

ILLINOIS POLLUTION CONTROL BOARD

October 5, 2000

MICHAEL E. MELLON and )  
REBECCA J. MELLON, )  
 )  
Complainants, )  
 )  
v. ) PCB 01-21  
 ) (Enforcement - Noise, Air, Citizens)  
ILLINOIS DEPARTMENT OF TRANSPORTATION, )  
 )  
Respondent. )  
 )

ORDER OF THE BOARD (by N.J. Melas):

This matter comes before the Board on an August 16, 2000 filing of a citizens' complaint (complaint) by Michael E. Mellon and Rebecca J. Mellon (complainants) against the Illinois Department of Transportation (respondent). Respondent did not file a motion to dismiss or a challenge to the Board's jurisdiction within the allotted 14 days, nor did respondent file any other type of response within 30 days. See 35 Ill. Adm. Code 103.122, 103.140(a). Therefore, the Board makes its determination based on the allegations in the complaint.

The Board finds that the air pollution allegation pertaining to Section 9(b) of the Environmental Protection Act (Act) and the noise pollution allegation pertaining to Section 23 of the Act and are frivolous and will not accept those allegations for hearing. The Board finds that the remaining air and noise pollution allegations in this matter are not duplicitous or frivolous and therefore accepts those allegations for hearing.

BACKGROUND

Complainants reside at 5520 W. Edmunds Street in Chicago, Cook County, Illinois. Respondent has a maintenance yard (yard) at 5027 North Central Avenue, also in Chicago, which shares a common boundary with complainants' residence. Complainants allege that the operation of trucks (including snowplows) at the yard cause noise pollution. Complainants specifically object to noise from the idling and acceleration of engines, backup warning alarms, banging of tailgates during the delivery of salt, garbage dumping, and the movement of garbage dumpsters around the yard. Complainants also allege that exhaust from the trucks in the yard causes air pollution. Complainants further allege that the air and noise pollution adversely affect their sleep, depress the value of their property, and generally have a negative impact on the use and enjoyment of their residence. Complaint at Rider.

Complainants claim that respondent is violating Sections 9(a), 9(b), 23, and 24 of the Act, and Section 900.102 of the Board's rules. 415 ILCS 5/9(a), 9(b), 23, and 24 (1998); 35 Ill. Adm. Code 900.102.

DUPlicitous/FRIVOLOUS DETERMINATION

Section 103.124(a) of the Board's procedural rules directs the Board to determine whether or not a citizen's complaint is duplicitous or frivolous. If the complaint is duplicitous or frivolous, the Board shall 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, 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. 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 action has been brought before 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. People v. State Oil (August 19, 1999), PCB 97-103, slip op. at 3; Lake County Forest Preserve District v. Ostro (July 30, 1992), PCB 92-80.

Complainants allege that respondent has violated Section 23 of the Act. Section 23 is merely the General Assembly's statement of purpose for Title VI of the Act, which is the Title that addresses noise. Section 23 contains neither a directive nor a prohibition. The Board cannot grant relief here because there can be no violation of Section 23. Brunson v. MCI Worldcom, Inc. (January 7, 1999), PCB 99-71. The alleged violation of Section 23 is frivolous, and the Board dismisses it.

Complainants also allege that respondent has violated Section 9(b) of the Act. Section 9(b) provides, in pertinent part, that no person shall operate any equipment or vehicle that causes air pollution without an Illinois Environmental Protection Agency (Agency) permit or in violation of an Agency permit. Complainants do not allege any facts in the complaint related to respondent's permits or violations of permits. See Loschen v. Grist Mill Confections, Inc. (June 5, 1997), PCB 97-174, slip op. at 5. The alleged violation of Section 9(b) is frivolous, and the Board dismisses it as well.

With respect to the remaining air and noise pollution allegations, complainant correctly cites the air and noise pollution provisions in the Act and the Board's rules. Complainant also alleges facts which, if proved at hearing, could result in a finding of air and/or noise pollution. Complaint at Rider. The Board has the authority to grant relief from the alleged air and noise pollution provisions if the facts are proved at hearing.

#### CONCLUSION

The Board finds that, pursuant to Section 103.124(a) of its procedural rules the air pollution allegations at Sections 9(a) of the Act and the noise pollution allegations at Section 24 of the Act and Section 900.102 of the Board's rules are neither duplicitous nor frivolous. Those allegations will be accepted for hearing. The Board finds that the air pollution allegation pertaining to Section 9(b) of the Act and the noise pollution allegation pertaining to Section 23 of the Act are frivolous and will not accept those allegations for hearing.

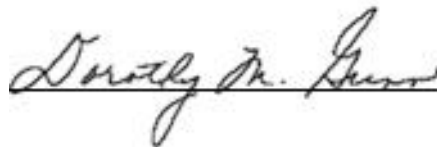
The hearing in this matter must be scheduled and completed in a timely manner consistent with Board practices. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

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

IT IS SO ORDERED.

Board Member E.Z. Kezelis abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 5th day of October 2000 by a vote of 6-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board