

ILLINOIS POLLUTION CONTROL BOARD

June 20, 2002

ROGER L. YOUNG and ROMANA K.)
YOUNG,)
)
Complainants,)
)
v.) PCB 00-90
) (Citizens Enforcement - Noise)
GILSTER-MARY LEE CORPORATION,)
)
Respondent.)

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

On November 29, 1999, Roger and Romana Young (complainants) filed a complaint against Gilster-Mary Lee Corporation (respondent). In that complaint, the complainants alleged that the respondent violated Sections 9(a) and 24 of the Environmental Protection Act (Act) (415 ILCS 5/9(a) and 24 (2000)) and 35 Ill. Adm. Code 900.102, 901.102, 901.104, and 901.106 (the Board's noise regulations). Complainants did not proceed with the allegations under Section 9(a) of the Act and 35 Ill. Adm. Code 901.102, 901.104, and 901.106. Complainants did proceed at hearing with assertions that noise generated in the respondent's food manufacturing plant in Chester, Randolph County, unreasonably interfered with complainants in their home adjacent to the plant.

Hearing was held on April 10, 2001, in Chester before Board Hearing Officer Steven Langhoff. Complainants filed a post-hearing brief on May 18, 2001. Respondent filed their post-hearing brief on June 20, 2001.

On September 6, 2001, the Board found that based on the evidence presented at hearing, the noise emanating from Gilster-Mary Lee Corporation's plant in Chester unreasonably interfered with the enjoyment of the complainants' property. The Board directed respondent to file a report within 180 days detailing how respondent will reduce the noise levels. Complainant was given an additional 60 days to respond to the report.

On March 6, 2002, respondent filed a report (Report) detailing steps the respondent has taken to reduce the noise emanating from the facility. Complainants had until May 6, 2002, to file a response to the report. Complainants did not file a response to the report. Based on the steps taken by the respondent to remediate the noise at the source, the Board finds that no further action is warranted and this case is closed.

SEPTEMBER 6, 2001 OPINION AND ORDER

As indicated above, the Board found that Gilster-Mary Lee Corporation violated Section 24 of the Act (415 ILCS 5/24 (2000)) and 35 Ill. Adm. Code 900.102. The Board found that sound emanating from Gilster-Mary Lee's plant unreasonably interfered with the complainants' enjoyment of their lives and property at 1009 Swanwick Street in Chester, Randolph County. In addition to the noise generally emanating from the plant, the Board found four sources of noise that violated the Act. Those four sources are truck unloading, loading and unloading of garbage dumpsters, trucks idling, and noise from the employee parking lot.

Complainants did not seek a civil penalty in this proceeding. Rather, they asked the Board to require respondent "to take substantive, effective steps to address the excess noise emanating from the" facility. Young v. Gilster-Mary Lee Corporation, PCB 00-90, (Sept. 6, 2001). Complainants requested an order directing respondent to undertake the control measures discussed by Mr. Gregory Zak in his testimony. Young v. Gilster-Mary Lee Corporation, PCB 00-90, (Sept. 6, 2001).

The Board was not convinced that the record supported adoption of all of the control measures discussed by Mr. Zak. For example, the Board questioned the practicality of building a structure over the unloading station. The Board also noted that some of the steps already taken by Gilster-Mary Lee, if fully enforced, could also alleviate noise emissions. The Board found that there was not sufficient evidence for the Board to determine what steps are reasonable to reduce the noise emissions. For these reasons, the Board directed Gilster-Mary Lee to prepare and file a report, within 180 days of September 6, 2001, detailing a plan for reducing the noise emissions reaching the complainants' residence. The complainants were given 60 days to respond.

GILSTER-MARY LEE'S REPORT

Gilster-Mary Lee's report is titled "Noise Reduction Plan" and the report addresses truck unloading, trucks idling, loading and unloading of garbage dumpsters, and noise from the employee parking lot as well as the general noise emanating from the plant. The following discussion will summarize the steps taken by Gilster-Mary Lee to alleviate the noise emissions and Gilster-Mary Lee's response to the additional control measures suggested by complainants' witness.

Truck Unloading and Trucks Idling

Gilster-Mary Lee has undertaken several steps to address noise emissions from the unloading of trucks. First, Gilster-Mary Lee installed internal blowers at the plant so that no external truck blowers are used. The cost of the installation of blowers was \$99,971.89. Report at 3. Gilster-Mary Lee has performed noise measurements at the facility's property line approximately 75 feet from the complainants' property line. The noise measurements show a reading of 58.4decibels (db) when no trucks are unloading and 60.1db with two trucks unloading and using the inside blowers. Report at 5. These readings demonstrate a reduction

in the noise emissions from those measured prior to hearing in this matter, according to Gilster-Mary Lee. Report at 6. Further, Gilster-Mary Lee asserts that these measurements are below the 61db level that Mr. Zak testified was the approximate A weighted level on which an industrial noise source should not emit to residential property. Report at 5.

The second step taken by Gilster-Mary Lee to reduce the noise emissions from truck unloading was to purchase vibrators to loosen flour during the unloading process. Report at 7. The vibrators replace hammers which had been used to pound on the side of trucks during the unloading process. *Id.* The cost of these items was \$4,302.52. *Id.* Gilster-Mary Lee does not permit the use of hammers in unloading bulk products at all. *Id.*

The third step taken by Gilster-Mary Lee to alleviate noise from unloading of trucks was a “reinforcement and clarification of unloading procedures” by Gilster-Mary Lee. Report at 8. Gilster-Mary Lee issued written procedures which include: no truck unloading between the hours of ten at night and seven in the morning; hammers are not to be used; no trucks idling in proximity to the plant; no truck parked on Swanwick Street or the employee parking lot across from the Chester trash dock; and internal blowers must be used. Report at 8-9. The written policy is provided to new bulk delivery drivers and is posted in unloading areas. Report at 9.

Trash Dumpster

With regards to the trash dumpster, Gilster-Mary Lee had implemented a policy before hearing which Gilster-Mary Lee continues. Report at 13. Gilster-Mary Lee has continued to conduct trash dumpster “change-out” at another location other than adjacent to the complainants’ property. *Id.* Gilster-Mary Lee took noise measurements during the trash dumpster pick-up and those measurements indicated a reading of 56.4db. *Id.*

Employee Parking Lot Noise

To address noise in the employee parking lot, Gilster-Mary Lee prepared and distributed to employees communications reminding employees to be considerate of their behavior in company owned lots. Report at 10. Signs were posted in the lots adjacent to complainants’ property restricting the use of these lots to Gilster-Mary Lee employees and remind employees to “behave in an orderly manner.” *Id.* Gilster-Mary Lee has also instructed plant management to monitor employee conduct and to take appropriate corrective action to stop any excessive noise.

In addition, Gilster-Mary Lee made improvements to the parking lot to alleviate potential noise emissions. Report at 11. Gilster-Mary Lee resurfaced and repaired the parking lot to eliminate noise created by rocks being thrown. *Id.* The cost to Gilster-Mary Lee for these improvements was \$4,200. *Id.*

General Noise Emissions

In addition to the steps taken to reduce noise emissions from the specific sources discussed above, Gilster-Mary Lee has required plant management to actively monitor the area outside the plant for potential noise sources that can be eliminated. Report at 10. These inspections take place on a weekly basis and as a result of these inspections additional potential noise sources have been found and repaired. *Id.*

Suggestions for Noise Abatement by Complainants

The complainants' expert, Mr. Zak suggested several measure at hearing to abate the noise emissions from the plant. Those suggestions included enclosure of bulk unloading station and trash unloading area, construction of sound walls, and continuous sound monitoring. Young v. Gilster-Mary Lee Corporation, PCB 00-90, (Sept. 6, 2001). Gilster-Mary Lee asserts that the suggestions are not needed, are technically impracticable and are economically unreasonable. Report at 14.

More specifically, Gilster-Mary Lee argues the cost of enclosing the bulk unloading station would be over \$108,000 and could result in the narrowing of a city street. Report at 14-15. The enclosure could also pose sanitation concerns for the plant according to Gilster-Mary Lee. Report at 16. Gilster-Mary Lee indicated that enclosure of the trash unloading area would cost over \$85,000 and require significant structural work at the site. Report at 17. Gilster-Mary Lee also investigated the construction of sound walls and found the cost to be over \$130,000. Report at 18. Gilster-Mary Lee is also concerned that the construction of sound walls would have an undesirable effect on complainants themselves. Report at 19. Finally, regarding continuous sound monitoring, Gilster-Mary Lee argues that it is not necessary in this case, as steps have already been taken to reduce the noise. Report at 19-20. Furthermore, Gilster-Mary Lee argues that sound monitoring is economically unreasonable and technically impracticable in this case. Report at 20. The cost to maintain the sound monitoring would be over \$25,000 and the monitoring would need to take place on complainants' property. *Id.*

DISCUSSION

The Board previously found that Gilster-Mary Lee Corporation's plant in Chester unreasonably interfered with the enjoyment of the complainants' property in violation of Section 24 of the Act (415 ILCS 5/24 (2000)) and 35 Ill. Adm. Code 900.102. The Board ordered Gilster-Mary Lee to cease and desist from further violations of the Act (415 ILCS 5/1 *et seq.* (2000)) in the September 6, 2001 order. The only issue left was what remedy would be appropriate in this case. The complainants sought only to have the noise reduced; the complainants did not seek a civil penalty.

In response to the Board's order, Gilster-Mary Lee filed with the Board a report which details steps taken after the Board found the violations at the facility. The steps were designed

to reduce noise emissions from the facility. The complainants have not responded to the report. Gilster-Mary Lee put in place equipment, policies, and procedures to address several noise sources including the four specifically raised by complainants. In addition, Gilster-Mary Lee has continued noise reduction steps at the facility begun prior to the hearing in this matter. Based on the report and affidavits attached, the Board finds that the Board need not direct Gilster-Mary Lee to undertake additional noise reduction steps. Therefore, the Board will enter a final order which only directs Gilster-Mary Lee to cease and desist from further violation of the Act (415 ILCS 5/1 *et seq.* (2000)).

CONCLUSION

The Board, having previously found that respondent violated Section 24 of the Act (415 ILCS 5/24 (2000)) and 35 Ill. Adm. Code 900.102, will enter an order directing the respondent to cease and desist from further violation of the Act. In response to the Board's September 6, 2001 order, Gilster-Mary Lee Corporation filed a report detailing noise reduction steps taken at the facility. Complainants did not respond to the report. Therefore, after considering the record, the Board will not order any further steps to reduce the noise emissions from the facility.

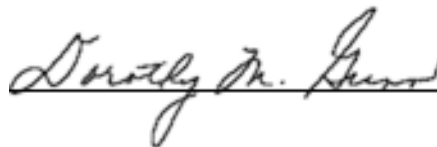
ORDER

Having found that Gilster-Mary Lee Corporation violated Section 24 of the Act (415 ILCS 5/24) and 35 Ill. Adm. Code 900.102, the Board orders Gilster-Mary Lee to cease and desist from further violation of the Environmental Protection Act.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/31(a) (2000)); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 20, 2002, by a vote of 7-0.



Dorothy M. Gunn, Clerk

Illinois Pollution Control Board