

ILLINOIS POLLUTION CONTROL BOARD  
October 4, 1979

ENVIRONMENTAL PROTECTION AGENCY,        )  
  )  
                                  Complainant,        )  
  )  
                                  v.                    )        PCB 78-258  
  )  
K. L. OIL COMPANY, an Illinois        )  
corporation, d/b/a K & L AUTO WASH,        )  
  )  
                                  Respondent.        )

MR. WILLIAM J. BARZANO, JR., ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. EDWARD M. BURKE, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Board upon a complaint filed September 29, 1978 by the Environmental Protection Agency (Agency) against Respondent K. L. Oil Company, an Illinois corporation, d/b/a K & L Auto Wash. The complaint charged violation of Section 24 of the Environmental Protection Act (Act) and Rules 102 and 202 of Board Rules, Chapter 8: Noise Pollution, in connection with the operation of a gas station and car wash in Justice in Cook county. The parties met on January 25, 1979 before a stenographer and indicated that they would later submit a stipulation. The Hearing Officer, apparently arriving late, granted leave to file within fifteen days written statements as to the proposed settlement and further stated that no members of the public had appeared at the hearing. The parties entered into a stipulation, statement of facts and proposal for settlement filed May 17, 1979. This stipulation was considered in an Interim Order dated June 7, 1979. On September 14, 1979 the parties filed a joint motion for entry of a final order setting forth additional facts and amending the terms of the settlement.

Respondent's car wash is classified as a Class B land use activity under the standard land use coding system of the U. S. Department of Transportation, Federal Highway Administration. There is residential property which is a Class A land use in the vicinity of the car wash. Noise Rule 202 sets forth allowable octave band sound pressure levels for sound emitted from Class B land to Class A land during daytime hours. Count II of the complaint alleged that on various dates Respondent's car wash emitted noise which exceeded the sound pressure levels for the higher fre-

quency octave bands. Count I alleged violations of the same provisions by unreasonably interfering with the enjoyment of life.

At the time of the proposed settlement, Respondent had expended over \$9000 on noise control measures and expected it might have to spend another \$5000. It is not clear from the record what the final cost of compliance was. However, on June 25, 1979 the Agency conducted a survey and determined that the car wash was in compliance with the sound pressure levels of Noise Rule 202. In their joint motion the parties have set forth the results of the test and agreed to excise from the settlement agreement those provisions which concerned contingencies dependent on an adverse outcome of the survey.

As it now stands the stipulation sets forth various sound control steps which were completed prior to the noise survey. Respondent represents that it "has voluntarily shut down the facility on Sunday for an indefinite period of time." Respondent agrees to limit operations to 7:00 a.m. to 9:00 p.m. Monday through Friday and 8:00 a.m. to 9:00 p.m. on Saturday, Sunday and legal holidays. Respondent will also maintain all noise abatement equipment previously installed to ensure its working order. The stipulation provides for no penalty. The Board finds that, considering the factors outlined in §33(c) of the Act, no penalty is necessary to aid in enforcement of the Act.

Procedural Rule 331 requires that a settlement be presented to the Hearing Officer at a hearing in which all interested persons may testify. Since no persons appeared at the hearing in January, it is moot whether they would have objected to subsequent modification of the agreement. The parties allege in the joint motion that the citizen complainants have stated that the noise levels no longer constitute an unreasonable interference with the enjoyment of life. Although this proceeding has been somewhat irregular, the Board finds that the letter and spirit of the hearing requirement have been met and that the stipulation is acceptable under Procedural Rule 331.

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

#### ORDER

Respondent shall comply with the agreements contained in the stipulation, statement of facts and proposal for settlement as amended by the joint motion for entry of final order filed September 14, 1979 which are hereby incorporated by reference as if fully set forth.

IT IS SO ORDERED

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 4<sup>th</sup> day of October, 1979 by a vote of 4-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board