

ILLINOIS POLLUTION CONTROL BOARD  
November 30, 1978

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 77-15  
 )  
RICHARD ABDNOUR, d/b/a )  
HIGHLAND FOOD MARKET, )  
 )  
Respondent. )

MS. SUSAN SHUMWAY, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MYERS & DAUGHERITY, ATTORNEYS AT LAW (MR. EUGENE P. DAUGHERITY, OF COUNSEL), APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by Mr. Werner):

This matter comes before the Board on the January 13, 1977 Complaint brought by the Illinois Environmental Protection Agency ("Agency") which alleged that from May 4, 1976 until January 13, 1977 the Respondent operated five compressors (used for the refrigeration of food products) mounted on a concrete slab located on the outside and at the rear of a food market building\* in such a manner as to cause or allow the emission of sound beyond the boundaries of the property which unreasonably interfered with the enjoyment of life and with the lawful activities of persons on Class A land in proximity to Highland's property in violation of Rule 102 of Chapter 8: Noise Regulations and Section 24 of the Illinois Environmental Protection Act ("Act"). On December 5, 1977, the Complainant filed a Motion for Leave to File an Amended Complaint, Instantly and an Amended Complaint. The Board granted the Agency's motion on December 20, 1977. The Amended Complaint updated the original Complaint and added a second count to allege that, on specified dates, the Respondent emitted sound from its facility in violation of Rule 202 of Chapter 8: Noise Regulations. A hearing was held on June 30, 1978. The parties filed a Stipulation and Proposal for Settlement on July 3, 1978.

Respondent Richard Abdnour, d/b/a Highland Food Market\* ("Highland") owned and operated a food market\* which consisted of

a building and property, as well as equipment and inventory, located at 1114 North Bloomington Street, Streator, County of LaSalle, Illinois. The facility\* has been operated at its present location since 1941. In 1973, Richard Abdnour became the owner of the market by purchasing the business from his father. At the facility, Highland operates five (5) compressor units for the purpose of refrigeration of food products. These compressor units have been located on the outside of and at the rear of the building at the facility since 1973. The compressor units are capable of emitting sound beyond the boundaries of the facility property. The food market\* is located in a mixed residential, light industrial, and commercial neighborhood. There has been no significant change in the neighborhood since the facility was first operated. Highland employs approximately four persons in the operation of its business, two full-time and two part-time. The food market\* is in operation fifty-two weeks per year, seven days per week, thirteen hours per day. (Stipulation, p. 2).

It is stipulated by the parties that the facility emits sound beyond the boundary of Highland's property and that the facility constitutes a property-line-noise-source within the definition of Rule 101 of the Board's Noise Regulations. The land on which the food market\* is located constitutes Class B land within the definition of Rule 201(b) of Chapter 8: Noise Regulations. The main source of the sound emitted from the facility is the compressors. (Stipulation, p. 3). It is stipulated that on May 4, 1976, August 30, 1976, May 11, 1977, and June 29, 1977, Highland caused or allowed the emission of sound from its facility to receiving Class A land in excess of the limitation imposed by Rule 202 of the Board's Noise Regulations, as shown by Noise Survey Reports and Investigation Reports prepared by the Agency. (See: Exhibits B, C, D, and F which are attached to and incorporated into the Stipulation). These sound emissions constitute violations of Rule 202 of Chapter 8. (Stipulation, p. 4).

Highland has, subsequent to the filing of the Amended Complaint, caused or allowed the emission of sound from its facility to receiving Class A land in excess of the limitation imposed by Rule 202 of the Board's Noise Pollution Regulations. (Stipulation, p. 4).

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\*Mr. Abdnour is no longer doing business as Highland Food Market, although he still occupies the same business location. He is now in the liquor retail business and is currently doing business as Foremost Liquors. However, he still has the same compressors and is still in operation. (Record, p. 2-3).

The Complainant represents that, if a hearing were held in this matter, it would present testimony of at least three citizens residing on Class A land in proximity to Highland. Complainant further represents that these citizens would testify, in substance, that sound emitted from Highland's facility has from May 4, 1976 to the present date interfered with their rest and relaxation; causes irritability; interferes with daytime sleep; interferes with conversation; and interferes with the use of enjoyment of their property. (Stipulation, p. 4).

Subsequent to May 11, 1977, but prior to June 29, 1977, Highland constructed a compressor enclosure. (See: Exhibit E). At some time between May 11, 1977 and June 29, 1977, Highland altered the structure which had been built in substantial compliance with Exhibit F. The alternations consisted of the addition of two axial flow exhaust fans in the bottom half of the west wall of the new structure, directed towards a residence. (Stipulation, p. 4).

Agency personnel inspected the facility and took measurements of noise emissions therefrom on June 29, 1977. A copy of the Noise Survey Report and Investigation Report prepared by the Agency, reflecting the June 29, 1977 inspection and measurements, is attached to the Stipulation as Exhibit F. The measurements are in accordance with Rule 103 of the Board's Noise Regulations and accurately reflect the actual sound levels present at that time and place. (Stipulation, p. 5). The Agency's June 29, 1977 investigation revealed that a high-pitched noise was being emitted from the facility, and measurements on that date revealed that noise emissions from the facility exceeded the limitations of Rule 202 of Chapter 8: Noise Regulations, with and without the presence of the high-pitched noise.

Highland represents that it originally constructed the structure in conformance with Exhibit F, but the structure provided insufficient air flow to the refrigeration units, causing three of the units to burn out. Highland represents that the fans were added to ensure adequate air flow. However, the Agency contends that the fans are placed so as to cause or contribute to excess noise emissions from the facility, and that noise emissions can be reduced and proper air flow maintained by relocating the fans and keeping all louvers and fans unblocked. (Stipulation, p. 5).

It is stipulated that Highland has, on each day of operation of the facility since May 4, 1976, operated its facility in such a way as to emit sound which unreasonably interfered with the enjoyment of life and with lawful business and activity of persons

residing in proximity to the facility, thus causing noise pollution as defined in Rule 101 of the Board's Noise Regulations, and therefore in violation of Rule 102 of Chapter 8: Noise Regulations. (Stipulation, p. 5). The parties have also stipulated that the food market\* performs services which are of social and economic value. As a business, Highland contributes to the tax bases of the State of Illinois, LaSalle County, and the Village of Streator. Additionally, Highland provides employment for four (4) persons. (Stipulation, p. 5-6). The parties agree that Highland has an obligation to comply with the Board's Noise Regulations so as to minimize the impact of its operations on neighboring residents. It is further stipulated by the parties that it is currently both technically practicable and economically reasonable for Highland to take all actions required by the Compliance Program and Schedule which is detailed in the Stipulation and Proposal for Settlement. (Stipulation, p. 7-9).

The proposed settlement agreement, which is designed to bring the Highland facility into compliance with Rule 202 of the Board's Noise Regulations, requires the Respondent, as part of the Compliance Program, promptly relocate the two axial flow exhaust fans to the roof of the compressor enclosure and to either completely seal the hole left in the wall by the removal of the fans, or completely seal the hole with seal and sound absorptive louvers. (Stipulation, p. 7). In the event that noise measurements conducted by the Agency after the exhaust fans are relocated reveal that the facility is still not in compliance with Rule 202 of the Board's Noise Regulations, the Respondent has agreed to promptly construct plywood barriers, lined with sound absorptive foam, on the roof of the structure between each fan and the nearest residence in accordance with the recommendations of Respondent's sound experts. If subsequent noise measurements by the Agency indicate that the facility is still not in compliance, Highland shall accomplish further sound reduction to meet the Board's Noise Regulations as may be agreed upon between the parties. (Stipulation, p. 7-8). The Agency has agreed that, within one week of its receipt of any complaints about noise from the facility, it will provide written notice to Highland of the existence and nature of the complaints. (Stipulation, p. 8). Additionally, the parties have suggested that a stipulated penalty of \$300.00 is appropriate under the circumstances of this case.

In evaluating this enforcement action and proposed settlement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act. Incinerator, Inc. v. Illinois Pollution Control Board, 59 Ill. 2d 290, 319 N.E. 2d 794 (1974). Accordingly, the Board accepts the Stipulation and Proposal for Settlement and finds that, from May 4, 1976 until January 13, 1977, the Respondent, Richard Abdnour, d/b/a Highland Food Market, violated Rule 102 and Rule 202 of Chapter 8: Noise Regulations and Section 24 of the Illinois Environmental Protection Act. The Board imposes the stipulated penalty of \$300.00 .

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

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. The Respondent has violated Rule 102 and Rule 202 of Chapter 8: Noise Regulations and Section 24 of the Illinois Environmental Protection Act from May 4, 1976 until January 13, 1977.

2. Within 35 days of the date of this Order, the Respondent shall pay the stipulated penalty of \$300.00 , payment to be made by certified check or money order to:

State of Illinois  
Fiscal Services Division  
Illinois Environmental Protection Agency  
2200 Churchill Road  
Springfield, Illinois 62706

3. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed July 3, 1978, which is incorporated by reference as if fully set forth herein.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 30<sup>th</sup> day of November, 1978 by a vote of 5-0.



Christan L. Moffett, Clerk  
Illinois Pollution Control Board