

ILLINOIS POLLUTION CONTROL BOARD
May 21, 1992

DON BOLENDER,¹)
)
Complainant,) PCB 91-136
) (Enforcement)
v.)
)
MONTICELLO BUS SERVICE,)
WAYNE KRUGER, President,)
)
Respondent.)

DON BOLENDER APPEARED PRO SE;

RON SCHARF ESQ. AND ALAN SCHARF ESQ. APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J. Anderson):

This matter comes before the Board on the August 14, 1991 filing of a formal complaint filed by complainant Don Bolender (Bolender), against the respondent, Monticello Bus Service and Wayne Kruger (Bus Service), pursuant to Sections 9A, 23, and 24 of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1989 ch. 111 1/2, pars. 1009(A), 1023, 1024). Bolender alleges that excessive noise and odor emitted from respondent's property eliminate his family's use of their patio and disturb their sleep. The public hearing was held on January 17, 1992.

BACKGROUND

The complainant owns and lives in a condominium complex directly across the street from the Bus Service in Monticello. (Compl. par. 6.) Bolender moved into the condominium in 1988. (Tr. 36-37.) The Bus Service has been located in Monticello for approximately 30-40 years and it has been owned by the present owners since 1984. (Tr. 6-7.) Complainant alleges that the noise and odor emanating from the Bus Service, while the charter buses are left idling late at night, disturb the rest and sleep of his family and eliminate the use of their patio. (Compl. par. 8.)

Bolender previously complained to the General Manager on two occasions about noise emissions from the Bus Service. Approximately one year ago, Bolender complained about the noise

¹ The Board notes that the complainant's name was misspelled as "Bolander" on the formal complaint. The case has been re-captioned with the corrected spelling which was provided on January 17, 1992.

from a nighttime Bus Service employee basketball game taking place in one of the storage facilities. (Tr. 42.) As a result, the basketball hoop was removed, and no employee has played basketball at the facility since that time. (Tr. 42.) Additionally, approximately one year ago, Bolender complained about noise from the nighttime use of the blare horn on the charter buses. (Tr. 42.) As a result of Bolender's complaint, a new policy was instituted and charter buses no longer sound their blare horns when backing up during the nighttime hours. (Tr. 43-44.)

APPLICABLE REGULATIONS

NOISE

Title VI of the Act contains the standards and procedures for noise control. Section 23 of Title VI sets forth the legislature's purpose of preventing noise that creates a public nuisance. Section 24 of Title VI prohibits any person from emitting beyond his property noise that interferes with the enjoyment of life or with any lawful business or activity. This is a "noise nuisance" action pursuant to Section 24. Section 25 of Title VI sets forth the Board's authority to adopt noise regulations.

Sections 23 and 24 of Title VI provide as follows:

Section 23

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 nuisance, and in other respects reduces the quality of our environment.

It is the purpose of this Title to prevent noise which creates a public nuisance.

Section 24

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.

These Sections of the Act have been implemented by the Board in two ways. First, the Board has adopted specific numerical limitations on the characteristics of sound that may be transmitted from source to receiver. However, the complaint did not allege a violation of the Board's numerical standards and no

numerical test data were introduced. The second method by which the Board has implemented the noise provisions is found at 35 Ill. Adm. Code 900.101 and 900.102 which provide as follows:

Section 900.101 Definitions

Noise pollution: the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity.

Section 900.102 Prohibition of Noise Pollution

No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the Illinois Environmental Protection Act, so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter.

Thus, under the Act and the Board's regulations, respondent has caused a "noise nuisance" violation if the complainant meets the standard of proof that an "unreasonable interference with the enjoyment of life or with any lawful business or activity" has occurred. The pleadings, testimony and exhibits introduced by the complainant must be analyzed according to this standard, rather than according to specific sound emission levels.

ODOR

The Act, Board regulations and judicial interpretations adopt a similar approach to controlling "odor nuisance" problems. The Act defines and prohibits an unreasonable interference with the enjoyment of life or property in Section 3.02 of Title I and Section 9 of Title II. These Sections provide as follows:

Section 3.02

"AIR POLLUTION" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

Section 9

No person shall:

- a. Cause or threaten to allow the discharge or emission of any contaminant into the environment in any State so as to cause air pollution in Illinois, either alone or in combination with contaminants from other sources,

or so as to violate regulations or standards adopted by the Board under this Act.

Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 1003.02 and 1009. Board regulations at 35 Ill. Adm. Code Sections 201.102, "Air Pollution" and 201.141 "Prohibition of Air Pollution" contain identical language to the Act. Similar judicial interpretations apply to the "unreasonable interference" odor and noise pollution cases. See: Incinerator, Inc. v. Pollution Control Board (1974), 59 Ill.2d 290, 319 N.E.2d 794; Mystic Tape, Div. of Borden, Inc. v. Pollution Control Board (1975), 60 Ill.2d 330, 328 N.E.2d 5; Processing And Books v. Pollution Control Board (1976), 64 Ill.2d 68, 351 N.E.2d 865.

Thus, the issue that must be considered in any noise or odor complaint is whether the sounds or smells have caused an unreasonable interference pursuant to the Act and Board rules. This issue was addressed in Ferndale Heights Utilities Co. v. Pollution Control Board (1976), 44 Ill.App.3d 962, 358 N.E.2d 1224.

The Board must consider the facts of the case in light of the factors outlined by 33(c) of the Act in determining whether an unreasonable interference has occurred under the Act and Board rules. Id. at 967-68, 358 N.E. 2d at 1228. The statutory factors that must be considered are as follows:

- (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- (ii) the social and economic value of the pollution source;
- (iii) the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
- (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions discharges or deposits resulting from such pollution source; and
- (v) any subsequent compliance.

Ill. Rev. Stat. 1989, ch. 111 1/2; par. 1033(c), as amended by P.A. 86-1363, § 2002, 1990 Ill. Legis. Serv. 1979, 1989 (West), effective Sept. 7, 1990.

Although the Illinois courts have held that these statutory criteria shall be utilized in determining whether an unreasonable interference with life or property has occurred, Wells Manufacturing Co. v. Pollution Control Board (1978), 73 Ill.2d 226, 383 N.E.2d 148; Mystic Tape Inc. v. Pollution Control Board (1975), 60 Ill.2d 330, 328 N.E.2d 5; Incinerator, Inc. v. Pollution Control Board (1974), 59 Ill.2d 290, 319 N.E.2d 794; City of Monmouth v. Pollution Control Board (1974), 57 Ill.2d 482, 313 N.E.2d 161, complainants need not introduce evidence on all of these criteria. Processing And Books v. Pollution Control Board (1976), 64 Ill.2d 68, 351 N.E.2d 865.

COMPLAINT

The complaint alleges that the running of the diesel charter buses causes excessive noise and odor. The complaint also alleges that the charter buses are left running for one to two hours when they return at night from charter trips, and for 30 to 60 minutes before they leave for charter trips in the morning. The complaint further asserts that the most bothersome emissions occur mainly between the hours of 8 p.m. to 6 a.m. (Compl., pars. 6-7).

The complaint alleges that Bolender and his wife have suffered ill effects as a result of the noise and odor. These include the loss of use of their patio and the interruption and loss of sleep. (Compl., par. 8).

At issue in this proceeding are the noise and air emissions that emanate from the Bus Service late at night when the charter buses are being cleaned and inspected, and early in the morning when the charter buses are warming up. The complainant owns a condominium located directly across the street from the Bus Service. (Compl. par. 6.) The respondent has 33 employees, and operates two bus services including charter bus services and local school bus services. (Tr. 175.) Charter buses often begin their morning departure schedule at 5:30 a.m. (Tr. 118.) In order to do so, it is critical that the buses are started and left running 10 to 30 minutes prior to their departure. (Tr. 119.) Upon return from a trip, the buses must undergo certain procedures regardless of their arrival time. The buses must routinely have the rest room facilities pumped and dumped of refuse, and must have a post-trip inspection. (Tr. 120-121.) These procedures generally take 15 to 30 minutes, and the engines must remain idling throughout these processes. (Tr. 121.) Additionally, if a charter bus is scheduled for another trip early the next morning, it must be cleaned when it returns from the previous trip. The cleaning of all charters takes place within the Wash Bay building. (Tr. 121-122.) The Wash Bay is an insulated building that was constructed in December of 1987 in order to decrease the noise emitted while buses were being washed. (Tr. 185-187.) While the inside of the charter buses are

being cleaned, the engines must remain idling, and the doors of the Wash Bay must be open in order to prevent the accumulation of fumes. (Tr. 123-124.) This procedure takes approximately 30 minutes to perform. (Tr. 125.) However, when the outside of the buses are cleaned, it is not necessary for the engines to be idling. The outside cleaning lasts approximately 15 to 30 minutes. (Tr. 124-125.)

The public hearing on this matter was held on January 17, 1992. Bolender was the only witness to testify on behalf of the complainant. Six witnesses testified on behalf of the respondent.

HEARING

The complainant testified at the hearing that the noise and fumes emitted from the Bus Service disturb his family's rest and sleep between the hours of 9:30 p.m. and 7:00 a.m. (Tr. 38.) Bolender asserted that his wife often finds it necessary to leave the master bedroom in order to sleep. (Tr. 53.) Bolender described the noise and odor to be most troublesome during the summer months when the windows are often left open. (Tr. 17.)

In support of his allegations, Bolender introduced two letters into evidence that were written by neighbors, Clarence Cross and Ralph and Kimberly Snavely, who also complain about the air and noise pollution emitted from the Bus Service. (Tr. 12.) Mr. Cross rented the condominium directly next door to Bolender. In his letter Cross stated that he would have bought the condominium in August of 1990 but for the noise, dust and fumes from the Bus Service. (See Pet. Exhibit #1.) The Snavelys asserted in their letter that they live in the condominium across the street from the Bus Service. The Snavelys also asserted that the noises from the Bus Service constantly keep them awake at night, and that dust from the Bus Service accumulates in their house. (See Pet. Exhibit #2.) Bolender also introduced two letters into evidence that he wrote to Wayne Kruger, president of the Bus Service, about the noise and air pollution. One of these letters was accompanied by a petition bearing six signatures against the noise and air pollution emitted from the Bus Service. (Tr. 13.)

Several witnesses testified on behalf of respondent. (Tr. 63-224.) Mr. George Geissler, the Mayor of Monticello, testified that he has lived at 1004 Surrey Road for 16 and 1/2 years. Mr. Geissler described this location as being 2 and 1/2 blocks west of the Bus Service. (Tr. 64.) Mr. Geissler testified that he has never had a complaint about the Bus Service, and that he thinks its operations are beneficial to the community because of the work opportunities that it provides. (Tr. 66.)

Ms. Bette Higgins testified that she has lived at 626 West Main Street for 11 and 1/2 years. (Tr. 73-74.) Ms. Higgins described her house as part of the neighborhood that surrounds the Bus Service. (Tr. 73.) Ms. Higgins testified that she has never had a problem with the noise and odors from the Bus Service. (Tr. 77.) Ms. Higgins also testified that the installation of the Wash Bay has decreased the noise emissions considerably. (Tr. 79.) Finally, Ms. Higgins testified that she believes the Bus Service is an asset to the community because of the jobs it provides, and an asset to the local economy because it purchases its fuel and products locally. (Tr. 79-80.)

Mr. Ray Funk testified that he has lived at 633 West Main Street for 25 years. (Tr. 85.) Mr. Funk described his property as being down the street from the Bus Service, and next to the condominium complex. The condominium complex is located between Mr. Funk's property and the Bus Service. (Tr. 85, 95.) Mr. Funk also testified that he has never had a problem with the noise or odor from the Bus Service. (Tr. 87.) Mr. Funk testified that he had no problems with noises or odors even when the lot in which the condominium complex was to be built was empty for two months before construction began. (Tr. 95-96.) Finally, Mr. Funk stated that he thinks the Bus Service is an asset to the community and the local economy because of the jobs it provides and because it buys its necessities locally. (Tr. 89.)

Mrs. Vernice Funk testified that she has lived in the area of the Bus Service for 43 years. (Tr. 99.) Mrs. Funk also testified that during the two month period when the condominium lot was empty, she had no problems with the noise or odor from the Bus Service. (Tr. 100.) Finally, Mrs. Funk testified that the Bus Service is an asset to the City of Monticello. (Tr. 101.)

Mr. Michael Butler testified that he has lived at 1106 North Union Drive for 12 years. (Tr. 102.) Mr. Butler asserted that he is currently employed by the Bus service and has been for eight years. (Tr. 102.) Mr. Butler stated that he works as a supervisor of employees and school bus drivers. (Tr. 103.) Mr. Butler testified that 80% of the time the buses are cleaned during the day. (Tr. 128.) He explained that the company prefers to clean the buses during the daytime hours in order to avoid the nighttime noise and having to pay employees overtime. (Tr. 130.) Mr. Butler testified that as a result of Bolender's complaint about a year ago regarding the blare horn usage, the drivers no longer use their horns when backing up during nighttime hours at the Bus Service. (Tr. 134.) Additionally, Mr. Butler explained that the basketball hoop has been removed and employees no longer play basketball on the premises because of Bolender's noise complaint over a year ago. (Tr. 135-136.) Mr. Butler testified that Bolender's recent noise complaints have resulted in the enactment of a company policy regarding the running and idling of the buses. The drivers can only leave their buses idling for as

long as is absolutely necessary for the build up of air and the generation of air conditioning or heat. (Tr. 136-137.) Finally, Mr. Butler testified that to his knowledge, all vehicles at the Bus Service meet all state, federal and EPA standards regarding emission tests and noise problems. (Tr. 153.)

Mr Jim Pownall testified that he has been employed by the Monticello Bus service as General Manager since July of 1984. (Tr. 173-174.) Mr. Pownall explained that the installation of the insulated Wash Bay in 1987 has decreased the noise emitted while the buses are being washed. (Tr. 187.) He testified that the Bus Service paid \$30,000 to insulate a small portion of the Wash Bay building. (Tr. 187.) Mr. Pownall also testified that the Bus Service spent approximately \$773,827 operating its service in the year of 1990, and explained that this estimate is somewhat low because not all expenditures were included. (Tr. 215-216.) Mr. Pownall testified that the company is financially incapable of relocating or currently spending more money for new buildings or for equipment and materials to further reduce noise levels or emissions. (Tr. 218, 219.)

Respondent also introduced 11 affidavits into evidence which were written by Monticello residents who live in close proximity to the Bus Service.² Tr. 6.) Bruce and Melody Pinks stated that they live behind the Bus Service, approximately 100 feet from the operation. The Pinks asserted that they have never had any problems with noises or odors from the Bus Service, and that they believe that the Bus Service is an asset to the local community. (See Resp. Exhibits #s 1,2.) Jack and Lucille Carron stated in their affidavits that they are the closest neighbors of the Bus Service, and that the operation is located approximately 70 feet from their bedroom window. Additionally, the Carron stated that their screen porch is 70 feet from the Bus Service, and that they eat two-three meals in the porch during the spring and summer months. The Carron claimed that they have never had problems with noise or odor from the Bus Service, and that they think the company is an asset to the local community. (See Resp. Exhibits # 3,4.) Fred, Bev, Richard and Carolyn Erickson asserted that they lived in the same condominium complex as the complainant from August 1990 to June 1991. The Ericksons stated that Carolyn slept in the second floor bedroom facing the Bus Service while they lived in the condominium complex. The Ericksons asserted that they never had a problem with noises or odors from the Bus Service, and that they think the company is an asset to the local community. (See Resp. Exhibits #s 5-8.) Mildred Wrench stated that she lives in a one story house across the street from the Bus Service, approximately 100 feet away from the operation. Ms.

² The Board notes that one of the affidavits submitted by respondent was written by Beverly Erickson whose name also appeared as a signature on Bolender's petition.

Wrench asserted that she has never had any problems with noise or odors from the Bus Service, and that she thinks the company is an asset to the local community. (See Resp. Exhibit #9.) Penny Norfleet explained that she lives in the apartment complex that is located behind the Bus Service and approximately 50 yards from the company. Ms. Norfleet stated that she has never had a problem with the noise or odors from the company, and that she thinks the Bus Service is an asset to the local community. (See Resp. Exhibit #10.) Mr. George Geissler asserted that he lives approximately two and a half blocks from the Bus Service, and that he has never had a problem with noises or odors. Additionally, Mr. Geissler stated that he thinks the Bus Service is an asset to the local community. (See Resp. Exhibit #11.) Finally, respondent introduced one letter written by Mr. Ralph E. Shafer, a neighbor of the facility, who claimed that no air or noise pollution problems exist. (See Resp. Exhibit #12.)

SECTION 33(c) FACTORS

As earlier noted, the question of unreasonable interference must be considered in light of the factors set forth in Section 33(c) of the Act.

Regarding Character and Degree of Injury, the record contains testimony that the noise and odor emanating from the Bus Service routine from the emptying of the refuse tanks, inspections of the charter buses, and the periodic washing of the charter buses, all between the hours of 9:30 p.m. to 7:00 a.m. disturb the rest, sleep and outdoor activities of the Bolenders and, by letter, of two other residents. The Bolenders have experienced "intermittent sound of a disturbing nature", and the record indicates that they have endured these disturbances for four years. (See Kaji, PCB 80-46 at 3.) However, the Board notes that nearby residents testified that they have never had any complaints about or problems with the Bus Service. (Tr. 63-224.) The Board also notes that the respondent introduced 11 affidavits and one letter into evidence written by neighbors who have never had problems with or complaints about the Bus Service. (Tr. 61.)

Regarding the Social or Economic Value of the Source, the Monticello Bus Service is of substantial social and economic benefit to the community. The Bus Service provides employment for 33 people and spends approximately \$774,000. annually. (Tr. 214-216.) Additionally, it is the policy of the Bus Service to buy fuel and necessities locally if possible. (Tr. 213.) Also, all of those submitting affidavits on behalf of the respondent believe the Bus Service is an asset to the local community.

Regarding Suitability or Unsuitability of the Source and Priority of Location, the record does not indicate that the complainant's or respondent's land use is inconsistent with local zoning. The record does not indicate that the noise and odor

emissions have arisen or increased since the complainant acquired his property. The record indicates that no complaints about noise or odor were made until Bolender complained. The respondent has priority of location, having operated the Bus Service at the present location approximately three years before the complainant moved into the area.

Regarding Technical Practicability and Economic Reasonableness of Control, it appears to be impossible to totally eliminate the noise and odor emissions without ordering that the facility be closed or moved. Complainant explains that he is not asking that the Bus Service be completely closed down. Bolender suggests that the Bus Service be closed at the current location and moved to a different location, or that it make some corrections to its operation at the current location. (Tr. 23.) The Bus Service has already addressed Bolender's concerns by implementing changes that lessen the emissions. (Tr. 42-44, 134-137) Mr. Pownall testified that one of the factors in building the insulated Wash Bay was to muffle the noise that was caused from washing the buses outside. (Tr. 186.) Mr. Butler testified that it is not feasible to completely close the doors to the Wash Bay when the buses are being washed because the engines are idling and fumes are accumulating. Mr. Pownall testified that the company is financially unable to relocate or presently spend more money than it already has. (Tr. 218-219)

Regarding Subsequent Compliance, the Bus Service has implemented some measures to address the noise and odor problems in addition to those instituted in response to Mr. Bolender's prior complaints. After Bolender's recent noise complaints were made, the Bus Service instituted a policy of allowing charter buses to remain idling only as long as is absolutely necessary for them to warm up and to maintain heating and air conditioning. (Tr. 136-137.)

BOARD CONCLUSION

The noises and odors from the Bus Service disturb the Bolenders' rest, sleep and patio use. However, a number of neighbors, by affidavit, were not disturbed. The social and economic value of the Bus Service has not been challenged. The respondent's land use is consistent with local zoning, and regarding the question of priority of location, the record shows that the Bus Service was located across the street from the condominium complex when Bolender moved in, and the present owners operated the Bus Service for approximately three years before the complainant acquired his property. The Bus Service has been responsive to the previous noise complaints of Bolender, and has worked since this complaint to reduce the noise emissions by constructing the insulated Wash Bay building and by instituting company policy allowing charter buses to remain idling only as long as is absolutely necessary. Finally, we are

persuaded that it would not be economically reasonable to close down the Bus Service at the present location and move the operations to a new area, or, on balance, to sufficiently improve upon the existing facility.

Therefore, after full consideration of all of the facts and circumstance in the record, and in light of the Section 33(d) factors, the Board finds that the noise and odor from the Bus Service does not constitute an unreasonable interference with the Complainant's enjoyment of life and lawful activity in violation of Section 9A and 24 of the Act. The Board accordingly dismisses this action.

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

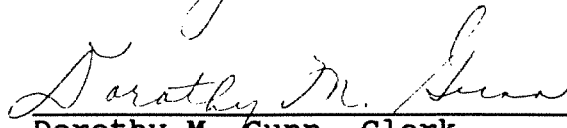
ORDER

For the foregoing reasons, the Board having found no violation in this matter, this case is hereby dismissed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1041, provides for the appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 21st day of May, 1992, by a vote of 7-0.



 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board