

ILLINOIS POLLUTION CONTROL BOARD  
June 2, 1994

DOROTHY L. HOFFMAN, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 94-146  
 ) (Enforcement)  
 CITY OF COLUMBIA, )  
 a municipal corporation, )  
 )  
 Respondents. )

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

This matter is before the Board pursuant to a complaint filed May 5, 1994 by Dorothy L. Hoffman against respondent, the City of Columbia (City). 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 its operation of the City's trucks at its Public Works Department facility, resulting in noise pollution.<sup>1</sup> On May 11, 1994, the City filed a motion to dismiss the complaint arguing that the complaint is frivolous and duplicitous. As of the date of this order the Board has not received a response to the motion to dismiss from Dorothy Hoffman. The Board denies the motion to dismiss for the reasons stated below.

The Board recently denied a motion to dismiss brought on frivolous and duplicitous grounds in another citizen's enforcement case involving noise pollution. Joseph A. Schrantz v. Village of Villa Park, (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 'frivolous' provision is designed to avoid expensive and time-consuming hearings on claims that cannot

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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 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.

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 respondent to cease and desist from the alleged violations, and to permanently reduce the noise by ceasing operations at that location. 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 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.

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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.)

The City's motion alleges that the complaint filed before the Board by Dorothy Hoffman is duplicitous. In support of the motion the City states that Dorothy Hoffman was the plaintiff in an action before the Monroe County Circuit Court entitled Dorothy Hoffman v. the City of Columbia, No. 91-L-26. In that action, Dorothy Hoffman filed a Second Amended Complaint wherein in paragraph 4(c) of Count II and paragraph 4(d) of Count III she complains of disruptive noises emanating from the property of the City and requests an injunction prohibiting the City's use of the property. The complaint states that the alleged noise pollution occurred in 1990 and 1991. On December 15, 1993, the Monroe County Circuit Court entered an order dismissing Dorothy Hoffman's Second Amended Complaint in its entirety. However, Dorothy Hoffman appealed the Monroe County Circuit Court's decision to the Fifth District Appellate Court and that appeal is now pending.

Dorothy Hoffman's complaint filed with the Board on May 5, 1994 alleges that the noise pollution occurred in 1993 and 1994. Thus the alleged violation before the Board resulted from actions by the City on different dates than those alleged in the Second Amended Complaint which is before the 5th District Appellate Court and Monroe County Circuit Court. Pursuant to Brandle and League of Women Voters the complaint before the Board is not duplicitous.<sup>4</sup> The complaint is not duplicitous or frivolous and this matter is directed to hearing.

The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Clerk of the Board shall promptly issue appropriate directions to the assigned hearing officer consistent with this order.

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.

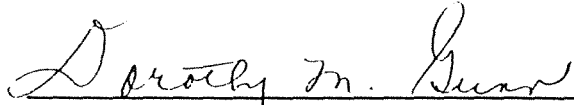
If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

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<sup>4</sup> See also Northern Illinois Anglers' Association v. The City of Kankakee, (January 5, 1988), PCB 88-183

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 2<sup>nd</sup> day of June, 1994, by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board