

ILLINOIS POLLUTION CONTROL BOARD
September 5, 2002

STEPHEN G. BRILL,)	
)	
Complainant,)	
)	
v.)	
)	PCB 00-219
HENRY LATORIA, individually and d/b/a as)	(Citizens Enforcement - Noise)
T.L. TRUCKING FOODLINER,)	
)	
Respondent.)	

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

Henry Latoria, individually and doing business as T.L. Trucking Foodliner (TL Trucking), timely filed a motion for reconsideration (Mot. for Rec.) on July 15, 2002, asking the Board to reconsider the Board's June 6, 2002 interim opinion and order (Int. Op.). On July 22, 2002, TL Trucking amended its motion to reconsider (Am. Mot. for Rec.). Mr. Brill filed no response.

TL Trucking is a truck washing facility in Franklin Park. The Board's June 6 order found that TL Trucking caused noise and air pollution by emitting dust and diesel exhaust fumes in violation of Sections 9(a) and 24 of the Environmental Protection Act (Act) (415 ILCS 5/9(a) and 24 (2000)), and Section 900.102 of the Board regulations (35 Ill. Adm. Code 900.102). The Board directed TL Trucking to obtain the assistance of a noise expert and prepare a report detailing what steps it can take to alleviate the noise and air emissions reaching Mr. Brill's residence.

Pursuant to the Board's procedural rules, motions for reconsideration must be filed within 35 days of adoption of a final Board order. 35 Ill. Adm. Code 101.520(a). Section 101.902 of the Board's procedural rules sets forth the factors the Board will consider when ruling upon a motion for reconsideration. Those factors include "new evidence, or a change in the law, to conclude that the Board's decision was in error." 35 Ill. Adm. Code 101.902.

The Board denies TL Trucking's motion for reconsideration. For the reasons below, the Board upholds its June 6, 2002 determination that TL Trucking caused an unreasonable interference of noise and violated air pollution standards from the emission of dust and diesel exhaust fumes.

DISCUSSION

In ruling on a motion for reconsideration, the Board is to consider “newly-discovered evidence which was not available at the time of the hearing, changes in the law or errors in the court’s previous application of the existing law.” Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156, slip op. at 2 (Mar. 11, 1993), *citing* Koroglyun v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 572 N.E.2d 1154, 1158 (1st Dist. 1992). TL Trucking does not present any new evidence or claim that the law has changed since June 6, 2002. Furthermore, the Board finds nothing in the respondent’s motion that persuades the Board that its interim opinion and order was in error, or that facts were overlooked.

The respondent’s motion claims the Board erred in that it misunderstood or failed to reconcile or consider various testimonies and existing evidence in the record. The Board addresses each of the respondent’s arguments in turn.

1. The Board failed to reconcile testimony of complainant and respondent’s witnesses regarding the ability to distinguish between sounds from TL Trucking and those from surrounding sources of noise.

Mr. Homans testified that truck-washing activity at TL Trucking on Friday, August 2001, between 5 and 7 a.m., was inaudible. Int. Op. at 28. Mr. Homans also testified that sound produced from TL Trucking during those two hours could not be distinguished from surrounding sources of noise. *Id.* The Board has found noise interference unreasonable despite conflicting testimony from witnesses describing the type and severity of the interference. Village of Matteson v. World Music Theatre, PCB 90-146, slip op. at 18-19 (Feb. 25, 1993), *aff’d*, Discovery South Group, Ltd. et al. v. PCB and Village of Matteson, 275 Ill. App. 3d 547, 656 N.E.2d 51 (Aug. 28, 1995). Furthermore, the Board’s final determination hinges on noise interferences resulting not only from wash activity at the facility, but also from air brakes, air horns, trailers hooking up, and idling engines.

2. The Board failed to reconcile the testimony of Franklin Park Officials that TL Trucking was in compliance with all local zoning ordinances and that they found no basis for the complaint.

With regard to Mr. Brill’s complaints about noise coming from TL Trucking, Franklin Park officials testified that TL Trucking was never cited for violations of the zoning code. The fact that the respondent’s facility is in compliance with the zoning code does not mean there is *per se* no unreasonable interference of noise. Young v. Gilster-Mary Lee Corp., PCB 00-90, slip op. at 4 (Sept. 6, 2001). Mr. Brill’s complaint alleges violations of the Act and Board rules, and the Board found a violation of state law. Compliance with local law is an influencing factor the Board considers when determining the suitability or unsuitability of a pollution source under Section 33(c)(iii) of the Act. *Id.*; see 415 ILCS 5/33(c)(iii)(2000). The Board recognized that TL Trucking is in compliance with the local zoning ordinances because it is located in a restricted industrial area. Int. Op. at 40. After reviewing the evidence, however, the Board found that TL Trucking is not suitable to its location since it significantly

increased the level of noise emissions on Mr. Brill's property since its arrival, and that the hours of noise emissions deviate from most other businesses in the immediate area.

3. The Board misunderstood testimony that other nearby industry operates on similar schedules thereby making it impossible to discern noise contribution by TL Trucking.

The Board neither misstated nor misunderstood testimony as to the operations of other industries. The Board recognized that Dean Foods operates 24 hours a day. *Int. Op.* at 3. The Board also recognized that other industrial facilities in the area use semi-tractor trailers. *Id.* Mr. White testified he hears noise from Bruner & Lay, but that the noise stops after 3p.m.. *Id.* at 10. Mr. Rasmussen, who has lost 30% of his hearing, also testified that noise from Bruner & Lay makes his house vibrate, but that the noise stops at 3p.m. *Id.* Ms. Brill testified that other industries on River Road operate on an 8 to 12-hour schedule. *Tr.* at 39. More importantly, residents of the neighborhood testified that noises coming from other 24-hour industries, train horns, and planes flying overhead, are neither startling nor shattering like TL Trucking noise. *Int. Op.* at 35. In explaining why TL Trucking causes unreasonable noise interference with the claimant's enjoyment of life and property, the Board noted there are variations in the way each complainant is affected by the noise.

4. The Board inappropriately considered references to physical effects of noise on Mr. Brill in Mr. Brill's noise log, thereby causing prejudice to TL Trucking.

In its June 6, 2002 interim opinion and order, the Board found there was no injury to health resulting from the dust or fumes. *Int. Op.* at 30. Furthermore, Brill did not even allege adverse health effects caused by noise or air emissions from TL Trucking. *Id.* at 34. At hearing, the hearing officer also struck references to Mr. Brill's medical history or medical problems found in complainant's exhibit #1. *Tr.* at 368. Therefore, since the Board found no violations based on references to the physical effects of noise, air emissions, dust or fumes, there was no prejudice to TL Trucking.

5. The Board inappropriately considered references sound readings in Mr. Brill's noise log.

It is only necessary to follow Board-mandated measurement procedures when proving a party violated numeric noise limits. *Int. Op.* at 36, *citing Glasgow v. Granite City Steel*, PCB 00-221, slip. op. at 32 (Mar. 7, 2002). In determining whether TL Trucking violated the numeric noise limits under 35 Ill. Adm. Code 901.102(a), (b), and 901.104, the Board did not consider measurements taken by Brill because they did not comply with Board regulations. The Board did, however, find that Mr. Homan's measurements complied with Board regulations and used them in finding that TL Trucking did not violate nighttime numeric noise limits.

In determining whether there is a violation of the Board's nuisance noise standards or to determine the character and degree of an alleged violation, the Board may consider noise

measurements even if they do not comply with Board regulations. Int. Op. at 36, *citing Roti v. LTD Commodities*, PCB 99-19, slip op. at 26 (Feb. 15, 2001), *citing Dettlaff v. Boado*, PCB 92-26, slip. op. at 7, 9 (July 1, 1993); *D'Souza v. Marraccini*, PCB 96-22, slip. op. at 9 (May 2, 1996). Although Mr. Brill's readings may not have been correctly performed as required by the rule, Mr. Gregory Zak, at that time an Illinois Environmental Protection Agency noise expert, stated that the meter Mr. Brill used was accurate, that Mr. Brill used the meter in accordance with Mr. Zak's instructions, and that the meter does not drift. Under these circumstances, the Board found that Mr. Brill's readings were adequate to support a claim of noise nuisance. Int. Op. at 37.

6. The Board failed to consider the credibility of Mr. Brill.

Board hearing officer, Bradley Halloran, found Mr. Brill to be a credible witness in a hearing report dated December 18, 2001 based on his legal judgment, experience, and observations at the September 26, 2001 hearing in this case. The record contained no evidence to the contrary for Board consideration.

7. The Board inappropriately dismissed the video TL Trucking submitted.

Latoria did not state on the video that any cleaning equipment was in use at the facility. Nonetheless, the first ten seconds of the video show a truck being cleaned with "spinners." Resp. Exh. 52. The Board did not dismiss the video, but used it in its noise pollution analysis. While the video is a good visual of how trucks are washed at the TL Trucking facility, this video is not a sound measurement that is approved or recommended by the Agency or the Board. Furthermore, Mr. Brill and other witnesses complained of noises coming from sources other than truck washing, such as air horns, air brakes, trailers hooking up, and engines idling. Tr. at 254, 261.

8. The Board inappropriately dismissed the influence of heavy construction and traffic on River Road based on Mr. Brill's testimony of wind patterns.

The Board's June 6, 2002 interim opinion referred to Mr. Brill's testimony of wind patterns with regard to dust in the residential area that may come from construction on River Road. Int. Op. at 23. In finding that TL Trucking caused air emissions in violation of the Act, the Board also considered testimony from other nearby residents who stated they observed activity at the TL Trucking facility producing dust and diesel exhaust fumes. *Id.* at 22; Tr. at 16, 17, 63, 129-30, 200, 220, 259-60. The Board considered the contribution of construction and traffic on River Road to dust in the area (Int. Op. at 30), but ultimately found by a preponderance of the evidence that while other industries and construction in the area may contribute to the dust, TL Trucking is a major source of the existing dust in the area. This finding is in accordance with Section 9(a) of the Act, since TL Trucking's emissions "either alone or in combination with contaminants from other sources" violate the prohibition of air pollution under the Act. 415 ILCS 5/9(a) (2000).

9. The Board inappropriately considered the fact that Mrs. Brill and Mrs. O'Neill called the police to complain about noise when Franklin Park officials refute a noise problem in fact occurred.

It was appropriate for the Board to consider Mrs. Brill and Mrs. O'Neill's phone calls to the Franklin Park police with noise complaints about TL Trucking because these calls are evidence of interferences with these neighbors' enjoyment of life and their property. Nowhere in the record do Franklin Park officials refute a noise problem in fact occurred. Furthermore, in a discussion regarding sound and Franklin Park zoning codes, Mr. Stumbris, a Franklin Park zoning administrator, knew that TL Trucking was warned that washing their trucks outside their building would violate the zoning code. Int. Op. at 13; Tr. at 422. Mr. Stumbris was also aware of 3 complaints made by Mr. Brill against TL Trucking. Tr. at 431. This shows that Mr. Stumbris was aware of a noise problem with TL Trucking operations.

10. The Board incorrectly concluded that Mr. Homans' sound readings do not represent sounds generated by TL Trucking because the Board failed to note testimony that TL Trucking had no notice of testing, conducted business during the testing, and that the testing was done during the time period Mr. Brill and others stated was the noisiest time of day.

The Board recognized that Mr. Homans did not give TL Trucking advance warning as to when he would take measurements, that TL Trucking conducted business during the testing, and that testing was done during the times when the most complaints were received. Int. Op. at 18. The Board even relied on Mr. Homans' measurements, stating they were taken in compliance with Board regulations, in finding that TL Trucking did not violate nighttime numeric noise limits under 35 Ill. Adm. Code 901.102(b). However, in finding an unreasonable interference of noise under Section 24 of the Act and 35 Ill. Adm. Code 900.102, the Board weighed testimony from various witnesses and could not accept Mr. Homans' testing as 100% representative of the typical noise interference that TL Trucking produces. See 415 ILCS 5/24 (2000).

CONCLUSION

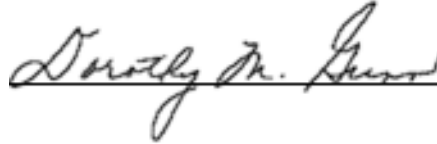
For the above reasons, the Board denies the respondent's motion to reconsider. The arguments raised by TL Trucking present the Board with no new evidence, change in law, or any other reason to conclude that the Board's June 6, 2002 interim opinion and order was in error.

The respondent's motion to reconsider stays the effect of the Board's June 6, 2002 order until the Board rules on the respondent's motion. 35 Ill. Adm. Code 101.520(c). Therefore, TL Trucking must retain a noise expert and file a report by March 4, 2003 (180 days from the date of this order), detailing how it will reduce noise and air emissions at the site. The complainant will have 60 days after TL Trucking files its report to respond. If

necessary, the Board may require a hearing on the proposed measures after receiving reports from the parties in this matter.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 5, 2002, 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