak.) Mrs. Oltman testified that she and her husband were unable to have company in their home and that they were unable to use the breezeway. Both Mr. and Mrs. Oltman testified that they were unable to sleep due to the noise and that the noise was constant. Mr. Cowan testified that the air conditioner was not run continuously during the 1994 cooling season, but, admitted that the air conditioner ran full-time during the 1995 cooling season.

Section 33(c) (ii): the social and economic value of the pollution source.

The record contains no evidence regarding the social and economic value of the air conditioning unit.

Section 33(c)(iii): 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.

The record indicates that the window air conditioning unit was a 20,000 BTU unit. However, there is no discussion on the record as to whether this is an unusual size for a private residence window air conditioner. The record does establish that complainants have lived in their home for over 45 years and that the respondent moved in sometime in the last two years. The record establishes that the air conditioner at issue was installed prior to the Cowan’s purchase of the home.

Section 33(c)(iv): the technical practicability and economic reasonableness of reducing or eliminating the emissions...resulting from such pollution source.

The record indicates that the window air conditioner has been replaced by a central air conditioning unit.

Section 33(c)(v): any subsequent compliance.

The complainants agree that the noise source has been removed. (Tr. at 36-37.) Mrs. Oltman testified that she and her husband proceeded with this case after removal of the window unit because they were concerned that the respondents would reinstall a window air conditioning unit. (Tr. at 37.)

### Analysis Summary

A review of all the factors set forth in Section 33(c) of the Act does not support a finding that the noise from the window air conditioning unit was an unreasonable interference

in the lives of the complainants. Although testimony by the complainants demonstrate that the noise interfered with their lives, the record does not support a finding that such interference was unreasonable. As previously stated, the interference must go beyond an annoyance and the Board is not convinced that the complainants have sufficiently demonstrated an unreasonable interference. The health problems cited by Mrs. Oltman were present before the respondents moved into their home and began using the air conditioning unit. Further, although the proximity of the window air conditioning unit may have contributed to the interference, the record does not establish that the air conditioning unit was unsuitable for usage in a residence. Finally, the confusion in this record by the parties of the facts, including the times and dates of operation of the window air conditioner, does not point to a finding of unreasonable interference.

### CONCLUSION

After careful review of the record in this case and consideration of the factors in Section 33(c) of the Act, the Board finds that no violation of Section 24 of the Act occurred. The record in this case does not establish that the window air conditioner unreasonably interfered with the Oltmans' use and enjoyment of their property. Therefore this matter is dismissed.

This opinion constitutes the Board's findings of fact and conclusions of law.

### ORDER

The Board finds that no violation of Section 24 of the Environmental Protection Act (415 ILCS 5/24) has occurred. This matter is dismissed and the docket is closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1994)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration.")

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the \_\_\_\_ day of \_\_\_\_\_, 1996, by a vote of \_\_\_\_\_.

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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board