

ILLINOIS POLLUTION CONTROL BOARD  
May 19, 1994

SCOTT AND KAREN THOMAS,	)	
	)	
Complainants,	)	
	)	
v.	)	PCB 91-195
	)	(Enforcement)
	)	
CARRY COMPANIES OF ILLINOIS,	)	
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by E. Dunham):

This matter is before the Board on a complaint filed by Scott and Karen Thomas (complainants) on October 16, 1991. On August 5, 1994, the Board found that the noise and dust emanating from respondent's property unreasonably interfered with complainants' enjoyment of life. Respondent was ordered to study the economic reasonableness and technical feasibility of any control options which it may deem appropriate to reduce the noise and dust emissions from its facility. These studies were filed on December 1, 1993. Complainants filed a response to the studies on January 19, 1994. On January 27, 1994, respondent filed a reply to complainant's response.

Having previously found respondent in violation of the air and noise provisions of the Environmental Protection Act (415 ILCS 5/1 et seq. (1992)), the sole matter, before the Board at this time is to order an appropriate remedy to abate the nuisance. Both complainant and respondent have presented compliance alternatives. Each party states measures proposed by the other are infeasible. Based on the record, the Board must order a course of action to abate the nuisance.

Carry Companies (Carry) has paved its parking lot since the Board's finding of violation. The parties are in agreement that the dust problem has been remediated by the paving of the lot. Accordingly, the Board will not require Carry to impose additional measures in relationship to the dust problem.

Carry Companies presented a report prepared by Shiner Associates based on acoustical measures performed in October of 1993. The report recommends operational changes, including: 1) closing the doors to the trailer wash bays during washing; 2) closing the doors to the wash building at all times during the night; 3) restricting truck traffic to the south half of the yard at night and; 4) repairing yard tractor brakes.

In their response, complainants argue that the report submitted by respondent fails to conform to the Board's order in that the report focuses on numerical standards instead of addressing the "nuisance" which is to be abated. In addition,

the complainants state that the report fails to address the economic reasonableness of the control measures. The Thomas's also discuss the implementation and effectiveness of the changes presented by respondent. The complainants request the Board to adopt the changes recommended by Gregory Zak at hearing.

In its August 5, 1993 interim opinion and order the Board summarized Mr. Zak's testimony as follows.

At the hearing, Mr. Zak proposed several methods to reduce the impact of the noise on the Thomas's. Mr. Zak proposed an acoustic barrier as a partial solution. (Tr. at 254.) Mr. Zak testified that a barrier fence of the sort he was recommending would cost approximately \$55,000. Mr. Zak described the barrier fence as the key element to the entire noise control proposal. (Tr. at 285.) He also recommended equipping the tractors with better mufflers, paving the parking lot and remodelling the wash building. (Tr. at 268-269.) Mr. Zak believes that it would cost between \$500 and \$1,000 per unit to replace the mufflers on the trucks. (Tr. at 277.) He stated that it would cost around \$2,000 to remodel the building. He also recommended that the trucks park only at the south end of the Carry property. (Tr. at 278 and 280.)

The Carry Companies' report stated that the barrier fence is not practical. Specifically, the report noted the distance of the source and receiver from the fence and the height requirements for such a fence to be effective. Carry also notes that a variance from the City of Decatur will be required for construction of the fence. Carry also objects to implementation of the recommendations made by Mr. Zak, because Mr. Zak has never set foot on Carry's property, conducted noise studies at the site or observed first hand many of the noises complained of. (Tr. at 293-295.) Carry also notes that it has obtained an estimate of \$16,000 for a wood fence. However, Carry maintains that this represents a significant expense especially considering the technical ineffectiveness of such a barrier.

Respondent contends that some operational controls were implemented in 1991 and 1992. (Tr. at 440 and 450.) However, the complaints from the Thomas's continued at least to January, 1994, according to an affidavit filed with the Board on January 19, 1994 by Karen Thomas. The failure of operational controls alone to eliminate the nuisance convinces the Board that, although continued implementation and enforcement of the operational controls will be crucial to reducing noise, additional measures must be taken to eliminate the nuisance. The Board finds that of the other recommendations contained in the report the construction of a barrier fence is the most economically reasonable and technically feasible. Therefore, the Board finds

that a properly designed barrier fence must be installed to abate the nuisance caused by non-compliance by respondent's employees with prescribed work rules.

With regard to the 45 dB(A) mufflers, the Board has required the installation of mufflers in other cases in the past. In Christianson v. The American Milling Co. (March 11, 1992), PCB 90-59, the Board required that a single front end loader be retrofitted with a 45 dB(A) muffler. In Madoux v. Straders Loggings and Lumber Mill (November 19, 1992), PCB 90-149, the Board required installation of similar mufflers on two pieces of heavy equipment used by the respondent in that case. While the Board believes that retrofitting the trucks with 45 dB(A) mufflers would reduce the noise level, the Board finds that requiring the installation of mufflers on the entire fleet of trucks is not feasible. The Board will not order installation of expensive mufflers on an unspecified number of vehicles, potentially encompassing the entirety of respondent's fleet given the facts as presented in this case.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

#### ORDER

The respondent, Carry Companies, shall undertake all measures necessary to cease and desist from further violations of Section 9(a), 23 and 24 of the Act. In addition, respondent shall undertake the following measures to reduce noise emissions:

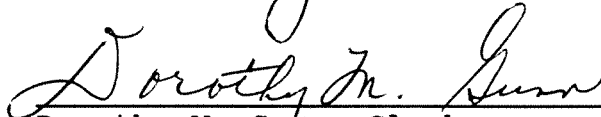
1. Carry Companies shall immediately implement and enforce the operational controls suggested by Shiner Associates, those being:
  - a. Close all wash bay doors while washing trailers;
  - b. Close the north bay doors at all times at night;
  - c. Use only the south half of the lot at night to the extent practicable; and
  - d. Repair truck brakes to eliminate noise as needed.
2. Carry Companies shall install a sound barrier fence at least 14 feet in height along the entire northern boundary of their property according to good engineering practice. Installation of the fence shall be completed by September 30, 1994.

IT IS SO ORDERED.

R.C. Flemal and J. Theodore Meyer dissented.

Section 41 of the Environmental Protection Act, (415 ILCS 5/41 (1992)), provides for appeal of final orders of the Board within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 19<sup>th</sup> day of May, 1994, by a vote of 4-2.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board