

ILLINOIS POLLUTION CONTROL BOARD
November 7, 2002

MORRY GABEL, MYRA GABEL, DON)
FOREMAN, MARSHA FOREMAN, KEITH)
PINSONEAULT and TRACY)
PINSONEAULT,)
)
Complainants,)
)
v.) PCB 03-38
) (Citizen's Enforcement - Noise)
THE WEALSHIRE, INC., an Illinois)
corporation,)
)
Respondent.)

ORDER OF THE BOARD (by W. A. Marovitz):

On September 27, 2002, complainants filed a complaint against The Wealshire Inc., an Alzheimer's Disease care facility (Wealshire). *See* 415 ILCS 5/31.1(d) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002; 35 Ill. Adm. Code 103.204. Complainants allege that Wealshire violated Section 24 of the Environmental Protection Act (Act) (415 ILCS 5/24 (2000) *amended by* P.A. 92-0574, eff. June 26, 2002), as well as 35 Ill. Adm. Code 900.102 and 35 Ill. Adm. Code 901.102(a) and (b) of the Board's noise regulations. Complainants further allege that Wealshire violated these provisions by emitting noise from operating air conditioning units that unreasonably interfere with the use and enjoyment of the complainants' property and health. Complainants also allege the noise depresses complainants' property values. Wealshire is located at 150 Jamestown Lane, Lincolnshire, Lake County. The units are located on the north side of the property and in proximity to complainants' properties.

Section 31(d) of the Act (415 ILCS 5/31(d) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002) allows any person to file a complaint with the Board. Section 31(d) further provides that "[u]nless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing." *Id.*; *see also* 35 Ill. Adm. Code 103.212(a). A complaint is duplicative if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. 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." *Id.* Within 30 days after being served with a complaint, a respondent may file a motion alleging that the complaint is duplicitous or frivolous. 35 Ill. Adm. Code 103.212(b). Wealshire has filed no motion. No evidence before the Board indicates that the complaint is duplicative or frivolous.

The Board accepts the complaint for hearing. *See* 415 ILCS 5/31(d) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002; 35 Ill. Adm. Code 103.212(a). A respondent's failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if Wealshire fails within that timeframe to file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the

complaint, the Board will consider Wealshire to have admitted the allegation. 35 Ill. Adm. Code 103.204(d).

The Board directs the hearing officer to proceed expeditiously to hearing. Among the hearing officer's responsibilities is the "duty . . . to ensure development of a clear, complete, and concise record for timely transmission to the Board." 35 Ill. Adm. Code 101.610. A complete record in an enforcement case thoroughly addresses, among other things, the appropriate remedy, if any, for the alleged violations, including any civil penalty.

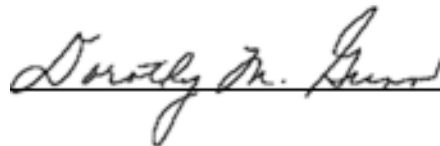
If a complainant proves an alleged violation, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act to fashion an appropriate remedy for the violation. *See* 415 ILCS 5/33(c), 42(h) (2000). Specifically, the Board considers the Section 33(c) factors in determining, first, what to order the respondent to do to correct an on-going violation, if any, and, second, whether to order the respondent to pay a civil penalty. The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation, such as the character and degree of any resulting interference with protecting public health, the technical practicability and economic reasonableness of compliance, and whether the respondent has subsequently eliminated the violation.

If, after considering the Section 33(c) factors, the Board decides to impose a civil penalty on the respondent, only then does the Board consider the Act's Section 42(h) factors in determining the appropriate amount of the civil penalty. Section 42(h) sets forth factors that may mitigate or aggravate the civil penalty amount, such as the duration and gravity of the violation, whether the respondent showed due diligence in attempting to comply, any economic benefit that the respondent accrued from delaying compliance, and the need to deter further violations by the respondent and others similarly situated.

Accordingly, the Board further directs the hearing officer to advise the parties that in summary judgment motions and responses, at hearing, and in briefs, each party should consider: (1) proposing a remedy for a violation, if any, including whether to impose a civil penalty, and supporting its position with facts and arguments that address any or all of the Section 33(c) factors; and (2) proposing a civil penalty, if any, including a specific dollar amount, and supporting its position with facts and arguments that address any or all of the Section 42(h) factors.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 7, 2002, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board