

ILLINOIS POLLUTION CONTROL BOARD
December 20, 1989

Vito Zivoli,)
)
Complainant,)
)
v.) PCB 89-205
) (Enforcement)
Prospect Dive and Sport)
Shop, Ltd., and Michael S. Ropers,)
)
Respondents.)

ORDER OF THE BOARD (by J.D. Dumelle):

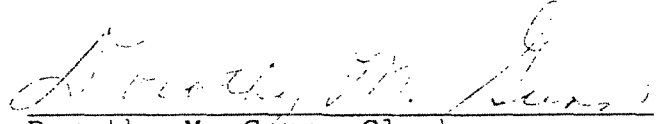
This matter comes before the Board upon a Citizen's complaint filed on December 13, 1989. The Board notes that under Section 31(b) of the Environmental Protection Act (Act) the Board is to make a determination as to whether the complaint is "frivolous or duplicitous". The Board further notes that in its formal citizen's complaint "packages" there exists a form which must be included in the service of the complaint upon the Respondent. A copy of that form is attached hereto.

The form provided information for the Respondent regarding the "duplicitous or frivolous" issue, namely that the Respondent can file a motion stating its belief that the complaint is frivolous or duplicitous within two weeks from the date of service of the complaint. As this form was not served upon Respondent with the complaint, the Board will allow Respondent to file a motion within two weeks of the date it receives this order if it believes that the complaint is frivolous or duplicitous.

Finally, in addition to the nuisance standard, the Board notes that the numerical noise regulations that may apply here were adopted by the Board in R72-2, In the Matter of: Noise Pollution Control Regulations, Order of July 23, 1973; Opinion of July 31, 1973, as Rule 202 and Rule 203. Those Rules provided maximum allowable octave band sound pressure levels for nine octave band center frequencies. These 1973 octave band pressure levels were codified at 35 Ill. Adm. Code 901.102. In 1987, the Board adopted amendments which provided that the particular regulatory standards would be measured based on one-hour Leq measurement techniques, See R83-7, In the matter of: General Motors Corp. Proposed Amendments to 35 Ill. Adm. Code 900.103 and 901.104, January 22, 1987.

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 20th day of December, 1988 by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

**NOTE: THIS FORM MUST BE INCLUDED IN THE SERVICE TO RESPONDENT
INFORMATION FOR RESPONDENT RECEIVING COMPLAINT**

The Board will not accept this complaint that has been served upon you if the case is determined to be either duplicitous or frivolous. Duplicitous means that a similar case is pending in another court or in another action before the Board. The response to question #10 in the complaint states the opinion of the Complainant(s) on this issue.

Neither can the Board accept the complaint if the action is frivolous. Frivolous means that the requested relief is beyond the Board's authority to grant. For example, the Board has the authority to order the Respondent(s) to cease and desist the polluting activity and order a fine after following certain procedures. The Board does not have the authority for example to grant monetary compensation to the Complainant for damage to health or property. Also, the Board cannot order the polluting activity to cease while the case is pending, except under special circumstances. The response to question #9 in the complaint states the opinion of the Complainant(s) on this issue.

If you believe this case is duplicitous or frivolous, please file a motion with the Board within two weeks from the date of service. The motion must state the basis for which the motion is made and a concise statement of the relief sought. Memoranda, affidavits, and any other relevant documents should accompany the motion. If more time than two weeks is necessary to gather supporting evidence, please indicate this within the two weeks and state your reasons as well as the amount of additional time needed. Upon good cause, the Board may grant an extension at its next Board meeting.

Ten (10) copies of the motion must be filed with the Clerk of the Board with proof of service. Service may be done either personally or by First Class United States mail. Mail service is presumed completed four days after mailing.

If no response is received by the Board within two weeks, the Board, at its discretion, may find that the complaint is not duplicitous or frivolous and may accept the case for hearing.

If you have any questions, please contact the Assistant Clerk of the Board, Adaleen Hogan, at (312) 917-3629.