

ILLINOIS POLLUTION CONTROL BOARD

May 2, 1985

SPADONI, FRANKIEWICZ & ZULLO,)
)
 Complainants,)
)
 v.) PCB 84-167
)
 HOLY APOSTLES GREEK ORTHODOX)
 CHURCH,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board upon the November 1, 1984 filing of a complaint by Don and Carol Spadoni, Bob and Beth Frankiewicz, and Don and Diane Zullo (complainants) against the Holy Apostles Greek Orthodox Church (respondent). Respondent filed an answer on December 19, 1984 denying the complainants' allegations while neither admitting nor denying the content of the documents submitted with the complaint. A hearing was held in Westchester, Illinois on March 18, 1985.

The complaint alleges that respondent violated the noise regulations located at 35 Ill. Adm. Code 900.102 (old rule 102), 901.102(a) (old rule 202), and 901.102(b) (old rule 203). Section 900.102 provides that "[n]o person shall cause or allow the emission of sound beyond the boundaries of his property, . . . , so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter." Sections 901.102(a) and (b) contain octave band sound pressure levels which shall not be exceeded.

Respondent is located at 2501 S. Wolf Road in Westchester. Complainants Zullo, Spadoni, and Frankiewicz reside at 2524, 2528, and 2532 S. Wellington in Westchester, respectively, directly east of the respondent's property. The respondent has five air conditioning units that are located just west of the property lines of complainants and which complainants allege are the source of excessive noise.

Although other documents have been filed with the complaint, the parties and the Illinois Environmental Protection Agency (IEPA) have filed a joint settlement agreement entitled "stipulation for settlement" (agreement). Although not a party, the IEPA assented to the agreement. The signatories request that the Board approve the agreement.

The agreement provides that the respondent will move the existing air conditioners from the east to the west side of its

building or will remove the existing units and install new units on the south of the building. Either option will place the units at least 75 feet from the complainants' property lines behind the south side of the respondent's building. Residences to the south of the proposed unit relocation will be separated by 275 feet and residences to the west by 150 feet. The total cost of respondent's proposed actions would be in the range of thirty to fifty thousand dollars. The agreement also contains a timetable which the Board need not address and a denial by the respondent that it has "caused or committed" noise pollution.


The Board hereby rejects the settlement agreement based on its conclusion that it lacks statutory authority to accept settlements imposing compliance conditions without a Board finding of violation. IEPA v. Chemetco, Inc., PCB 83-2, February 20, 1985, interlocutory appeal, No. 5-85-143 (5th District); People of the State of Illinois and IEPA v. Archer Daniels Midland Corporation, PCB 83-226, March 22, 1985, interlocutory appeal, No. 3-85-0222 (3rd District).

In order to bring this proceeding to a conclusion the parties may file an amended settlement agreement containing sufficient admissions of violation for the Board to order implementation of the agreed modifications and schedule. Alternatively, the parties may wish to draft a private settlement agreement between themselves and when the controversy has been resolved, to seek a joint dismissal of the action before the Board.

IT IS SO ORDERED.

Board Member J.D. Dumelle dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 2nd day of May, 1985 by a vote of 4-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board