

ILLINOIS POLLUTION CONTROL BOARD
November 2, 2000

ANTHONY J. SCHLAX,)	
)	
Complainant,)	
)	
v.)	PCB 01-60
)	(Enforcement – Citizens, Noise)
EVANSTON HOSPITAL,)	
)	
Respondent.)	

ORDER OF THE BOARD (by M. McFawn):

On October 4, 2000, Anthony J. Schlax (Schlax) filed a complaint against Evanston Hospital, in Evanston, Cook County, Illinois (Evanston). In this order, the Board determines whether the complaint is duplicitous or frivolous. The Board finds that the noise pollution allegations in the complaint are not duplicitous or frivolous and therefore accepts this case for hearing.

THE COMPLAINT

Schlax alleges that Evanston is causing noise pollution by operating bussing employees to the Burch Woman’s Hospital entrance, and by operating a loading dock on the west side of Evanston Hospital. Schlax alleges that these operations are in violation of Sections 23 and 24 of the Environmental Protection Act (Act) (415 ILCS 5/23 and 5/24 (1998)), and Section 900.102, 900.102,a, and 900.102,b, of the Board’s regulations (35 Ill. Adm. Code 900.102). Comp. at par. 4-5.

Schlax alleges that noise generated from Evanston’s shuttle bus and loading dock operations results in an unreasonable interference with the use and enjoyment of his property, endangers his physical and emotional health and well-being by disturbing his sleep, and depresses the value of his property. Comp. at par. 8. Schlax requests that the Board order Evanston to cease and desist from further violations of the Act and the Board’s regulations, discontinue bussing employees to the Burch Woman’s Hospital entrance, and restrict use of the loading dock prior to 7:00 a.m., and other relief that the Board deems appropriate. Comp. at par. 9.

Evanston has not filed an answer or any motion in response to the complaint.

DUPLICITOUS OR FRIVOLOUS DETERMINATION

Section 31(d) of the Environmental Protection Act (Act) (415 ILCS 5/31(d) (1998)) requires the Board to set citizen's enforcement actions for hearing unless the Board determines that the complaint is "duplicitous or frivolous." The Board and the courts consistently have interpreted "duplicitous" to mean duplicative. See Winnetkans Interested in Protecting the Environment (WIPE) v. Illinois Pollution Control Board, 55 Ill. App. 3d 475, 478-479, 270 N.E.2d 1176, 1178-1179 (1st Dist. 1977); People v. State Oil Company (August 19, 1999), PCB 97-103, slip op. at 2-3.

Section 103.124(a) of the Board's procedural rules provides in part as follows:

If [a] complaint is filed by a person other than the Agency, . . . the Chairman shall place the matter on the agenda for Board determination whether the complaint is duplicitous or frivolous. 35 Ill. Adm. Code 103.124(a).

Below, the Board determines whether the complaint is duplicitous or frivolous.

Duplicitous

A complaint is duplicitous if the matter is identical or substantially similar to one brought in this or another 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 another action brought before the Board or another forum. The Board therefore finds that the complaint is not duplicitous.

Frivolous

A complaint 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, PCB 97-103, slip op. at 3; Lake County Forest Preserve Dist. v. Ostro (July 30, 1992), PCB 92-80. With three exceptions mentioned below, Schlax alleges facts which, if proven at hearing, could result in a finding of violation for which the Board has the authority to grant relief from.

The first exception to this frivolous determination is regarding the alleged violation of Section 23 of the Act. Section 23 of the Act contains only legislative purpose as opposed to prohibitions on activity. See 415 ILCS 5/23 (1998). The Board has previously held that there can be no violation of Section 23. See Brunson v. MCI Worldcom, Inc. (January 7, 1999), PCB 99-71. Regarding the Section 23 allegations, Schlax fails to state a claim upon which the Board can grant relief. Therefore, to the extent that the complaint alleges violations of Section 23 of the Act, those allegations are frivolous and are stricken from the complaint.

The second and third exceptions to this frivolous determination regard the alleged violations of Sections 901.102,a and 901.102,b of the Board's regulations. Section 901.102 of the Board's regulations does not contain any subsection. See 35 Ill. Adm. Code 901.102. Since

the subsections do not exist, there can be no violation of these subsections. Therefore, to the extent that the complaint alleges violations of Sections 901.102,a and 901.102,b of the Board's regulations, those allegations are frivolous and are stricken from the complaint.

CONCLUSION

The Board finds that, pursuant to section 103.124(a), the complaint, with the previously noted exceptions, is neither duplicitous nor frivolous and is therefore accepted for hearing.

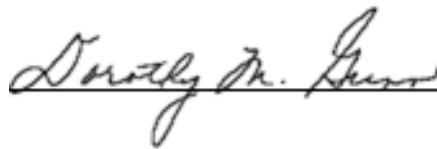
The hearing should be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and with section 103.125 of the Board's procedural rules. 35 Ill. Adm. Code 103.125.

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 to 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 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 2nd day of November 2000 by a vote of 7-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board