

ILLINOIS POLLUTION CONTROL BOARD  
September 1, 1994

MARY LOU POWELL, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 94-204  
 ) (Enforcement)  
 MR. M. CEISEL )  
 d/b/a Laser Express Auto Bath, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by C.A. Manning):

This matter is before the Board pursuant to a complaint filed July 29, 1994 by Mary Lou Powell, against the respondent, Mr. M. Ceisel d/b/a Laser Express Auto Bath (Auto Bath). The complaint alleges that respondent violated 415 ILCS 5/23 and 5/24 of the Environmental Protection Act (Act) and 35 Ill. Adm. Code 900.102, in his operation of an automatic car wash facility.<sup>1</sup> As of the date of this order, the Board has not received a response to the complaint. Pursuant to Section 31(b) of the Act the Board must make a determination as to whether the complaint filed is frivolous or duplicitous. (415 ILCS 5/31(b) (1992).)

In the context of a motion to dismiss brought on frivolous and duplicitous grounds, in another citizen's enforcement case involving noise pollution, the Board discussed the meanings of frivolous and duplicitous. Joseph A. Schrantz et al. v. Village of Villa Park et al., (October 21, 1993), PCB 93-161. In Schrantz, the Board explained the meaning of "frivolous":

The Board has construed "frivolous" to mean "failure to state a cause of action upon which relief can be granted." (Citizens for a Better Environment v. Reynolds Metals Co., (May 17, 1973) PCB 73-173, 8 PCB 46. The Board stated in Farmers Opposed to Extension of the Illinois Tollway v. Illinois State Toll Highway Auth., (September 16, 1971) PCB 71-159, 2 PCB 119: "The

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<sup>1</sup>The Board's regulations at 35 Ill. Adm. Code 901.102(a) and (b) establish numerical limits for sound emission levels for certain land use classifications. Sections 23 and 24 of the Act are the general provisions prohibiting persons from emitting noise beyond the boundaries of their his property so as to unreasonably interfere with the enjoyment of life or any lawful business or activity so as to violate any regulation or standard adopted by the Board under the Act.

'frivolous' provision is designed to avoid expensive and time-consuming hearings on claims that cannot prevail even if the facts alleged are true." After examining these two Board holdings, and Webster's dictionary<sup>2</sup>, the Appellate Court of Illinois, First District, defined a "frivolous" pleading as "one that is either legally or factually deficient." Winnetkans Interested in Protecting the Environment (WIPE) v. Illinois Pollution Control Board, 13 Ill.Dec. 149, 153, 370 N.E.2d 1176 (1st Dist. 1977)<sup>3</sup>.

The instant complaint requests that the Board issue an order directing respondents to cease and desist from the alleged violations, and to bring the facility into compliance with Illinois' statutes. The Board has the authority to grant such relief if the alleged facts are proven at hearing. Therefore the Board finds that the complaint is not frivolous.

Schrantz also discussed the meaning of "duplicitous" and in doing so stated the following:

In Brandle v. Ropp, (June 13, 1985), PCB 85-68, 64 PCB 263, the Board held:

Duplicitous is not defined in the Act but has been interpreted to apply to complaints which duplicate allegations identical or substantially similar to matters previously brought before the Board. (Citation omitted.) A complaint is also duplicitous if it is identical or substantially similar to one brought in another forum.

In League of Women Voters v. North Shore Sanitary Dist., (October 8, 1970) PCB 70-1,1 PCB 35, the Board held "that the reason for the prohibition of duplicitous complaints is the apprehension that private citizens' complaints 'might flood the Board with too

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<sup>2</sup>Webster's Third New Dictionary 913 (1971) defined "frivolous" as "of little weight or importance: having no basis in law or fact...."

<sup>3</sup>"The Board can grant relief by ordering a respondent to stop the polluting activity and by imposing a fine. The Board cannot grant monetary compensation for damage done to health or property and it cannot impose criminal sanctions such as a jail term. Thus, any request for monetary compensation or the imposition of criminal sanctions would be considered frivolous." (In the Matter of: Duplicitous or Frivolous Determination, (June 8, 1989), RES 89-2, Slip Op. at 2.)

many cases raising the same issue and [might] unduly harass a respondent.'" WIPE v. IPCB, 13 Ill.Dec. at 153, citing, League of Women Voters, at 36.


The complainant states that there are no other cases arising from the same issue in another forum or court. The Board is unaware of any other cases arising from the same issue therefore the Board finds the complaint is not duplicitous and this matter is directed to hearing.

The hearing must be scheduled and completed in a timely manner consistent with Board practices. The hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding the credibility of witnesses and all actual exhibits to the Board within 5 days of the hearing.

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 the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. 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 15<sup>th</sup> day of September, 1994, by a vote of 6-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board