

ILLINOIS POLLUTION CONTROL BOARD

November 19, 1992

CARL MADOUX, ALICE MADOUX,)
GLENN MOODY, AND MARGARET MOODY,)
Complainant,)
v.) PCB 90-149
STRADERS LOGGING AND LUMBER) (Enforcement)
MILL,)
Respondent.)

JAMES S. SINCLAIR APPEARED ON BEHALF OF COMPLAINANTS;

ROBERT D. LARSON APPEARED ON BEHALF OF RESPONDENT.

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

This matter is before the Board on a complaint filed July 17, 1990, and an amended complaint filed August 6, 1990, by Carl and Alice Madoux, and Glenn and Margaret Moody (complainants). The complaint alleges that respondent is in violation of Sections 9 and 24 of the Illinois Environmental Protection Act (the Act). (Ill. Rev. Stat. ch. 111 1/2, par. 1009 and 1024.) Hearing was held on June 27, 1991, in Alton, Illinois. Pursuant to the hearing officer's scheduling order, the complainants filed their closing brief on August 12, 1991, and respondent filed its closing brief on September 3, 1991. Complainants filed a reply brief on September 16, 1991.

The Board issued an interim opinion and order on May 21, 1992, which found that respondent, Straders Lumber Mill, was in violation of Section 24 of the Act. After considering the facts and circumstances of the case, including the factors outlined in Section 33(c) of the Act, the Board found that respondent is emitting noise which constitutes an unreasonable interference with the complainants' enjoyment of life and lawful activity. Respondent was ordered to examine the economic reasonableness and technical feasibility of any control options to reduce noise emissions from its facility. The noise reduction studies were to be filed with the Board by September 1, 1992. Complainants were ordered to reply to the respondent's study by October 1, 1992.

On October 7, 1992, Straders's attorney filed a motion to withdraw as respondent's counsel. This motion was granted by the Board on October 28, 1992. The respondent failed to file the noise reduction studies by the Board-ordered deadline of September 1, 1992. At this time, the Board has received no additional filings by the respondent. On October 1, 1992, complainants filed a motion pursuant to 35 Ill. Adm. Code 101.280

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asking for sanctions against respondent for failure to comply with the interim Board order of May 21, 1992.

Motion Pursuant to Section 101.280

35 Ill. Adm. Code 101.280 specifies that the Board will order sanctions if a party unreasonably refuses to comply with any provision of Sections 101 through 120. A list of possible sanctions is indicated. Complainants' motion filed October 1, 1992, requests that the Board require the respondent to install at its sawmill operation the solutions proposed by Mr. Gregory Zak at hearing. Complainants also request the installation of noise abatement measures by a date certain set by the Board, the opportunity to verify compliance with such an order, and that the Board retain jurisdiction until respondent is in compliance, as evaluated by respondent. In addition, complainants ask that the Board award reasonable expenses to complainants from respondent in seeking an order pursuant to Section 101.280. (Complainants' Motion, October 1, 1992.)

The Board grants in part complainants' motion pursuant to Section 101.280. In the order that follows, the Board will craft a remedy from the record at hand and order compliance by a date certain. The Board will also issue an order that respondent cease and desist from violations of Section 24 of the Act after the date certain. However, because of the considerable expense of implementing the proposed solution, the Board will not grant complainants' motion pursuant to Section 101.280(a)(7) requesting reasonable expenses incurred in obtaining the order.

REMEDY

The facts of this case are detailed in the Board interim opinion and order of May 21, 1992, which the Board incorporates by reference herein. (Madoux v. Straders Lumber Mill, PCB 90-149 (May 21, 1992) ___ PCB ___ hereinafter cited as "May 21 order at".) Since the respondent's have filed no response to the Board's interim opinion and order, the Board will fashion a remedy from the record. The primary source will be the possible solutions advanced by Mr. Gregory Zak (Tr. at 223-228) of the Illinois Environmental Protection Agency. Mr. Zak has been employed by and doing noise evaluation at the Agency for nineteen years; further, he has held the title of "Noise Technical Advisor" for approximately four and half years. (Tr. at 213.)

Mr. Zak proposed a potential solution to the noise problem by enclosing the operation of the sawmill to contain and reduce the sound being generated as well as installing a better muffler system on the articulating loaders. (Tr. at 223-227.) According to Zak (Tr. at 226, 227) the total cost of the proposed noise

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abatement program would be "somewhere between six to ten thousand dollars".¹ He proposed enclosing the debarker in a separate building (Tr. at 223, 224); enclosing the scrag mill building; and enclosing the grading shed. (Tr. at 224, 225.) Zak also proposed that all of the holes, cracks and gaps in the building be closed, and that the buildings not be opened except when taking material in or out. (Tr. at 225.) It was his opinion that enclosure of the operation would have the effect of significantly reducing noise from the mill. (Tr. at 228.) To control noise from the L-50 Michigan and IT-12 Caterpillar articulating loaders, Mr. Zak proposed the installation of a better muffler system at a cost of \$350.00 to \$400.00 per machine. (Tr. at 226.)

The Board noted in the interim order that complainants testified that the noise from trucks entering and leaving the facility along the public road disturb their sleep (May 21 order at 10). However, the Board reminds complainants that it does not have jurisdiction to regulate traffic on a public road. While there is nothing in the regulations specifying that nuisance noise on highways is beyond Board purview, there is a direct reference at 35 Ill. Adm. Code Section 901, which deals with numerical noise violations. Section 901.107(f) states:

"Sections 901.102 through 901.106 inclusive shall not apply to the operation of any vehicle registered for highway use while such vehicle is being operated within any land used as specified by Section 901.101 in the course of ingress to or egress from a highway.

The Board finds that the suggestions by Mr. Zak are economically reasonable and technically feasible solutions to the noise problem. Therefore, the Board directs the respondent to undertake the measures delineated by Mr. Zak in order to abate the noise emissions emanating from the respondent's property. Further the Board directs the respondent to cease and desist from violation of Section 24 of the Act. The Board will grant the respondent until March 1, 1993, to implement the changes necessary by the provisions of this order.

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

¹The Board notes that adding all the cost estimates given by Zak (Tr. at 223-227) yields a total figure greater than \$10,000. The discrepancy may be found in the cost estimate for a ceiling in the proposed debarker enclosure (Tr. at 224). The cost per foot given (2.825 cents per foot) when multiplied by the square footage of the ceiling (864 square feet) does not yield the total given in the transcript (\$28,088.46).

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ORDER

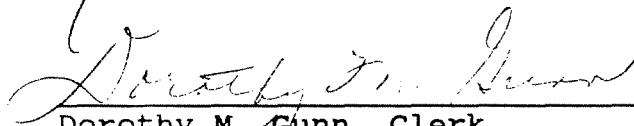
The respondent, Strader Lumber Mill, shall undertake all measures necessary to cease and desist from further violations of Section 24 of the Act. In addition respondent shall undertake the following measures to reduce noise emissions:

1. The respondent shall enclose the operation of the sawmill to contain and reduce the sound being generated including the placement of the debarker in a building, the placement of the scrag mill in a building, and the enclosure of the grading shed.
2. All of the holes, cracks, and gaps in the building must be closed by respondent, and the buildings must not be opened except when taking material in or out.
3. The respondent shall install a better muffler system, as described by Mr. Gregory Zak in his testimony, on the L-50 Michigan and the IT-12 Caterpillar.
4. The respondent shall cease and desist from further violation of Section 24 of the Act.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (Ill.Rev.Stat. 1991, 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. (But see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill.2d 304, 547 N.E.2d 437.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 19th day of September, 1992, by a vote of 7-0.



 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board

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