

ILLINOIS POLLUTION CONTROL BOARD
March 15, 2001

STEVEN P. LOGSDON,)
)
 Complainant,)
)
 v.) PCB 01-42
) (Enforcement - Citizens, Noise)
 TILFORD R. BOWMAN,)
)
 Respondent.)

STEVEN P. LOGSDON APPEARED *PRO SE*; and

TILFORD R. BOWMAN APPEARED *PRO SE*.

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

On August 28, 2000, Steven P. Logsdon (complainant) filed a complaint against Tilford R. Bowman (respondent) alleging that noise from respondent's sawmill violated Sections 23 and 24 of the Environmental Protection Act (Act) (415 ILCS 5/23, 24 (1998)) and 35 Ill. Adm. Code 900.102. Complainant seeks a cease and desist order, and any other relief the Board deems appropriate. Respondent did not file an answer to the complaint.

On September 21, 2000, the Board accepted this case for hearing based upon the alleged violations of Section 24 of the Act and 35 Ill. Adm. Code 900.102. In an order issued on that date, the Board found the alleged violation of Section 23 of the Act frivolous, as that Section does not state a cause of action upon which the Board can grant relief.

Board Hearing Officer Steven Langhoff held a hearing in this matter on December 7, 2000, in Mt. Sterling, Illinois. Both parties appeared *pro se*. Complainant presented no witnesses, and respondent presented one witness. Neither party submitted a brief.

Due to the lack of evidence presented in this proceeding, the Board finds that complainant has failed to meet his burden of proof to demonstrate that noise from respondent's sawmill unreasonably interferes with complainant's enjoyment of life. Therefore, the Board finds that respondent has not violated the Act and Board regulations. Accordingly, this matter is dismissed and the docket is closed.

STATUTORY BACKGROUND

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).

Section 33(c) of the Act provides that:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

- 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. 415 ILCS 5/33(c) (1998).

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. 35 Ill. Adm. Code 900.101.

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 the Chapter. 35 Ill. Adm. Code 900.102.

BACKGROUND

Complainant owns property in Ripley, Brown County, Illinois, a town with fewer than 200 residents. The record does not establish the zoning of this area. Complainant's property

is next door to a sawmill operation owned and operated by respondent. Tr. at 7.¹ On this property, there is an old house and a trailer. Tr. at 6. Complainant refers to the house as an “A-frame.” He describes it as a structure that used to be a house, but is presently all open inside. *Id.* Complainant states that he uses the A-frame as an office and a workshop, and he goes there to listen to short wave radio. *Id.* Complainant uses the trailer to cook and watch television. Tr. at 8. Complainant does not reside at this location, but he goes there daily. Tr. at 6.

Respondent owns and operates a sawmill and makes pallets. The sawmill operates once or twice per week. Complainant alleges that noise from respondent’s sawmill unreasonably interferes with the use and enjoyment of his property, disturbs his sleep which endangers his physical and emotional health, causes headaches and hearing problems, and depresses his property value. Comp. at 4.² Complainant describes himself as disabled, and testified that he has lung problems, and many more medical problems about which he did not elaborate. Tr. at 18. Complainant has had to wear earmuffs in his A-frame, and once went to the emergency room for treatment of his hearing and other medical problems due to the noise. Tr. at 14-15, 19-20. The doctor advised him to see an “eye and ear doctor ASAP.” Comp. Exh. 12. Complainant testified that he has not done so. Tr. at 19.

Using a Radio Shack Model 33-2055 sound level meter, complainant testified that he measured the sound emanating from the operation of the sawmill, tractors, board machine, and lawn mower. Tr. at 5. Complainant measured sound emissions from the A-frame window, located approximately 70 feet from the sawmill, on July 17 and 18, 2000, and again on August 7, 9, and 15, 2000. Tr. at 5; Comp. at 9-11. Complainant also measured sound emissions from the trailer, located approximately 200 feet from the sawmill. Tr. at 7-8.

DISCUSSION

Complainant alleges that respondent has violated Section 24 of the Act and 35 Ill. Adm. Code 900.102. These two provisions constitute a prohibition against “nuisance noise” pollution. See Pawlowski v. Johansen (April 6, 2000), PCB 99-82; Charter Hall Homeowner’s Ass’n. v. Overland Transportation System, Inc. (October 1, 1998), PCB 98-81.

In determining whether noise emissions rise to the level of nuisance noise pollution, the Board performs a two-step inquiry. First, the Board determines whether or not the noise constitutes an interference in the enjoyment of complainant’s life. Second, considering the factors in Section 33(c) of the Act, the Board determines whether or not the interference is unreasonable. Pawlowski, slip op. at 6; Charter Hall, slip op. at 19-21. The following discussion will address whether complainant has established that the noise from respondent’s sawmill constitutes an unreasonable interference in the enjoyment of his life.

Interference with Enjoyment of Life

¹ The transcript from the December 7, 2000 hearing shall be referred to as “Tr. at ____.”

² The complaint shall be referred to as “Comp. at ____.”

The Board has held that if there is no interference, there can be no nuisance noise violation. Pawlowski, slip op. at 7; Zivoli v. Prospect Dive and Sport Shop (March 14, 1991), PCB 89-205, slip op. at 9. Accordingly, the Board must first determine whether the sounds have interfered with complainant's enjoyment of life.

In Madoux v. Straders Logging and Lumber Mill (May 21, 1991), PCB 90-149, the Board held that noise from a lumber mill unreasonably interfered in the complainants, lives. In that case, the lumber mill was a full-time operation employing between 14 and 20 people, and trucks were a contributing factor to the noise at night. Other industrial pursuits that may cause interference by disturbing sleep and normal daily activities include: noise from trucks (Charter Hall; Hoffman v. City of Columbia (October 17, 1996), PCB 94-146; Thomas v. Carry Companies of Illinois (August 5, 1993), PCB 91-195); noise from a mining operation (Curtis v. Material Service Corp. (April 8, 1993), PCB 91-30); and noise from a grain processing plant, including hammering and truck engines (Christianson v. American Milling Co. (November 21, 1991), PCB 90-59). The Board has also held that noise from bars and nightclubs may constitute interference (see Pawlowski, slip op. at 11; Manarchy v. JJJ Associates, Inc. (July 18, 1996), PCB 95-73, slip op. at 10).

Complainant submitted sound level measurements to support his allegations that sound emissions from respondent's sawmill violate the nuisance noise provisions of the Act and Board regulations. The Board has previously held that sound level measurements may be used to substantiate nuisance noise claims, and that such measurements need not meet all the requirements that apply in a case involving a numeric violation. See Roti v. LTD Commodities (February 15, 2001), PCB 99-19, slip op. at 25; Dettlaff v. Boado (July 1, 1993), PCB 92-26, slip op. at 7-9. However, even for nuisance noise claims, the Board considers whether proper sound measurement procedures were followed. See Charter Hall, slip op. at 22.

In this case, other than the make and model number of the sound level meter, and the location of measurement from the A-frame, the Board has no information regarding complainant's measurement procedures. Complainant did not indicate whether he followed the manufacturer's instructions for the sound level meter, sought guidance from a noise expert, or set the sound level meter at the appropriate decibel range. As a result, complainant has not provided sufficient information to allow the Board to determine whether his measurement procedures were reasonably accurate. For these reasons, the Board cannot rely on complainant's sound level readings.

However, complainant did testify that the noise from the sawmill did interfere with the enjoyment of his property. Complainant stated that he was forced to wear earmuffs in his A-frame. Additionally, complainant testified that the noise has disturbed his sleep and has given him headaches. Based on these complaints, the Board finds that noise from the sawmill has interfered with complainant's enjoyment of life. The Board must now determine whether complainant has demonstrated that the interference was unreasonable, and therefore meets the definition of noise pollution.

Unreasonable Interference With Section 33(c) Factors

The next step of the Board's inquiry requires the Board to apply the statutory Section 33(c) factors to determine whether the interference in this matter is unreasonable. See Wells Manufacturing Company v. Pollution Control Board, 73 Ill. 2d 226, 233, 383 N.E.2d 148, 151 (1978); Processing and Books, Inc. v. Pollution Control Board, 64 Ill. 2d 68, 75-77, 351 N.E.2d 865, 869 (1976); Incinerator, Inc. v. Pollution Control Board, 59 Ill. 2d 290, 296, 319 N.E.2d 794, 797 (1974). The Board will now consider each of the Section 33(c) factors.

The Character and Degree of Injury to, or Interference with the Protection of the Health, General Welfare, and Physical Property of the People

In assessing the character and degree of interference of the noise from respondent's sawmill, the Board must determine whether the noise "substantially and frequently interferes" with the enjoyment of life, "beyond minor or trifling annoyance or discomfort." Kvatsak v. St. Michael's Lutheran Church (August 30, 1990), PCB 89-182, slip op. at 9; Roti, slip op. at 24; Pawlowski, slip op. at 7; Charter Hall, slip op. at 21.

Complainant testified that the noise caused headaches, hearing problems, and sleep disruption. Comp. at 4; Tr. at 14-15. On one date that the sawmill operated, complainant went to the emergency room due to his hearing and "other medical problems" which were allegedly a result of the noise. Tr. at 19-20. The doctor advised him to see an "eye and ear doctor ASAP." Comp. Exh. 12. Complainant testified that he has not done so. Tr. at 19.

Complainant testified that he has numerous medical problems, and the Board cannot determine if his headaches and hearing problems are a result of the noise or a result of his health condition generally. There is insufficient evidence to link complainant's health problems to respondent's sawmill. Further, since complainant does not reside at this location, and thus, sleeps elsewhere at night, the Board does not consider sleep disruption significant in this case.

The Board finds that complainant has not produced sufficient evidence to prove that the noise from respondent's sawmill operation was substantial and frequent, and beyond minor or trifling annoyance and discomfort.

The Social and Economic Value of the Pollution Source

In assessing this factor, the Illinois Supreme Court has considered the number of persons that respondent employs, and respondent's importance as a supplier to a particular market. Wells Manufacturing, 73 Ill. 2d at 235-36, 383 N.E.2d at 152. The Board has further considered the total wages and taxes respondent paid. Roti, slip op. at 26; Arendovich v. Koppers Co. (February 8, 1990), PCB 88-127, slip op. at 6.

There is no evidence in the record pertaining to respondent's employment records, tax payment, or contribution to the pallet market. Based upon the lack evidence in the record, the Board cannot determine the social or economic value of respondent's operation. However, the Board recognizes that sawmill operations do have economic and social value when operated in an environmentally sound manner.

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

Ripley is a town with a population of fewer than 200 people. Although complainant asserts that this location is intended to be residential, the record does not establish the zoning of this area. Complainant introduced into evidence photographs of his property and the sawmill. Comp. Exhs. 2-6, 8-10. The area appears to be rural and sparsely populated. Further, there is no evidence pertaining to priority of location.

Based upon the limited evidence in the record, the Board cannot determine that the sawmill is unsuitable to this rural area.

The Technical Practicability and Economic Reasonableness of Reducing or Eliminating the Emissions, Discharges or Deposits Resulting from Such Pollution Source

In considering this factor, the Board must determine whether technically practicable and economically reasonable means of reducing or eliminating noise emissions are readily available to respondents. Roti, slip op. at 27; Pawlowski, slip op. at 9; Charter Hall, slip op. at 24. In cases where the Board finds that noise interference is unreasonable, the Board may order implementation of noise abatement measures. In this case, neither party testified as to any potential solutions to complainant's noise complaints. Complainant's requested remedy, a cease and desist order, may be the only viable solution. Given the record in this proceeding, that result is not justified.

Based upon the limited evidence in the record, the Board cannot determine if there are any technically practicable or economically reasonable methods of noise abatements in this situation.

Any Subsequent Compliance

The record contains no evidence of subsequent compliance or any good faith efforts to reduce the effects of the noise.

CONCLUSION

While the Board finds that noise from respondent's sawmill has interfered with complainant's enjoyment of his property, the record offers little evidence upon which the Board may find such interference unreasonable. The Board finds that complainant has not produced sufficient evidence to prove that the noise from respondent's sawmill operation was

substantial and frequent, and beyond minor or trifling annoyance and discomfort. Absent a finding of unreasonable interference, the Board cannot find that the noise constitutes "noise pollution" as defined at 35 Ill. Adm. Code 900.101, and cannot find that respondent violated Section 24 of the Act and 35 Ill. Adm. Code 900.102.

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

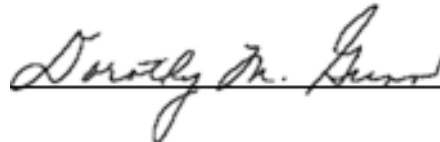
ORDER

The Board finds no violation by respondent of 35 Ill. Adm. Code 900.102 and accordingly no violation of 415 ILCS 5/24. This action is dismissed and the docket is closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/24 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 3d R. 335; see also 35 Ill. Adm. Code 101.520, Motions 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 15th day of March 2001 by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board