

ILLINOIS POLLUTION CONTROL BOARD
June 21, 2001

ROGER L. YOUNG and ROMANA K.)
YOUNG,)
)
Complainants,)
)
v.) PCB 00-90
) (Enforcement – Citizens, Noise)
GILSTER-MARY LEE CORPORATION,)
)
Respondent.)

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

On May 4, 2001, respondent filed a motion to strike “Letters and Signatures” filed by complainants and a request for sanctions. Also on May 4, 2001, respondent filed an “objection to certain hearing office rulings made at hearing.” On May 21, 2001, complainants filed a response to the motion to strike and for sanctions. On June 1, 2001, the respondent filed a motion for leave to file a reply and on June 6, 2001, complainants filed a response in opposition.

The Board denies respondent’s motion to file a reply. The Board rules provide that “the moving person will not have the right to reply, except as permitted by the Board . . . to prevent material prejudice.” 35 Ill. Adm. Code 101.500(e). In this case, the Board does not believe that the respondent will be prejudiced by not being allowed to reply. The respondent has fully briefed the issue to the Board and no reply is necessary. Therefore, respondent’s motion to file a reply is denied.

Respondent moves to strike an April 16, 2001 filing by complainants which contained “original letters and signatures of concerned citizens in the above matter who were unable to attend the hearing on April 10, 2001.” Respondent asserts several arguments to support the motion to strike; however, the Board finds those arguments to be without merit. Respondent bases the motion to strike on Kochanski v. Hinsdale Golf Club (July 13, 1989), PCB 88-16. The Board notes that although Kochanski and the instant case are both noise enforcement cases, the two cases are clearly distinguishable. In Kochanski, the Board ruled that a letter attached to a brief describing the qualifications of an engineer who performed a noise study would not be considered. See Kochanski at 3. Such information is quite different than public comments concerning noise from a source, because public comments are given lesser weight by Board rule than testimony at the hearing.

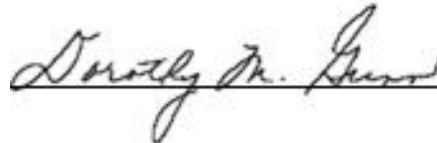
Under the Board’s rules, public comments may be filed after a hearing subject to the hearing officer’s scheduling order. 35 Ill. Adm. Code 101.628(c). Further, the Board’s rules indicate that such public comments are given less weight than evidence subject to cross-examination. 35 Ill. Adm. Code 101.628(b). In the instant case, the hearing officer required that all public comments be filed by April 17, 2001. Thus, the submission of public comments was

appropriate in this proceeding and the Board denies respondent's motion to strike. Furthermore, because the Board denies the motion to strike, the Board need not consider respondent's motion for sanctions.

Next, respondent argues that several of the rulings made by the hearing officer should be overturned. The respondent asserts that the hearing officer erred by allowing complainants to submit videotapes at hearing and, more specifically, by allowing submission into evidence of two videotapes not provided to the respondent during discovery. Respondent also argues that the hearing officer erred by admitting undisclosed opinion witness testimony from complainants' witness. The Board disagrees with the respondent and affirms the hearing officer's rulings. The Board's rules provide that "the hearing officer may admit evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs." 35 Ill. Adm. Code 101.626(a). All the evidence which respondent asked the hearing officer not to admit is admissible under the Board's rules. Furthermore, the hearing officer stated in ruling on a motion *in limine*, that the arguments regarding admissibility of the videotapes went to the weight of the evidence not the admissibility. The Board agrees. Therefore, the Board affirms the rulings made by the hearing officer concerning the admissibility of videotapes and the admissibility of the opinion witness's testimony.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 21st day of June 2001 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 Board