

ILLINOIS POLLUTION CONTROL BOARD
September 20, 2001

ILA M. NEATHERY and DENISE C. FLECK)
)
Complainants,)
)
v.) PCB 02-14
) (Citizens Enforcement – Noise)
GREG and KAREN BOUILLON d/b/a)
THIRSTY’S,)
)
Respondents.)

ORDER OF THE BOARD (by T.E. Johnson):

On July 30, 2001, Ila M. Neathery and Denise C. Fleck (complainants) filed a complaint against Greg and Karen Bouillon d/b/a Thirsty’s (respondents). See 415 ILCS 5/31.1(d) (2000); 35 Ill. Adm. Code 103.204. The complainants allege that the respondents violated Section 24 of the Environmental Protection Act (Act) (415 ILCS 5/24 (2000)), as well as 35 Ill. Adm. Code 900.102 and 900.104. The complainants further allege that the respondents violated these provisions by emitting noise resulting from live bands, patrons, and a sound system that unreasonably interferes with the use and enjoyment of the complainants’ property and health. The complaint concerns the respondents’ bar and dance hall located in Chatham, Sangamon County, Illinois. On August 9, 2001, the respondents filed a letter addressing the complaint. The letter denies the claims in the complaint, and requests that the case be dismissed because it contains exaggerated claims and is based upon a personal vendetta. The Board regards the letter both as an answer to the complaint and a motion to dismiss the complaint as frivolous.

MOTION TO DISMISS

In the letter, the respondents cite a number of incidents in support of their assertion that noise is not an issue at the respondents’ facility. The respondents also note that they have substantially completed one of the complainants’ requested items of relief: the erection of an eight foot fence between complainants’ property and the respondents’ facility. The respondents assert that the complainants have reputations as chronic complainers, and request that the Board dismiss the pending complaint. Pursuant to Section 101.500 a response to the motion was due on or before August 24, 2001. To date, the complainants have not filed a response to the motion.

A motion to dismiss should be granted if the facts, when viewed in the light most favorable to the non-movant, prove that the movant is entitled to dismissal as a matter of law. BLT Specialty Resins v. IEPA, PCB 95-98 (April 20, 1995). A complaint is frivolous if it fails to state a cause of action upon which the Board can grant relief. Metz v. United States Postal Service and Bradley Real Estate, PCB 98-18 (October 15, 1998). In their letter, the respondents do not assert that the complaint fails to state a cause of action upon which the Board can grant relief. Rather, the respondents argue that the relief requested in the complaint should not be

granted for a variety of reasons including those enumerated previously. As stated, the Board must view the alleged facts in the light most favorable to the complainant when considering the motion to dismiss. If the allegations in the complaint are proven true, the Board has the authority to grant the relief requested in the complaint. Thus, the complaint is not frivolous, and the motion to dismiss is denied.

DUPLICITOUS/FRIVOLOUS DETERMINATION

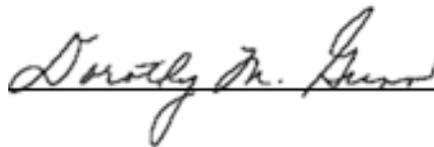
The Board is required to determine whether the complaint is duplicitous or frivolous regardless of the ruling on respondents' motion. Section 31(d) of the Environmental Protection Act (415 ILCS 5/31(d) (2000)) allows any person to file a complaint with the Board. Section 31(d) further provides that "[u]nless the Board determines that such complaint is duplicitous or frivolous, it shall schedule a hearing." *Id.*; *see also* 35 Ill. Adm. Code 103.212(a). A complaint is duplicitous if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. A complaint is frivolous if it requests "relief that the Board does not have the authority to grant" or "fails to state a cause of action upon which the Board can grant relief." *Id.* No evidence before the Board indicates that the complaint is duplicitous or frivolous.

CONCLUSION

The Board accepts the complaint for hearing. *See* 415 ILCS 5/31(d) (2000); 35 Ill. Adm. Code 103.212(a). The motion to dismiss is denied. As noted, the Board accepts the August 9, 2001 letter as an answer denying the material allegations of the complaint. The Board directs the hearing officer to proceed expeditiously to hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the above order was adopted on September 20, 2001, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board