

ILLINOIS POLLUTION CONTROL BOARD

April 20, 2000

GLADYS L. KNOX and DAVID A. KNOX,)
)
Complainants,)
)
v.) PCB 00-140
) (Enforcement - Noise, Citizens)
TURRIS COAL CO. and AEI RESOURCES,)
INC.,)
)
Respondents.)

ORDER OF THE BOARD (by M. McFawn):

This case is before the Board on the respondents' "Motion to Dismiss Formal Complaint," filed on March 29, 2000. The motion seeks dismissal of the complaint as frivolous. On April 3, 2000, complainants filed an "Objection to Motion to Dismiss Formal Complaint," responding to respondents' arguments. After considering the arguments of the parties, respondents' motion is denied.

Complainants Gladys and David Knox commenced this case on February 25, 2000, by filing a formal complaint. The complaint alleges that respondents Turris Coal Co. and AEI Resources, Inc., have violated Section 24 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/24 (1998)), 35 Ill. Adm. Code 900.102, and 35 Ill. Adm. Code 901.102 through emission of excessive noise from an exhaust fan used in respondents' mining operations. Section 24 of the Act provides:

No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act. 415 ILCS 5/24 (1998).

Thus, either of the alleged violations of Administrative Code sections would constitute a violation of Section 24. Section 900.102 provides:

No person shall cause or allow the emission of sound beyond the boundaries of his property . . . so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter.

Section 901.102(a) provides:

Except as elsewhere in this Part provided, no person shall cause or allow the emission of sound during daytime hours from any property-line-noise-source located on any Class A, B or C land to any receiving Class A land which exceeds any allowable octave

band sound pressure level specified in the following table, when measured at any point within such receiving Class A land, provided, however, that no measurement of sound pressure levels shall be made less than 25 feet from such property-line-noise-source.

A table follows with permissible decibel levels for various land categories and frequencies. “Class A land” includes land used for residential purposes. See 35 Ill. Adm. Code 901.101. A “property-line-noise-source” is defined at 35 Ill. Adm. Code 900.101 as

any equipment or facility, or combination thereof, which operates within any land used as specified by 35 Ill. Adm. Code 901.101. Such equipment or facility, or combination thereof, must be capable of emitting sound beyond the property line of the land on which it is operated.

Subsection (b) of Section 901.102 is identical to subsection (a) except that it applies to nighttime hours, and the permissible decibel levels are lower. The complaint alleges that respondents have violated both subsections.

By their complaint, complainants request the following relief:

Complainants request that the Board enter an order directing the Respondents to cease and desist from further violations of applicable statutes and regulations and, more specifically, order Respondents to permanently reduce the noise level to a point that it no longer causes a disturbance to the Complainants or depresses the value of their property. Further, the Complainants request that the Board enter an order according such further, or other, relief as it may deem appropriate in the circumstances. Comp. ¶ 9.

Respondents argue that portions of the complaint are frivolous, and should be dismissed. An action before the Board is frivolous if it requests relief which the Board could not grant. Lake County Forest Preserve District v. Ostro (July 30, 1992), PCB 92-80. Respondents identify two respects in which they claim the complaint is defective.

First, respondents object to that portion of complainants’ request for relief seeking a permanent reduction in noise levels “to a point that it no longer . . . depresses the value of [complainants’] property.” Respondents argue that the Board “does not have the authority to regulate land values nor does it have the ability to determine the value of land,” Mot. at 2, and that consequently the relief requested by complainants cannot be granted by the Board.

The Board rejects this argument. Protection of property values is one of the purposes of the noise provisions of the Act. Section 23 of the Act provides:

The General Assembly finds that excessive noise endangers physical and emotional health and well-being, interferes with legitimate business and recreational activities, increases construction costs, depresses property values, offends the senses, creates

public nuisances, and in other respects reduces the quality of our environment. 415 ILCS 5/23 (1998) (emphasis added).

The Board thus concludes that the impact of noise on property values is a legitimate inquiry in determining whether noise constitutes noise pollution. By extension, where noise is proven to unreasonably depress property values the Board may fashion a remedy to obviate that problem.

Respondents also seek dismissal of the alleged violations of 35 Ill. Adm. Code 901.102, on the grounds that complainants have not attached any affidavits or other evidence indicating that the noise levels produced by the exhaust fan exceed the limits set in Section 901.102. Mot. at 2. Complainants respond that such evidence is not required at this stage, but would be presented at a hearing. Obj. at 1. Complainants are correct. A complaint is to advise respondents of the extent and nature of the alleged violations, to reasonably allow a defense. 35 Ill. Adm. Code 103.122(c)(2). There is no requirement that a complainant supply evidence supporting allegations at this early stage of the case.

Respondents argue that the allegations regarding Section 901.102 are insufficient for respondents to make any sort of response. We disagree. From our review of the complaint, we believe the allegations regarding Section 901.102 are clear: respondents are alleged to have emitted noise from a property-line-noise-source (the exhaust fan; see Comp. ¶ 3) to receiving Class A land (complainants' home property, *id.*) at levels beyond those allowed. Respondents have not specified the insufficiency they assert, and we see no insufficiency here that would prevent respondents from preparing a defense to complainants' Section 901.102 claims. Accordingly, respondents' motion is denied.

In addition to considering any motions by the parties, the Board undertakes its own review of each newly-filed citizens' enforcement action to consider whether the action is frivolous or duplicitous. See 35 Ill. Adm. Code 103.124. The allegations in the complaint, if proven, could support findings of the violations alleged. Complainants seek an order requiring respondents to cease and desist from violations; such an order is specifically authorized under Section 33(b) of the Act (415 ILCS 5/33(b)). The Board accordingly finds that the complaint is not frivolous.

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in this or another forum. Walsh v. Kolpas (September 23, 1999), PCB 00-35, slip op. at 2. Paragraph 10 of the complaint, which was certified by David A. Knox, states that no other action is known to complainant. Comp. at 4. Respondents have not brought any other action to our attention. We cannot, therefore, find that this action is duplicitous.

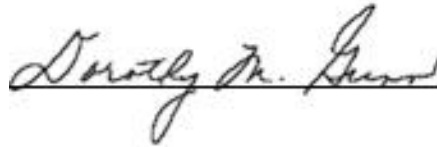
Having found this complaint neither frivolous nor duplicitous, the Board accepts the case for hearing. The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and 35 Ill. Adm. Code 103.125. The Clerk of the Board will promptly issue appropriate directions to that assigned hearing officer.

The assigned hearing officer is to inform the Clerk of the Board of the time and location of the hearing at least 30 days in advance of hearing so that a 21-day public notice of hearing may be published. After hearing, the hearing officer is to submit an exhibit list, a statement regarding credibility of witnesses, and all actual exhibits to the Board within five days after the hearing transcript is filed.

IT IS SO ORDERED.

Chairman C.A. Manning abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 20th day of April 2000 by a vote of 4-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board