

ILLINOIS POLLUTION CONTROL BOARD  
May 4, 2000

MICHAEL PAWLOWSKI and DIANE K. )  
PAWLOWSKI, )  
 )  
Complainants, )  
 )  
v. ) PCB 00-157  
 ) (Enforcement – Citizens, Noise)  
DAVE JOHANSEN a/k/a DAVID )  
JOHANSEN and TROY QUINLEY, )  
individually, and d/b/a BENCHWARMERS )  
PUB, INC., )  
 )  
Respondents. )

ORDER OF THE BOARD (by G.T. Girard):

On March 22, 2000, Michael and Diane Pawlowski (complainants) filed a complaint against Dave Johansen and Troy Quinley individually and d/b/a Benchwarmers Pub (respondents). The complainants allege that the respondents violated Sections 23 and 24 of the Environmental Protection Act (Act) (415 ILCS 5/23 and 24 (1998)) and 35 Ill. Adm. Code 900.101, and 900.102. Complainants charge that noise generated in Benchwarmers Pub on West Locust Street in Fairbury, Livingston County, Illinois, has unreasonably interfered with complainants in an adjacent building on specified dates in the year 2000.

On April 3, 2000, respondents filed a motion requesting that the Board not accept the complaint. The basis for the motion is two-fold. First, respondents assert that this case is duplicitous because a similar case is pending before the Board.<sup>1</sup> Respondents maintain that the parties are the same and all allegations, “excluding the dates of the alleged pollution,” are also the same. Second, respondents argue that this matter is frivolous because the requested relief is beyond the authority of the Board to grant.

The complainants have not filed a response to the motion.

The Board denies the motion to dismiss and accepts this matter for hearing. The Board finds that the complaint is not duplicative of the previous enforcement proceeding as the alleged violations occurred on different dates than those violations previously adjudicated. See,

---

<sup>1</sup> On April 6, 2000, the Board entered an interim opinion and order in Pawlowski et al v. Johansen et al, PCB 99-82. In that opinion and order, the Board found that respondents violated Section 24 of the Act and 35 Ill. Adm. Code 900.102. The Board directed the respondents to file a report within 60 days detailing how respondents will reduce the noise levels.

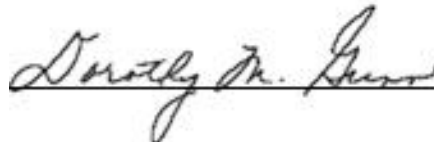
Fredette v. Village of Beecher (January 24, 1990), PCB 89-61. Also, the Board finds that this matter is not frivolous. Respondents are correct that the Board cannot issue an injunction. The Board can order that the alleged violations cease and desist. In addition, the request for a civil penalty is certainly within the Board's authority. See 415 ILCS 5/42. Pursuant to Section 42 of the Act, the Board may impose a civil penalty "not to exceed \$50,000 for the violation and an additional civil penalty not to exceed \$10,000 for each day during which the violation continues." 415 ILCS 5/42(a). As the complaint alleges violations occurred on ten different dates, the requested amount of the penalty does not appear frivolous. The Board will strike the allegations regarding violations of Section 23 of the Act. Section 23 of the Act is the legislative purpose statement and as such cannot be violated.

At this time, the Board finds that the complaint is neither duplicitous nor frivolous. This matter is set for hearing. However, at this time, the Board will stay this proceeding until such time as a final opinion and order is entered into in Pawlowski et al v. Johansen et al, PCB 99-82. The Board believes that such a stay may assist in the resolution of this matter. The Board will assign a hearing officer to conduct hearings consistent with this order and the Clerk of the Board shall promptly issue appropriate directions to the assigned hearing officer consistent with this order.

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 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 to the Board within five days of the hearing. 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 4th day of May 2000 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