ILLINOIS POLLUTION CONTROL BOARD
July 22, 1976

ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 75-89
	)	
TABOR and CO.,	)	
	)	
Respondent.	)	

Ms. Marilyn B. Resch, Assistant Attorney General, represented complainant.
Mr. John E. Fick represented respondent.

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

This matter comes before the Pollution Control Board (Board) upon a complaint filed by the Environmental Protection Agency (Agency) on February 24, 1975 and an amended complaint filed May 16, 1975. In two counts the Agency alleges that Tabor and Co. since August 10, 1973 up to the filing of the complaint including seven named dates violated Rule 202 of the Noise Pollution Control Regulations (Regulations), Section 24 of the Environmental Protection act (Act) and Rule 102 of the Regulations. Respondent filed an answer on March 31, 1975 denying the alleged violations. The hearing was held on June 3, 4 and 5, 1975 in the Town Hall in Tallula, Illinois.

Prior to dealing with the merits of this case the Board must make several rulings. The hearing officer left to the Board rulings on three different matters. The first matter is the Respondent's offer of proof concerning Mr. Fick's question, whether the third page of Complainant's Exhibit 10 shows a violation in the 2000 Hz, 4000 Hz and 8000 Hz octave bands (R. 280 to 283). The basis of the objection was that Respondent had repeated the questions several times receiving a negative answer each time. The Board finds that Witness Paulauskis' final agreement to a positive answer to the question is sufficient to allow the disputed question in the record.

The second matter is a joint motion by Respondent and Complainant to strike from Paragraph 6 of Count 1 of the complaint the reference to November 29, 1973 for want of proof (R. 361). This motion is granted.

Thirdly, Complainant objects to Respondent's Exhibit 13, a petition to the Pollution Control Board, on the grounds that the signatures on the petition have not been authenticated and its admission is hearsay. Counsel for Complainant is correct in that this is not normally admissible evidence, there is no verification of the 268 signatures. The Board will allow the petition to remain part of the record for what value it may have in consideration of Section 33(c) of the Act. The Petition to the Board was evidently drawn up to propose a regulatory change in allowable emissions from grain elevators; however, the petition does not meet the necessary requirements of Procedural Rule 203. To propose a regulatory change, ten copies of the proposed text of the change must be filed with the Clerk of the Board. Respondent's Exhibit 13 has no suggested text and was not filed properly. Unless resubmitted in the necessary form the Board cannot consider the petition as a regulatory proposal.

Respondent has an elevator in Tallula, Illinois. Tallula is a village of approximately 650 people located in Menard County. The elevator has through put of over a million bushels of grain per year (R. 406). Tabor and Company leased the elevator in 1971 and purchased the elevator for $225,000 in 1972. The drying season when the noise problem arises is from October through December (Joint Ex. #1).

There are several issues to be resolved in this case. These include classification of the land involved, the validity of the noise measurements and the application of Rule 209(c) of the Noise Regulations.

In the complaint the Agency alleges violation of Rule 202. Rule 202 deals with noise being emitted from a class "C" land use to a class "A" land use as designated by the Regulations. The Regulations use the Standard Land Use Coding Manual (1969, United States Government Printing Office) which designates land activities by means of numerical codes (hereinafter SLUCM). It is Respondent's contention that the SLUCM code has no classification for country grain elevators and that the Tabor elevator is unclassified and without regulation. The Board finds this argument to be without merit. Class "C" generally denotes industrial use. All agriculture and agricultural related activities are classified as "C" land uses. According to the SLUCM designations codes 811 through 829 are agriculture or agricultural related activities. Under the later category are included ginning, milling, shelling, baling, threshing and all other agricultural processing services. Although grain elevators are not specifically listed they would be included in "other agricultural processing services."

Respondent further contends that the receiving property is not land of class "A" use. The chief complainant to the Agency in this case was Joseph Feagans. Most of the noise measurements by the Agency were taken from the end of the sidewalk in the Feagans' back yard. The Feagans live in this house. Mr. Feagans also runs a two-way radio business in a separate building at the rear of his house (R. 157). The noise caused him to move his service area to the front of the house (R. 159). Respondent contends that because of Mr. Feagans' business his property is a class "B" land use and is not covered by Regulation 202. The Board rejects this contention. At the time of adoption of the Noise Regulations, the Board recognized in its adopting opinion that "land use is not necessarily co-extensive with land ownership." Included as an example was a high rise apartment building, "where the apartments themselves are class A uses while ground level businesses are class B uses," in the matter of Noise Pollution Control Regulations, R72-2, 8 PCB 703, 726 (1973). In the present situation Feagans' business is class B but his residence is class A. It should also be noted that the Feagans are surrounded on all sides but one, the north-west where the Tabor elevator is, by other residences or class A uses. Thus Feagans' property would come under the "C to A" classifications of Rule 202. The Agency also took measurements at the Kern, Sanders and Pond residences, "A" classifications. As these measurements were taken from receiving class A land and not less than 25 feet from the property-line-noise-source, the measurements are valid for showing violation of Rule 202. The Agency found C to A violations as follows:

Kern Residence	November 27, 1974	(Comp. Ex. 14)
Feagans Residence	November 6, 1973	(Comp. Ex. 3)
	October 16, 1974	(Comp. Ex. 22)
	November 1, 1974	(Comp. Ex. 8)
	November 15, 1974	(Comp. Ex. 11)
	November 22, 1974	(Comp. Ex. 13)
Sanders Residence	November 1, 1974	(Comp. Ex. 10)
	November 22, 1974	(Comp. Ex. 13)
Pond Residence	November 1, 1974	(Comp. Ex. 9)
	November 22, 1974	(Comp. Ex. 13)

Respondent as a defense is claiming that Tabor and Co. comes under the delayed compliance date of Rule 209(c). Rule 209(c) provides that any owner or operator of an existing property-line-noise-source which exceeds any allowable octave band sound pressure level of Rule 202 by 10 dB or more in any octave band with a center frequency of 31.5 Hertz, 63 Hertz or

125 Hertz shall comply with the standards and limitations of Part 2 of the Chapter on or after eighteen months from the effective date of the Noise Regulations. The date of compliance would then be February 10, 1975. All the Agency's allegations and measurements were before this date; thus, Respondent would have a complete defense.

In Respondent's attempt to rely on the delayed compliance date Respondent has attempted to invalidate the Agency's measurements, because none of the Agency's measurements show more than a 10 dB violation in any of the applicable octave bands. Of the several points discussed concerning the method of measurements none were of enough significance to cause the Board to doubt the accuracy of the Agency's measurements. The Agency did not take the barometric pressure (R. 233) which could possibly affect the calibration of the measurement equipment (R. 234). However, the Agency's readings were generally for two minutes (Comp. Ex. 7,14). Respondent's expert on noise measurement has never seen the barometric pressure drop enough in a two minute or ten minute period to affect the readings (R. 583).

David Eby the Respondent's noise measurement expert came up with two readings more than 10 dB greater than the allowable limit in the 125 Hertz octave band. In this octave band Rule 202 allows 69 dB. Mr. Eby measured one reading in the octave band at 85 1/2 dB and another at 79 1/2 dB (Resp. Ex. 14, 23 and 46). The prior reading does not show a Rule 202 violation. This reading was not taken from class A land. Mr. Eby took the measurement from the road to the northwest of the elevator (R. 568). This would be an unclassified area and not subject to Rule 202. The 69.5 dB reading was a C to A reading. However there is some question as to whether this reading which is 10.5 dB greater than the limit is an acceptable reading.

The drying season is approximately October through December (Joint Ex. 1). The Agency picked days at random within this time to take noise measurements (R. 92). The Agency did not take any measurements with all the equipment running (R.90). Mr. Dale Royer, manager of the Tabor elevator at Tallula, testified that the dryer ran 25 percent of the drying season (R. 498); however, he did not state that all the equipment was ever run all at one time. Mr. Eby's 79 1/2 dB measurement was taken with the whole elevator running, less eight auxiliary fans (Resp. Ex. 14 at 46). This measurement was taken under experimental conditions on January 7, 1975 (R. 560, 571). Equipment was being turned off and on for

Mr. Eby (R. 475, 571). Mr. Eby's measurements would not be typical of the regular drying season. The Board also notes that by January 6 the trees and ground would be largely devoid of leaves and foliage which would increase the amount of reflective surfaces which in turn increase the decibel level of noise measurements.

Under Rule 104 of the Noise Regulations, Respondent has the burden of persuasion or responsibility of showing that the delayed compliance date of Rule 209(c) applies to Tabor and Co. at Tallula, Illinois. The Board is not persuaded that Respondent under normal conditions clearly violates the Rule 202 limits by more than 10 dB in the applicable octave bands. The Board finds that the eighteen month delayed compliance date of Rule 209(c) is not applicable to this case. Tabor and Co. is found to have violated Rule 202, and thereby Rule 102 of the Noise Regulations and Section 24 of the Act.

In determining what if any penalty should be assessed the Board must consider the factors listed in section 33(c) of the Act. First to be considered is the character and degree of the injury. That injury has and does occur from noise was acknowledged by the General Assembly in Section 23 of the Act. At the adoption of the Noise Regulation there was testimony as to the damage noise can do, In the Matter of Noise Pollution Control Regulations, supra at 714. Noise can cause hearing losses, both temporary and permanent. Noise can interfere with speech, be annoying and affect the mental and motor performance of individuals, id. at 714, 716. The Feagans testified concerning the interference with their lives mostly in terms of loss of sleep and annoyance (R. 149-171) as did several other citizens of Tallula. The irritation and annoyance to the personal well being of the citizens of Tallula living close to the elevator is quite high during the three months of the drying season.

During this time of annoyance is also when the grain elevator with the dryer is of the most value to the farming community within the five mile radius of Tabor and also to the citizens of Tallula who work at the elevator and provide services to the farmers of the area. Farmers need ready access to elevators to allow them to harvest in good weather conditions and to store their grain safely. The grain is harvested at various moistures and must be dried sufficiently to avoid growth of molds and fungi (R. 412). During the harvesting season a dryer may have to run continually to allow farmers to store all they can while good weather prevails (R. 416).

It is apparent that this function is of extreme importance to a small rural village such as Tallula. The importance of Tabor to the community is further documented by the 268 signatures on a petition requesting the Board not to impair the functioning of Tabor elevator (Resp. Ex. 13).

It is apparent that the pollution source is suitable to the area particularly in terms of ready access. Approximately half of the silos at Respondent's facility have existed in their present location since around 1900 (Joint Ex. 1). The grain dryer was added in 1968 (Joint Ex. 1).

As of May 31, 1974 the total net fixed assets of Respondent's elevators and equipment at the Tallula location represented an investment of $375,335.60; total building and equipment at said location had a value of $348,310.37; the average yearly net profit at said location is $50,000 (Joint Ex. 1). On a yearly basis Respondent's facility handles approximately one million bushels of grain (Joint Ex. 1). On April 10, 1975, Dale G. Royer, Manager of Tabor at Tallula, wrote the Attorney General's office stating that Tabor had spent $65,234.34 on reduction of noise (Resp. Ex. 11). This figure was later amended to $73,015.52 (R. 504). At the hearing it was pointed out that the primary purpose of the filter system was to collect dust (R. 501), and that the system may actually increase the noise (R. 502). Many of these "improvements" were made without consulting noise experts and the filter system was purchased on the advice of the contractor (R. 501, 502). Subtracting the cost of the filter system Tabor has spent approximately $17,000 on noise abatement (R. 505).

On May 28, 1975 from the George A. Rolfes Company an offer was accepted by Tabor and Company. This contract to install noise abatement equipment and fixtures is to bring Tabor and Company into compliance with the Illinois Noise Regulation within 180 days of acceptance of the offer. These improvements will cost Tabor $64,105. A good deal of time was spent at the hearing discussing the cost of a 38 percent reduction in drying capacity (determined by the Agency, (R. 71). The Rolfes contract does not indicate there will be any such reduction. The existence of this contract in itself is evidence that compliance is technically feasible and enconomically reasonable.

The Board does find Respondent in violation of Rules 102 and 202 of the Noise Regulations and Section 24 of the Act. In considering a penalty it is clear that there has been injury to the citizens of Tallula in dealing with the effects of the noise. However, it is also clear that the elevator is of great importance to the community. Respondent has investigated and gone ahead with measures to abate the problem.

The Board notes that Tabor sought aid in noise abatement from the Brunswick Corporation, Fansteel, the Aeroglide Company and the George A. Rolfes Company. Only the George A Rolfes Company made an offer which was accepted with alacrity.

The elevator has spent, or contracted to expend, well over $130,000 in an effort to reduce noise and emissions from its elevator (Respondent's Brief at 39). Since these monies were apparently expended as soon as management was convinced such expenditures would offer relief, the Board does not find Respondent unduly dilatory.

The good faith shown by Respondent and the expenditures made to achieve compliance without increasing capacity or productivity, and the fact that environmental harm has been minimized, convinced the Board that a penalty would not, in this case, aid enforcement.

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

ORDER

It is the Order of the Pollution Control Board that:

1. Tabor and Company is found to have been in violation of Rules 102 and 202 of the Noise Regulations and Section 24 of the Act.

2. Tabor and Company shall cease and desist from all future violations of the Regulations or Act.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 22nd day of July, 1976 by a vote of 5-0.

Christan L. Moffett, Clerk
Illinois Pollution Control Board