

ILLINOIS POLLUTION CONTROL BOARD
May 4, 2000

DAVID and JACQUELYN McDONOUGH,)
)
Complainants,)
)
v.) PCB 00-163
) (Enforcement - Citizens, Noise)
GARY ROBKE,)
)
Respondent.)

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

On March 27, 2000, David and Jacquelyn McDonough (complainants) filed a complaint against Gary Robke (respondent). The complaint alleges, *inter alia*, that the respondent violated Sections 23 and 24 of the Environmental Protection Act (Act) (415 ILCS 5/24 (1998)) by creating noise pollution as a result of its operation of a 24-hour self-service car wash. As evidenced by the certificate of service and return receipt each dated March 7, 2000, respondent was served with the complaint and notice of filing on March 4, 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. Ill. Adm. Code 103.124(a).

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. 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.

The Board also finds that the action is not frivolous. The complaint is frivolous if it fails to state a cause of action upon which relief can be granted. Lake County Forest Preserve Dist. v. Ostro, (July 30, 1992), PCB 92-80. In this case, the complaint alleges violations of specific sections of the Act which fall within the Board’s jurisdiction. Therefore, the Board finds that the complaint is not frivolous.

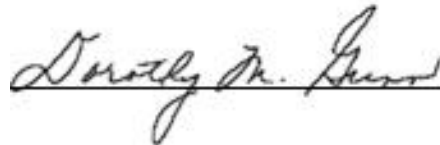
The Board finds that, pursuant to Section 103.124(a), the complaint is neither duplicitous nor frivolous and is accepted for hearing. The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent 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 4th day of May 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