

ILLINOIS POLLUTION CONTROL BOARD
January 10, 2002

MILTON C. and VIRGINIA L. KAMHOLZ,)
)
Complainants,)
)
v.) PCB 02-41
) (Citizens Enforcement – Air, Noise)
LAWRENCE AND MARIANE SPORLEDER,)
)
Respondents.)

ORDER OF THE BOARD (by S.T. Lawton, Jr.):

The Board addresses in this order whether Milton and Virginia Kamholz (complainants) properly served respondents with their noise enforcement complaint, and if the complaint is duplicitous or frivolous. On September 26, 2001, complainants filed their complaint with the Board, alleging that their neighbors, Lawrence and Mariane Sporleder (respondents) continuously ride dirt bikes, All-Terrain Vehicles (ATVs) and go-carts on their property located at 1306 Sullivan Road in Woodstock. Complainants also allege that noise, fumes, and dust from such activities cause air and noise pollution, in violation of the Environmental Protection Act (Act) and Board regulations.

Complainants initially failed to serve respondents with their complaint. In response to our November 1, 2001 Board order, complainants served their complaint on respondents via personal service on November 11, 2001. The Board finds that respondents were properly served.

The Board subsequently addresses whether the complaint is duplicitous or frivolous, as directed by Section 103.212(a) of the Board's procedural rules. 35 Ill. Adm. Code 103.212(a). The Board finds that the complaint is not duplicitous, but is frivolous in part for the reasons expressed below. Accordingly, the Board accepts the matter in part for hearing.

BACKGROUND

Complainants have resided at 1316 Sullivan Road in Woodstock for 31 years. Comp. at 1, 4. Their home is allegedly 50 feet north of respondents' property, which is located at 1306 Sullivan Road. Comp. at 3. Complainants contend that respondents continually ride and "rev" the motors of dirt bikes, ATVs and go-carts in a manner which creates "excessive, intolerable noise, offensive, sickening, [and] smelly exhaust fumes, and in dry weather, annoying dust." Comp. at 3. Complainants allege that respondents' activities cause noise and air pollution in violation of Section 9(a) of the Environmental Protection Act (Act) (415 ILCS 5/9(a) (2000)), and Sections 900.102, 901.102(a), 201.102, and 243.102(a) of the Board regulations (35 Ill. Adm. Code 900.102, 901.102(a), 201.102, 243.102(a)). Comp. at 2.

Complainants allege that respondents' riding prevents them from enjoying their home, has depreciated the value of their property, and has had a negative impact on their physical and mental health. Complainants state that the noise from respondents' bikes, ATVs and go-carts prevents them from conversing on the phone, hearing their television, opening their windows, or using their patio, deck, yard or screened-in porch. Comp. at 3-4. Complainants contend that the noise is so severe that they cannot go outside when respondents are riding. Comp. at 3.

The fumes also allegedly irritate complainants to the extent that they have developed sore throats and headaches, and complainants state that the odor has infiltrated their home. Complainants allege that their "entire living area is consumed with noise and fumes." Comp. at 3. Complainants state that respondents' activities have also caused complainants to have emotional problems. Comp. at 4. Complainants relate that they become extremely frustrated and angry because they cannot escape the intrusiveness of the noise and fumes. *Id.*

According to complainants, the extent of the problem with respondents has worsened over the last decade. Comp. at 3. Respondents began operating an ATV in the early 1990's. At that time, complainants found the noise tolerable and the dust was not as severe. *Id.* The dust increased when respondents installed a dirt track and began operating go-carts. The noise level increased again in 1995, when respondents started to ride dirt bikes. Complainants also contend that respondents and their friends drag raced a truck and car, adding to the noise and fumes. *Id.* Complainants allege that "[s]chool hours were the only quiet hours during the week, and weekends were horrible." *Id.* Complainants state that respondents generally rode daily, morning until night. *Id.*

Complainants specifically related that, on Mother's Day in 2001, one of their daughters refused to visit their house after hearing the noise from respondents' vehicles over the phone. Comp. at 4. The other daughter could only stay one hour. Comp. at 4. On that day, complainants allege that respondents rode three dirt bikes and an ATV approximately 70 feet from their windows. Comp. at 3. Complainants allege that they called their county representative about the noise, the person could not hear complainants speaking inside their home. Complainants state that they took their representatives advice and called the Sheriff, who temporarily stopped the noise until respondents resumed riding in the early evening. Comp. at 3.

Complainants state that they contacted respondents about the noise from their activities in August, 1996. Comp. at 3. In response, complainants allege that respondents increased their activity closer to complainant's property, especially near a window area of complainant's home. *Id.*

DUPLICITOUS/FRIVOLOUS DETERMINATION

Section 103.212(a) of the Board's procedural rules (35 Ill. Adm. Code 103.212(a)) implements Section 31(d) of the Act (415 ILCS 5/31(d) (2000)), providing that the Board shall schedule a hearing upon receipt of a citizen's complaint, unless it determines that the complaint is duplicitous or frivolous.

Duplicitous

A matter is duplicitous if it is “identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202. The Board has not identified any other cases, identical or substantively similar to this, pending in this or any other forum.

Frivolous

An action before the Board is frivolous if the complaint 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.” 35 Ill. Adm. Code 101.202. The complaint alleges air and noise pollution in violation of Section 9(a) of the Act (415 ILCS 5/9(a) (2000)) and Sections 900.102, 901.102(a), 201.102, and 243.102(a) of the Board regulations (35 Ill. Adm. Code 900.102, 901.102(a), 201.102, 243.102(a)).

The complaint is not frivolous in alleging that respondents caused air pollution in violation of Section 9(a) of the Act, which states:

No person shall . . . cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois 415 ILCS 5/9(a) (2000).

The Act defines air pollution as “the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to . . . unreasonably interfere with the enjoyment of life or property.” 415 ILCS 5/3.02 (2000). The complainants allege vehicles ridden by respondents generate fumes as well as dust on dry days that result in an unreasonable interference of the use and enjoyment of complainants’ property. Complainants specifically contend that the fumes cause them to have headaches and sore throats as well as contribute to emotional stress.

The complaint is also not frivolous in alleging that respondents violated noise nuisance and numeric noise limitations under Sections 900.102 and 901.102(a) of the Board regulations (35 Ill. Adm. Code 900.102, 901.102(a)). Section 900.102 prohibits someone from causing or allowing noise pollution, such as noise that unreasonably interferes with the enjoyment of another’s life or property. *See* 35 Ill. Adm. Code 900.102; *see also* 415 ILCS 5/3.02 (2000). The sound from vehicles ridden by respondents allegedly prevents complainants from using part of their residence and property, and contributes to mental and physical health effects. Complainants also allege that the noise from respondents’ vehicles has restricted them from entertaining family at their house.

Section 901.102(a) of the Board’s regulations prohibits emitting sound above regulatory limits during daytime hours from a source on Class A, B, or C land to any receiving Class A land. *See* 35 Ill. Adm. Code 901.102(a). The alleged violations are not frivolous in that the complainants state that noise from riding and “revving” the engines of dirt bikes, ATVs, go-carts, and other vehicles, occurs daily. The noise from respondents’ activities could possibly exceed the maximum levels of sound permitted by 35 Ill. Adm. Code 901.102(a). The Board can grant relief for these alleged violations.

The Board finds that Sections 201.102 and 243.102(a) of the Board regulations (35 Ill. Adm. Code 201.102, 243.102(a)) are frivolous, and strikes these counts from the complaint. Section 243.102(a) of the Board regulations (35 Ill. Adm. Code 243.102(a)) contains part of the preamble to air quality regulations as opposed to prohibitions on activity. *See Gardner v. Township Highschool District 211*, PCB 01-86, slip op. at 3 (Jan. 4, 2001); *Walsh v. Koplas*, PCB 00-35, slip op. at 2 (Sept. 23, 1999). Likewise, Section 201.102 of the Board regulations (35 Ill. Adm. Code 201.102) only defines "air contaminant," rather than prohibiting certain conduct. Complainant, in alleging these two sections, fails to state a claim upon which relief can be granted.

CONCLUSION

The Board accepts this matter concerning violations of Section 9(a) of the Act (415 ILCS 5/9(a) (2000), and Sections 900.102 and 901.102(a) of the Board regulations (35 Ill. Adm. Code 900.102, 901.102(a)) as neither duplicitous nor frivolous, and accepts them for hearing. The Board finds the allegations that respondents violated Sections 201.102 and 243.102(a) of the Board regulations (35 Ill. Adm. Code 201.102, 243.102(a)) are frivolous, and strikes them from the complaint.

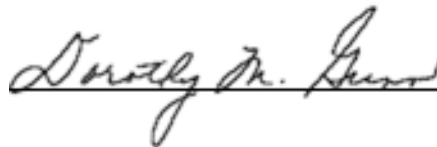
The Board directs that this matter proceed to hearing as expeditiously as practicable. The Board will assign a hearing officer to conduct hearings consistent with this order and Sections 101.600 and 101.612 of the Board's rules. *See* 35 Ill. Adm. Code 101.600 and 101.612.

The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 30 days within advance of the hearing so that a 21-day public notice of the 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 the hearing.

Any briefing schedule shall provide for final filings as expeditiously as possible. It is the responsibility of the hearing officer to guide the parties toward prompt resolution or adjudication of this matter, through whatever status calls and hearing officer orders he determines are necessary and appropriate.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 10, 2002, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control