

ILLINOIS POLLUTION CONTROL BOARD
April 15, 1999

TERRENCE G. GRAF, JOE GRAF,)	
MARCELLA GRAF, LOUISE)	
GROTHPIETZ, MARJORIE OLSZEOSKI,)	
LEONARD OLSZEOSKI, MIKE)	
CZEBOKOWSKI, LOIS CZEBOKOWSKI,)	
MILDRED OWEN, KATHERINE)	
WASHBURN, ROBERT WASHBURN,)	
GEORGE ARULEAF, ANNA)	
KOZARZEWSKI, and LUCY CATLOW,)	
)	
Complainants,)	
)	
v.)	PCB 99-125
)	(Enforcement - Citizens, Noise)
VALIQUET, INC., EMERALD)	
LANDSCAPING, and CPK)	
LANDSCAPING,)	
)	
Respondents.)	

ORDER OF THE BOARD (by E.Z. Kezelis):

This matter comes before the Board on the February 26, 1999 filing of a citizens' enforcement complaint (complaint) by Terrence G. Graf, Joe Graf, Marcella Graf, Louise Grothpietz, Marjorie Olszeoski, Leonard Olszeoski, Mike Czebokowski, Lois Czebokowski, Mildred Owen, Katherine Washburn, Robert Washburn, George Aruleaf, Anna Kozarzewski, and Lucy Catlow (complainants) against Valiquet, Inc., Emerald Landscaping, and CPK Landscaping (respondents).

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. Except as discussed below, the Board finds that the complaint is not duplicitous or frivolous.

BACKGROUND

Complainants are residents of a community in Des Plaines, Cook County, Illinois. They allege that Valiquet, Inc. is the landlord and Emerald Landscaping and CPK Landscaping are the tenants of a piece of property located near the complainants' homes. Complainants allege that the property is zoned for residential purposes but is being used for a landscape business. The respondents have not yet responded to the complaint.

Complainants allege that the respondents have caused noise, air, and odor pollution, in violation of Sections 23 and 24 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/23, 24 (1996)) and 35 Ill. Adm. Code 830.202, 830.203, 830.205, 830.504, and 900.102 of the Board's regulations. Complaint at 2.

Specifically, complainants allege that the noise generated from the respondents' landscaping business hinders the complainants' use of their backyards, penetrates their homes, and causes their homes to vibrate. Complaint at 3. Furthermore, complainants allege that during the winter months, the noise from machinery operation occurs during the late night and early morning hours between 10:00 p.m. and 4:00 a.m. Complaint at 3. Complainants also allege that foliage has been destroyed and property values lowered as a result of respondents' business. Complaint at 3. Additionally, complainants allege that the odors from a petroleum cleaning solution sprayed on respondents' trucks and from a compost pile are noticeable on their property and in their homes. Complaint at 3.

Complainants request that the Board order respondents to discontinue all use of a "Bobcat" type of equipment, discontinue the piling of landscape refuse, discontinue the use of salt, and discontinue the late night and early morning operations, *i.e.*, between 10:00 p.m. and 6:00 a.m. Complaint at 4. Complainants also request that the Board order respondents to plant foliage to conceal "piles" and replace trees allegedly killed as a result of the landscaping operations. Complaint at 4. Finally, complainants request that the Board order respondents to allow their truck engines to warm up in a parking lot away from the neighboring homes. Complaint at 4.

DUPLICITIOUS/FRIVOLOUS DETERMINATION

Section 103.124(a) of the Board's procedural rules implements Section 31(b) of the Act. 415 ILCS 5/31(b) (1996). It provides:

- a) The Clerk shall assign a docket number to each complaint filed *** the Chairman shall place the matter on the agenda for Board determination whether the complaint is duplicitous or frivolous. If the Board rules that the complaint is duplicitous or frivolous, it shall enter an order setting forth its reasons for so ruling and shall notify 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 another forum. Brandle v. Ropp (June 13, 1985), PCB 85-68.

The Board has not identified any other cases, identical or substantially similar to this, pending in other forums. Therefore, based on the record before us, this matter is not duplicitous.

Frivolous

An action before the Board is frivolous if it requests relief which the Board cannot grant. Lake County Forest Preserve Dist. v. Ostro (July 30, 1992), PCB 92-80.

In the present case, the complainants allege noise, air, and odor violations. Specifically, they allege that the three respondents are operating their businesses in violation of Sections 23 and 24 of the Act (415 ILCS 5/23, 24 (1996)) and 35 Ill. Adm. Code 830.202, 830.203, 830.205, 830.504, and 900.102 of the Board's regulations. Complaint at 2. One of the respondents is allegedly the landlord/owner of the property at which these violations allegedly are occurring. The other two respondents allegedly own and operate landscaping businesses on the property. With two exceptions, the complainants allege facts which, if proved, could result in a finding of noise pollution and other violations of the Act and regulations as alleged in the complaint. If the complainants prove these violations, the Board has the authority to grant at least some of the relief requested by complainants. Therefore, the complaint, with the exception of two specific allegations, is not frivolous.

The first exception to the frivolous determination is the alleged violation of 35 Ill. Adm. Code 830.504(e), (i). Subsections (e) and (i) of 35 Ill. Adm. Code 830.504 do not exist. Therefore, there can be no violation of this section as alleged. The second exception to the frivolous determination is the alleged violation of Section 23 of the Act. 415 ILCS 5/23 (1996). Section 23 of the Act contains only legislative statements of purpose as opposed to prohibitions on activity. There can be no violation of Section 23. See Brunson v. MCI Worldcom, Inc. (January 7, 1999), PCB 99-71. Therefore, to the extent that the complaint alleges violations of 35 Ill. Adm. Code 830.504(e), (i) and Section 23 of the Act, those allegations are frivolous and are accordingly stricken from the complaint.

PROCEDURAL MATTERS

Two procedural matters must be addressed. First, the Board notes that the complainants have not yet filed a proof of service, indicating service of the complaint on the respondents. The complainants are directed to file proof of service with the Clerk of the Board within 14 days of the date of this order. The complainants are required to serve each of the individual respondents with the complaint pursuant to 35 Ill. Adm. Code 101.141 of the Board's procedural rules.

Second, Terrence Graf is identified in the complaint as "representing" the complainants. It does not appear, however, that Mr. Graf is an attorney. While the Board rules allow individual citizens to represent themselves before the Board, they do not allow non-attorneys to represent other individual citizens before the Board. 35 Ill. Adm. Code 101.107. Illinois law prohibits such an act as well. Section 1 of the Attorney Act prohibits persons from acting as an attorney without first having obtained a license to do so. 705 ILCS

205/1 (1996). Therefore, each of the individually named complainants will need to proceed either on their own behalf or through a properly licensed attorney who has entered an appearance in this case.

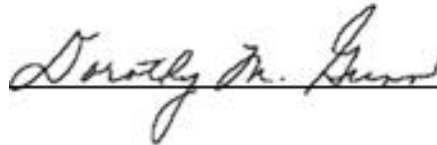
CONCLUSION

The Board finds that, pursuant to Section 103.124(a), the pollution allegations, with two previously noted exceptions, are neither duplicitous nor frivolous. The Board again notes that this finding does not preclude the filing of motions regarding the insufficiency of the pleadings.

IT IS SO ORDERED.

Board Members R.C. Flemal, G. Tanner Girard, and Nicholas J. Melas dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 15th day of April 1999 by a vote of 4-3.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board