

ILLINOIS POLLUTION CONTROL BOARD  
October 21, 1999

MICHAEL R. PAWLOWSKI and DIANE K. )  
PAWLOWSKI, )  
 )  
Complainants, )  
 )  
v. ) PCB 99-82  
 ) (Enforcement - Citizen, Noise)  
DAVID JOHANSEN and TROY QUINLEY, individually )  
and d/b/a BENCHWARMERS PUB, INC., )  
 )  
Respondents.

ORDER OF THE BOARD (by G.T. Girard):

On September 30, 1999, respondents filed a motion to dismiss this matter. Complainants filed a response to the motion on October 4, 1999. The hearing officer granted respondents leave to file a reply and a reply was filed on October 12, 1999. For the reasons enunciated below the Board denies the motion to dismiss.

Before discussing the pending motion, the Board notes that on January 21, 1999, the Board denied a motion to dismiss this matter filed by respondents. In the current motion, respondents have again claimed that the complainants "came to the nuisance." Respondents have offered no new arguments on this issue, which the Board addressed in the first motion to dismiss. Accordingly, the Board will not revisit this claim.

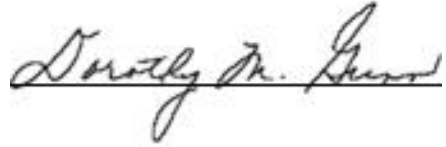
The motion filed by respondents on September 30, 1999, is captioned as a Motion to Dismiss. In the reply, respondents request leave to correct the title of the motion filed on September 30, 1999, to Motion for Summary Judgment. The Board grants the request.

Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998). When ruling on a motion for summary judgment, the Board "must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party." *Id.* Summary judgment "is a drastic means of disposing of litigation," therefore it should be granted only when the movant's right to the relief "is clear and free from doubt." *Id.*, citing Purtill v. Hess, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on its pleadings, but must "present a factual basis which would arguably entitle [it] to a judgment." Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2d Dist. 1994).

The statements contained in the respondents' motion for summary judgment do not support the granting of summary judgment. The respondents make assertions of facts in the motion but the assertion of these facts, even if true, do not sustain a motion for summary judgment as the assertions do not establish that the respondents are entitled to judgment as a matter of law. The assertions made by respondents in the motion actually indicate that there are several issues of fact which must be decided before the Board can determine whether or not a violation of the Environmental Protection Act has occurred. Further, the motion contains no argument that the respondent is entitled to judgment as a matter of law. Therefore, the motion is denied.

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 21st day of October 1999, 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 solid horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board