

ILLINOIS POLLUTION CONTROL BOARD
April 20, 2000

WAYNE and SONJA HALL,)
)
Complainants,)
)
v.) PCB 00-148
) (Enforcement- Citizens, Noise)
RICHARD L. and MARY J. MILLER, d/b/a)
R&M METALS,)
)
Respondents.

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

On March 9, 2000, Wayne and Sonja Hall (complainants) filed a complaint against the Richard L. and Mary J. Miller, d/b/a R&M Metals. (respondents). The complaint alleges that the respondents violated Section 24 of the Environmental Protection Act (Act) (415 ILCS 5/24 (1998)) by creating noise pollution. As evidenced by the certificate of service filed on March 9, 2000, respondents were served with the complaint and notice of filing on or about March 8, 2000. No responsive pleadings have been filed.

Section 31(d) of the Act provides that “[u]nless the Board determines that such complaint is duplicitous or frivolous, it shall schedule a hearing and serve written notice thereof upon the person or persons named therein....” 415 ILCS 5/31(d) (1998).

Section 103.124(a) of the Board’s procedural rules implements Section 31(d) of the Act. It provides:

The Clerk shall assign a docket number to each complaint filed
*** the Chairman shall place the matter on the agenda for Board
determination whether the complaint is duplicitous or frivolous. If
the Board rules that the complaint is duplicitous or frivolous, it
shall enter an order setting forth its reasons for so ruling and shall
notify the parties of the decision. If the Board rules that the
complaint is not duplicitous or frivolous, this does not preclude the
filing of motions regarding the insufficiency of the pleadings. 35
Ill. Adm. Code 103.124(a).

Duplicitous

American Heritage Dictionary (2d Coll. Ed. 1991) defines “duplicitous” as “given to or marked by duplicity.” “Duplicity” is defined as “deliberate deceptiveness in behavior or speech; double-dealing” or the quality or state of being twofold or double.” Notwithstanding the legislature’s use of the term “duplicitous”, the Board has interpreted “duplicitous” to mean “the

quality or state of being double or twofold*** the use of two or more distinct allegations or answers where one is sufficient. WIPE v. Pollution Control Board (1977) 55 Ill. App. 3d 475, 370 N.E.2d 1176, (quoting League of Women Voters v. North Shore Sanitary Dist., (October 8, 1970 PCB 70-1, 1 PCB 35)). An action brought before the Board is duplicitous if the matter is identical or substantially similar to one brought in this or any other forum. Walsh v. Kolpas, (September 23, 1999), PCB 00-35. Brandle v. Ropp, (June 13, 1985), PCB 85-68.

The Board has not identified any other cases, identical or substantially similar to this, pending in other forums. Therefore, based on the record before us, this matter is not duplicitous.

Frivolous

An action before the Board is frivolous if it fails to state a cause of action upon which the Board can grant relief. People v. State Oil (August 19, 1999), PCB 97-103, slip op. at 3. Lake County Forest Preserve Dist. v. Ostro, (July 30, 1992), PCB 92-80. In this case, the complaint seeks an order which prohibits respondents from creating noise pollution caused by an air compressor and generator used in respondents' welding operations. The Board is authorized to order that respondents cease and desist from violating Section 9(a) of the Act (415 ILCS 5/9(a) (1998)). Therefore, the Board finds that the complaint is not frivolous.

Conclusion

The Board finds that, pursuant to Section 103.124(a), the complaint is neither duplicitous nor frivolous and is accepted for hearing.

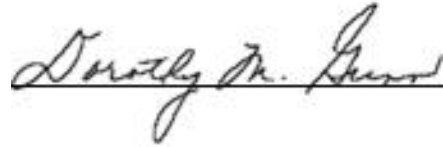
The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and Section 103.125 of the Board's rules. 35 Ill. Adm. Code 103.125.

The assigned hearing officer shall 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 shall submit an exhibit list, a statement regarding credibility of witnesses, and all actual exhibits for the Board within five days of hearing.

Any briefing schedule shall provide for final filings as expeditiously as possible. If, after appropriate consultation with the parties, the parties fail to provide or agree to an acceptable hearing date, the hearing officer shall unilaterally set a hearing date. 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 20th day of April by a vote of 5-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board