

ILLINOIS POLLUTION CONTROL BOARD

January 7, 1999

CARL BRUNSON AND NINA BRUNSON,)	
)	
Complainant,)	
)	
v.)	PCB 99-71
)	(Enforcement - Noise, Citizens)
MCI WORLDCOM, INC., and)	
IXC CARRIER, INC.,)	
)	
Respondent.)	

ORDER OF THE BOARD (by M. McFawn):

On November 25, 1998, complainants Carl Brunson and Nina Brunson filed a complaint with the Board alleging violations of Sections 23, 24, and 25 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/23, 24, 25 (1996)) and 35 Ill. Adm. Code 900.101, 900.102, and 900.103, against respondents MCI WorldCom, Inc., and IXT Carrier, Inc. The basis of the complaint is noise from regeneration/cooling facilities located adjacent to complainants' property.

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. 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. 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.

Nothing before the Board indicates that there is an identical or similar matter pending in another forum. The Board cannot find that the complaint is duplicitous.

Several of the statutes and regulations respondents are alleged to have violated are incapable of violation. Section 23 of the Act contains legislative statements of purpose; there can be no violation of Section 23. Section 25 of the Act sets forth standards under which the Board promulgates rules governing noise pollution; that section cannot be violated by a private entity. Similarly, 35 Ill. Adm. Code 900.101 contains only definitions; there can be no violation of Section 900.101. Finally, 35 Ill. Adm. Code 900.103 authorizes the Illinois Environmental Protection Agency to adopt procedures for measuring sound, and identifies the procedures applicable under other parts of the noise regulations. None of these provisions is applicable based on the allegations in the complaint. Thus, to the extent the complaint alleges violations of Sections 23 or 25 of the Act or 35 Ill. Adm. Code 900.101 or 900.103, those allegations are frivolous, and are hereby stricken.

However, the complaint also alleges violations of Section 24 of the Act and 35 Ill. Adm. Code 900.102. The facts alleged in the complaint, if proven, could support violations of these two sections. Complainants ask the Board to order respondents to remove regeneration/cooling facilities from their vicinity and to cease and desist from violations. This relief is within the Board's broad grant of authority to fashion a remedy for a violation. See 415 ILCS 5/33(a), (b) (1996). The Board concludes that with respect to alleged violations of Section 24 of the Act and 35 Ill. Adm. Code 900.102 the complaint is not frivolous.

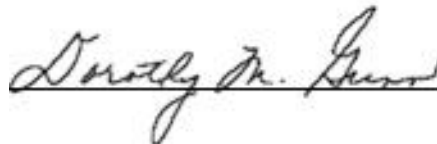
The Board accordingly accepts this matter for hearing. The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and Section 103.125 of the Board's procedural rules. The Clerk of the Board shall promptly issue appropriate directions to the assigned hearing officer.

The assigned hearing officer shall inform the Clerk of the Board of the time and the location of the hearing at least 30 days in advance of hearing so that a 21-day public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses, and all actual exhibits to the Board within five days of hearing.

Any briefing schedule shall provide for final filings as expeditiously as possible. If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if, after an attempt the hearing officer is unable to consult with all of the parties, the hearing officer shall unilaterally set a hearing date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 7th day of January 1999 by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board