

ILLINOIS POLLUTION CONTROL BOARD

June 21, 2001

DAVID P. HOUGHTALING,)
)
 Complainant,)
)
 v.) PCB 01-154
) (Enforcement – Citizens, Noise)
 TIRE MANAGEMENT, INC.,)
)
 Respondent.)

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

On May 11, 2001, David P. Houghtaling (complainant) filed a complaint against Tire Management, Inc., (respondent). The complaint alleges that the respondent violated Section 23 and 24 of the Environmental Protection Act (Act) (415 ILCS 5/23 and 24 (2000)) and 35 Ill. Adm. Code 900.102, “900.102, a & b,” and 901.104 on real property located at 725 Aurora Avenue, Aurora, Illinois.

As evidenced by the certificate of service filed on May 11, 2001, the respondent was served with the complaint and notice of filing on April 30, 2001. No other pleadings have been filed.

Section 103.212(a) of the Board’s procedural rules directs the Board to determine whether or not a citizen’s complaint is duplicitous or frivolous. The Board finds that the complaint is not duplicitous or frivolous, and therefore accepts it for hearing.

DUPLICITIOUS/FRIVOLOUS DETERMINATION

Section 103.212(a) of the Board’s procedural rules implements Section 31(d) of the Act. It provides:

Any person may file with the Board a complaint against any person allegedly violating the Act or any rule or regulation thereunder or any permit or term or condition thereof. When the Board receives a citizen’s complaint, unless the Board determines that such complaint is duplicitous or frivolous, it shall schedule a hearing. 35 Ill. Adm. Code 103.212.

Duplicitous

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought before the Board or in another forum. Brandle v. Ropp (June 13, 1985), PCB 85-68, 35 Ill. Adm. Code 101.202.

The Board has not identified any other cases, identical or substantially similar to this, pending in other forums. Therefore, based on the record before us, this matter is not duplicitous.

Frivolous

An action before the Board is frivolous if it requests relief which the Board cannot grant or if the complaint fails to state a cause of action upon which the Board can grant relief. Lake County Forest Preserve Dist. v. Ostro (July 30, 1992), PCB 92-80, 35 Ill. Adm. Code 101.202. The Board finds that the complaint is frivolous regarding the alleged violations of Section 23 of the Act and Section 900.102 a and b. Section 23 of the Act contains only legislative purposes as opposed to prohibitions on activity. The Board has previously held that there can be no violation of Section 23 of the Act. See Brunson v. MCI Worldcom, Inc. (January 7, 1999), PCB 99-71 and Schlax v. Evanston Hospital (November 2, 2000), PCB 01-60. Therefore the allegations that respondent violated Section 23 of the Act is frivolous and will be stricken. As to the allegation regarding Section 900.102 a and b, the Board notes that Section 900.102 contains no subsections. Therefore, the alleged violations of Section 900.102 a and b are frivolous and are stricken from the complaint. The Board further notes that the complaint contains an allegation that Section 900.102 was violated by the respondent. That part of the complaint is not stricken.

CONCLUSION

The Board finds that, pursuant to Section 103.212(a), the remainder of the complaint, is neither duplicitous nor frivolous and is accepted for hearing.

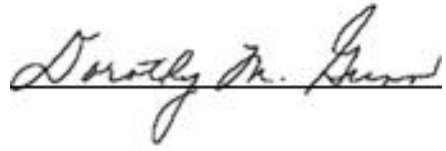
The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and Section 103.414 of the Board's rules. 35 Ill. Adm. Code 103.414. The Clerk of the Board shall promptly issue appropriate directions to the assigned hearing officer.

The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 30 days in advance of hearing so that a 21-day public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses, and all actual exhibits to the Board within five days of hearing.

Any briefing schedule shall provide for final filings as expeditiously as possible. If, after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if, after an attempt, the hearing officer is unable to consult with all of the parties, the hearing officer shall unilaterally set a hearing date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

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