

ILLINOIS POLLUTION CONTROL BOARD

September 21, 2000

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

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

This citizen's noise and air pollution enforcement complaint was filed on August 28, 2000, by Steven P. Logsdon (Logsdon) against Tilford R. Bowman (Bowman) regarding Bowman's sawmill and pallet making operation located in Ripley, Brown County, Illinois. Bowman has made no filing in response to the complaint. Therefore, the Board makes its determination on whether to accept this matter for hearing based on the allegations in the complaint.

THE ALLEGATIONS OF THE COMPLAINT

The complaint alleges that Bowman operates a sawmill and pallet making operation (facility) in the proximity of Logsdon's properties. Comp. at 3. The complaint alleges that since the facility opened, Bowman has engaged in operations that produce noise pollution from sunrise to sunset, seven days a week. *Id.* The complaint also alleges that air pollution is caused by sawdust and motor exhaust blowing on Logsdon's properties. *Id.*

Logsdon alleges that the noise constitutes noise pollution in violation of Sections 23 and 24 of the Environmental Protection Act (Act) (415 ILCS 5/23, 24 (1998)) and the Board's regulations at 35 Ill. Adm. Code 900.102. Logsdon further alleges that:

The noise generated by the sawmill operated by the Respondent has resulted in an unreasonable interference with the use and enjoyment of complainant's properties, disturbance during sleep which endangers the physical and emotional health and well-being of the complainant, and depresses the value of complainant's properties. The noise is causing the complainant headaches and hearing problems. The air pollution is causing breathing problems. Comp. at 4.

The complaint requests that the Board enter an order directing Bowman to cease and desist from further violations.

DUPlicitous/FRIVOLOUS DETERMINATION

Section 31(d) of the Act and Section 103.124(a) of the Board's procedural rules provide that the Board need not set for hearing a citizen's complaint that is duplicitous or frivolous. If the complaint is duplicitous or frivolous, the Board will enter an order setting forth reasons for so ruling and shall inform the parties of its decision. If the Board rules that the complaint is not duplicitous or frivolous, and sets the complaint for hearing, this does not preclude the filing of motions regarding the insufficiency of the pleadings. 35 Ill. Adm. Code 103.124(a).

Duplicitous

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in this or any other forum. See Walsh v. Kolpas (September 23, 1999), PCB 00-35; Brandle v. Ropp (June 13, 1985), PCB 85-68. Nothing in the complaint indicates that this matter is identical or substantially similar to any other action

brought before the Board or another forum. The complaint is not duplicitous.

Frivolous

A complaint before the Board is frivolous if it requests relief that the Board does not have the authority to grant or fails to state a cause of action upon which the Board can grant relief. See People v. State Oil (August 19, 1999), PCB 97-103, slip op. at 3; Lake County Forest Preserve Dist. v. Ostro (July 30, 1992), PCB 92-80.

Air Pollution

Logsdon's complaint alleges that Bowman caused air pollution. Comp. at 3. The Act requires that a complaint specify the provisions of the Act or regulations allegedly violated. See 415 ILCS 5/31(c), (d) (1998). Likewise, pursuant to 35 Ill. Adm. Code 103.122(c)(1), a complaint must contain a "reference to the provision of the Act and regulations which the respondents are alleged to be violating." Although the complaint here alleges that sawdust from the plant and motor exhaust are causing air pollution, the allegations fail to refer to any provision of the Act or regulations that Bowman is violating. The alleged air pollution violation is accordingly frivolous. See Glasgow v. Granite City Steel (August 24, 2000), PCB 00-221, slip op. at 2 (finding frivolous certain allegations in a complaint for failing to cite to any provision of the Act or regulations as having been violated).

The Board notes that it can hear a properly pled allegation of air pollution. Logsdon may file an amended complaint alleging air pollution if he pleads the allegation in accordance with the Act and the Board's procedural rules. See Glasgow, slip op. at 2.

Section 23 of the Act

Logsdon alleges that Bowman has violated Section 23 of the Act (415 ILCS 5/23 (1998)). Section 23 is the General Assembly's statement of purpose for the Title VI of the Act, the title which addresses noise. Section 23 contains neither a directive nor prohibition. There can be no violation of Section 23. Logsdon has failed to state a cause of action upon which the Board can grant relief. See Brunson v. MCI Worldcom, Inc. (January 7, 1999), PCB 99-71. The alleged violation of Section 23 is frivolous.

Prohibitions on Noise Pollution

Logsdon alleges that Bowman has violated Section 24 of the Act (415 ILCS 5/24 (1998)) and 35 Ill. Adm. Code 900.102. Both of these provisions are prohibitions on noise pollution. Logsdon seeks a cease and desist order. Logsdon states a cause of action and requests relief that the Board is able to grant. The alleged violations of Section 24 and Section 900.102 are not frivolous.

CONCLUSION

The Board finds that the alleged air pollution violation and the alleged violation of Section 23 of the Act are frivolous and will not accept those allegations for hearing. The Board finds the remaining alleged violations are neither duplicitous nor frivolous and, accordingly, accepts them for hearing. The allegations accepted for hearing therefore are the alleged violations of Section 24 of the Act and Section 900.102 of the Board's rules.

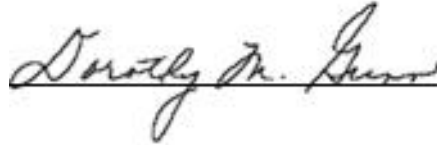
The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and Section 103.125 of the Board's procedural rules (35 Ill. Adm. Code 103.125). The Clerk of the Board shall promptly issue appropriate directions to the assigned hearing officer.

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 to the Board within five days after the 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 an acceptable hearing date or if, after an attempt the hearing officer is unable to consult with all of the parties, 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 21st day of September 2000 by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board