

ILLINOIS POLLUTION CONTROL BOARD
April 16, 1981

JAMES KAJI, DOROTHY KAJI, ET AL.,)
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Complainants,)
)
)
v.) PCB 80-46
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R. OLSON MANUFACTURING COMPANY,)
INC.,)
)
)
Respondent.)

MR. MARVIN LUSTGARTEN APPEARED ON BEHALF OF COMPLAINANTS.

MS. DIXIE L. LASWELL, ROOKS, PITTS, FULLAGAR AND POUST, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by I. Goodman):

This complaint was filed before the Board on March 18, 1980 by James Kaji, Dorothy Kaji, and others (Kaji) alleging that R. Olson Manufacturing Company, Inc. (Olson) is in violation of Rule 102 of Chapter 8 of the Illinois Pollution Control Board's rules and regulations (Noise Rules) and Section 24 of the Illinois Environmental Protection Act (Act). Hearings were held in this matter on November 12, 13, and 14, 1980; no citizen testimony was given at the hearings and the Board has received no public comment.

The facility which is the subject of this complaint is Olson's Chicago plant, located on West Grand Avenue immediately adjacent to two buildings owned by Kaji which are used by Kaji as a residence and a storage facility. Olson's facility produces metal stampings for approximately 120 companies and is the sole supplier of certain types of these stampings (R.443-4). The metal stampings are made using large punch presses which generate sound during the process. It is the sound made by these presses, particularly that from a 200-ton press located in the building most adjacent to Kaji, which is the subject of Kaji's complaint.

Kaji moved into his buildings in 1963 (R.409). Olson's facility was already in existence at that time, but was not then adjacent to Kaji's buildings. In 1965 Olson purchased three lots which were between Kaji's buildings and Olson's facility and constructed an addition to its plant in which several new pieces of machinery, including presses, were installed. Olson also started a second shift which still runs from 5:00 p.m. until 1:30 a.m. the following morning. In 1967 Olson installed a 100-ton press in the new addition and in 1976 installed the 200-ton press in question (R.95-6). Olson presently employs 60 persons at the plant and has annual payroll expenditures of over \$1,000,000 (R.433-4).

Kaji alleges that the noise problem started with the installation of the large presses in the expansion area next to his buildings, and that he had not been disturbed by Olson's prior operation in the original plant nor by the expansion itself. At hearing Kaji introduced evidence which indicated that the level of sound inside the Kaji living quarters approached 87 decibels during periods when Olson's large presses were in operation (Compl. Ex.1). Kaji alleges that this constitutes a violation of the numerical sound limitations contained in Rules 202 and 206 of the Noise Rules, notwithstanding the fact that violations of these rules were not alleged in the complaint or referenced at hearing.

Testing was conducted by an Agency technician, admittedly a novice, who not only conducted the test indoors but at a point less than 25 feet from the property line of the source. Even though, as Kaji alleges, it is impossible, given the plant and Kaji building construction configurations, to meet the 25-foot measurement distance contained in these rules, the Board cannot apply results obtained by a novice inspector, even if doing the best he can, in this case. This is not the sort of situation covered by the numerical standards limitations; therefore, they do not apply. The Board will, however, accept the report as evidence with respect to Rule 102 as relevant to a finding of an unreasonable interference with the enjoyment of life, even though Kaji's brief has abandoned an allegation of violations of Rule 102 in favor of allegations of violations of Rules 202 and 206. The Board, therefore, shall consider the issue of a violation of Rule 102 and shall weigh the evidence in the record of such violation.

The testimony of the Kaji family indicates that they are disturbed by the pounding noise created by Olson's presses, particularly at night, and, in Mr. Kaji's case, particularly when he doesn't feel well (R.233-240,321-345,367-397,408-435). Two journals were admitted into evidence, one kept by Mr. Kaji and the other by Mrs. Kaji, indicating the times when they were aware of the pounding noise coming from the Olson facility (Compl. Exs.3 and 4).

The Kajis allege a priority of location in the area since their complaints arose subsequent to the time when they moved in. Olson argues that not only is the neighborhood in question zoned for industrial purposes, but it has been so zoned since 1957 (Resp. Ex.1). Testimony of a consultant hired by Olson indicates that Olson has taken every reasonably available technical measure to abate the sound emanating from the presses, such as installing isolators and a masonry enclosure (R.486,492). Olson has received no other complaints regarding sound other than those from the Kajis and maintains that a shutdown of the large presses would result in the closure of the plant (R.447). Olson further alleges that the plant could not be run economically on a one-shift basis and that there is no other location available to which the presses could be moved.

In determining whether a violation of Rule 102 has occurred, the Board must take into consideration the criteria listed in Section 33(c) of the Act, as well as other facts and circumstances bearing upon the reasonableness of the sound emissions involved.

The record is clear that the Kajis are enduring intermittent sound of a disturbing nature; the record indicates that they have endured such sound for at least four years. The record also establishes the social and economic value of the pollution source and, indeed, this has not been challenged. The suitability of the source to the area in which it is located is demonstrated by the fact that the immediate neighborhood is predominantly industrial in character. As to the question of priority of location, considering the character of the neighborhood and the fact that Kaji was aware of such character when he moved in, Kaji must reasonably have expected that additional manufacturing facilities could lawfully be added by Olson. It is also clear from the record that Olson has made reasonable attempts to reduce the noise emissions, including construction of an unusual concrete brick structure as an enclosure and mounting the presses upon a shock-absorbent medium. Certainly it would not appear to be economically reasonable to require Olson to shut down the presses, and consequently the entire plant, which is the outcome of the relief requested by Kaji.

After full consideration of all of the facts in record in this matter, the Board comes to the conclusion, somewhat reluctantly, that although the Kajis may well be experiencing discomfort due to the noise created by Olson's press operation, Olson is engaged in an important manufacturing operation in a facility which is and has been since 1957 suitably located within an area zoned for industrial uses. Olson's operations have definite social and economic value to the community. Moreover, Olson has reduced the sound emissions as much as is technically and economically practicable. The Kajis, who have lived in the building for some seventeen years, apparently without complaint, cannot now be heard to complain; the neighborhood has developed in a manner which was predictable at the time of their arrival. The Board shall, therefore, dismiss this action.

This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

ORDER

It is the Order of the Illinois Pollution Control Board that the complaint in PCB 80-46 be and is hereby dismissed.

Mr. Dumelle dissents.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 16th day of April, 1981 by a vote of 4-1.

Christian L. Moffett
Christian L. Moffett, Clerk
Illinois Pollution Control Board