

ILLINOIS POLLUTION CONTROL BOARD  
February 15, 2001

STEPHEN M. LARDNER, )  
)  
Complainant, )  
)  
v. ) PCB 00-92  
) (Enforcement – Noise, Citizens)  
DOMINICK'S FINER FOODS, INC., THE )  
LANDOWNER OF LONGMEADOW )  
COMMONS, WASTE MANAGEMENT, )  
MUNDELEIN DISPOSAL, and BFI, )

Respondents.

ORDER OF THE BOARD (by M. McFawn):

On December 1, 1999, Stephen Lardner (complainant) filed a complaint against a Dominick's Finer Foods (Dominick's). The complaint alleged that Dominick's operation of a loading dock at its 1150 W. Maple Ave. site, in Mundelein, Illinois, in close proximity to complainant's property was in violation of 415 ILCS 5/23 and 5/24, and 35 Ill. Adm. Code 900.102(a) and (b). The complaint alleged that trucks arrived at the loading dock at 12 midnight, and 3:00 a.m., and that compressor noises from refrigerator trailers parked at the loading dock turned on every 15 minutes, for a duration of about five minutes, 24 hours a day.

On February 2, 2000, complainant filed an amended complaint that added the Landowner of Longmeadow Commons, Waste Management, Mundelein Disposal, and BFI as respondents. The amended complaint alleged the same noise violations as the original, but also added waste pick up noises, allegedly occurring as early as 4:00 a.m., several times a week.

On January 17, 2001, complainant and Mundelein Disposal filed a stipulation and proposal for settlement as to Mundelein Disposal with the Board. The stipulation and proposed settlement were not served on the remaining respondents. In the proposed settlement, complainant agrees to release and waive claims he may have against Mundelein Disposal for those violations alleged in the amended complaint. In return, Mundelein agrees to commence waste pickup only between 7:00 a.m. and 7:00 p.m. The stipulation does not call for any cash penalty. Mundelein Disposal denies the violations, and further states that the provisions of 415 ILCS 5/24 or 35 Ill. Adm. Code 900.102 do not apply to Mundelein Disposal while doing business at the Longmeadow Commons Shopping Center.

Pursuant to Section 31(d) of the Environmental Protection Act (Act), once the Board determines that a complaint is neither duplicitous nor frivolous, it shall schedule a hearing

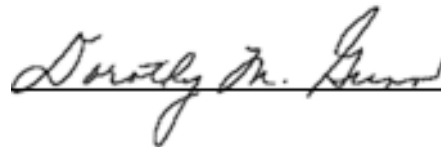
(415 ILCS 5/31(d) (1998)). The Board cannot waive this statutory requirement that a hearing be held.<sup>1</sup> If the parties desire the Board to enter the stipulation and proposed settlement agreement on the record, it must be presented at hearing. However, if complainant and Mundelein Disposal do not wish the stipulation and proposed settlement agreement entered into the record, the complainant may file a motion to dismiss Mundelein Disposal from the complaint.

In addition, as noted above, the parties did not serve the stipulation and proposal for settlement on respondents Dominick's Finer Foods, Inc., the Landowner of Longmeadow Commons, Waste Management, and BFI. Section 101.304(b) provides that the duty to serve all documents filed with the Clerk of the Board rests with the filing party. 35 Ill. Adm. Code 101.304(b). Pursuant to Section 101.304(d), the Board may dismiss a proceeding, and subject parties to sanctions, if service is not timely made. 35 Ill. Adm. Code 101.304(d)

However, at this time, the Board will not accept the stipulation and proposed settlement. The parties are free to re-present this or any other stipulation at hearing.

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 15th day of February 2001 by a vote of 7-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

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<sup>1</sup> Section 31(c)(2) of the Act specifically allows the parties to file a stipulation and proposal for settlement accompanied by a request for relief from the hearing requirement when a complaint has been filed on behalf of the Agency or by the People of the State of Illinois. 415 ILCS 5/31(c)(2) (1998).