

ILLINOIS POLLUTION CONTROL BOARD
February 20, 2003

MILTON C. and VIRGINIA L. KAMHOLZ,)
)
Complainants,)
)
v.) PCB 02-41
) (Citizens Enforcement – Air, Noise)
LAWRENCE and MARIANE SPORLEDER,)
)
Respondents.)

VIRGINIA KAMHOLZ APPEARED *PRO SE*; and

JOSEPH GOTTEMOLLER APPEARED ON BEHALF OF RESPONDENTS.

OPINION AND ORDER OF THE BOARD (by N.J. Melas):

On September 26, 2001, Milton C. and Virginia L. Kamholz (complainants) filed a citizen enforcement complaint (Comp.) against Lawrence and Mariane Sporleder (respondents). The Kamholzes allege that respondents violated the air pollution prohibition, numerical sound limits, and nuisance noise prohibitions of the Environmental Protection Act (Act) and Board regulations. 415 ILCS 5/9(a) (2002); 35 Ill. Adm. Code 900.102, 901.102(a), 201.102, and 243.102(a). The Kamholzes allege that the noise violations and air pollution resulted from the riding and “revving” of dirtbikes, all-terrain vehicles (ATVs), and go-carts at the respondents’ property located in Woodstock, McHenry County.

As discussed below, the Board finds that noise produced by Lawrence and Mariane Sporleder unreasonably interfered with the complainants’ enjoyment of life and property, but finds the Sporleders did not violate numerical noise standards nor cause air pollution. The Board orders the Sporleders to cease and desist from further violations of the Act.

PROCEDURAL BACKGROUND

The Kamholzes filed this complaint on September 26, 2001. The complainants hired private detective Michael McCleary who personally served the respondents with the formal complaint in this matter on November 11, 2001. In a January 10, 2002 order, the Board struck from the complaint as frivolous alleged violations of Sections 201.102 and 243.102(a) of the Board regulations (35 Ill. Adm. Code 201.102, 243.102(a)). The Board also found the alleged violations of Section 9(a) of the Act and Sections 900.102 and 901.102(a) of the Board rules neither duplicative nor frivolous and accepted them for hearing.

Board Hearing Officer Bradley Halloran held a hearing on November 19, 2002, at the Woodstock Public Library, Woodstock. Fourteen witnesses testified, fourteen exhibits were admitted, and two exhibits were accepted as offers of proof at the hearing. Hearing Officer

Halloran found all witnesses credible. The Sporleders filed a closing brief on January 16, 2003 (Cl. Br.). The Kamholzes filed a reply brief on January 23, 2003 (Rep. Br.).

PRELIMINARY MATTER

In the complaint, at hearing, and in the reply brief the Kamholzes allege that the noise, fumes, and exhaust produced when the Sporleders ride vehicles off-road on their property cause the Kamholzes headaches and sore throats. However, the Board and Illinois courts generally do not allow lay witness testimony on medical conclusions where the witness does not show that he or she is qualified to offer a medical opinion regarding the cause of the illness. Bridgeman v. Terminal Railroad Ass'n of St. Louis, 195 Ill. App. 3d 966, 973-974, 552 N.E.2d 1146, 1150 (5th Dist. 1990); Glasgow v. Granite City Steel, PCB 00-221 slip op. at 4 (Mar. 7, 2002); Young v. Gilster-Mary Lee Corp., PCB 00-90 slip op. at 12, 16 (Sept. 6, 2001), *citing* Johnson v. ADM-Demeter, Hoopeston Division, PCB 98-31, slip op. at 7 (Jan. 7, 1999). In the proceeding at hand, nothing in the record shows that Mr. or Mrs. Kamholz nor any of the other witnesses are medical experts. The Board disregards the complainants' opinions on the causes of the illnesses that they describe.

FACTS

Complainants

The members of the Kamholz family that testified at hearing are Milton and Virginia Kamholz, their daughter Natalie, her husband, Mr. Stephen Secor, the Kamholzes' second daughter Nadine, and her husband Mr. Michael Dworzynski. Natalie and Stephen Secor have three children ages 14, 12, and 5. Tr. at 159. The Kamholzes also have a son named Kurt. Tr. at 21. Milton and Virginia Kamholz have lived at 1316 Sullivan Road in Woodstock for 31 years. Comp. at 1, 4. The parcel of land is approximately five acres. The Kamholzes built their house when they purchased the property in 1972. Tr. at 200. The Kamholzes' home is approximately 50 feet north of the Sporleders' property, which is located at 1306 Sullivan Road. Comp at 3.

Respondents

The respondents and complainants have been neighbors for over 30 years. Tr. at 73. The residents of the Sporleder property include Lawrence and Mariane Sporleder and their two grandsons, Kelly and Donald. The Sporleders' property is zoned Estate 5 under the McHenry County zoning ordinance. Tr. at 285.

Noise and Air Emissions Testimony

The Kamholzes state the Sporleders' riding prevents them from enjoying their home, has depreciated the value of their property, and has had a negative impact on their physical and mental health. The noise from respondents' bikes, ATVs, and go-carts prevents them from conversing on the phone, hearing the television, opening windows, or using the patio, deck, yard, or screened-in porch. Comp. 3-4. The noise is so severe that they cannot go outside when the respondents are riding. Comp. at 3.

The Kamholzes developed sore throats and headaches because of the fumes and that the respondents' activities have caused the complainants to have emotional problems. Comp. at 4. Further, their "entire living area is consumed with noise and fumes." Comp. at 3.

According to the Kamholzes, the extent of the problem with respondents has worsened over the last decade. Comp. at 3. The Sporleders began recreational riding in the early 1990s when the Kamholzes' daughter also participated in the riding. At that time the noise was tolerable and the dust was not so severe. *Id.* The dust increased when the respondents installed a dirt track and began operating go-carts. The noise increased again in 1995, when the Sporleders' grandson Donald started to ride dirt bikes. Respondents and their friends also drag-raced a truck and car, adding to the noise and fumes. *Id.* At that time the Kamholzes had to stop entertaining outside because of the noise and dust. Tr. at 71. Mrs. Kamholz contacted the sheriff that year and was given the name of Mr. Greg Zak, then a noise specialist with the Illinois Environmental Protection Agency. Tr. at 72.

A year later, on August 10, 1996, Mrs. Kamholz sent a letter to the Sporleders by registered mail asking them to please stop creating noise. Tr. at 73. The Sporleders did not stop or reduce the noise. Tr. at 73. The Kamholzes contend that the Sporleders only increased their activity closer to complainant's property. Comp. at 3. Mrs. Sporleder said she never received the letter. Tr. at 273. However, the letter was sent by certified mail and the return receipt indicates the letter was signed for by "Mariann Sporleder" on August 10, 1996. Comp. Exh. 6. In November 2001, both grandsons lived with the respondents and the riding once again became frequent and, at times, lasted ten hours a day. Tr. at 85.

In June of 1997, Donald turned 16 and the activity decreased somewhat. Kelly still rode his dirt bike on the weekends when he came to visit. However, the Sporleders have not raced cars or trucks on their property since 1997. Tr. at 87. The Kamholzes state that school hours were the only quiet hours during the week. The weekends were quite noisy and the respondents generally rode daily, morning until night. Comp. at 3.

Because of the noise on Mother's Day, 2001, some of the Kamholzes' children stayed for only a short period of time, and others didn't come over to visit at all. Comp. at 4. On that day, respondents rode three dirt bikes and an ATV approximately 70 feet from the Kamholzes' windows. Comp. at 3. Mrs. Kamholz called her county representative, Ms. Mary Lou Zierer, about the noise. Ms. Zierer lives at 707 Old Birch Road, Harvard and has been a member of the McHenry County Board for 14 years. Ms. Zierer described the dirt bike noises she heard during the phone call with Mrs. Kamholz as quite loud. Tr. at 100. Ms. Zierer recommended that Mrs.

Kamholz contact the sheriff about the noise and that she also come to a planning and development committee meeting to talk over her problem with them. *Id.* Mrs. Kamholz called the sheriff that day. The noise stopped for a short while, but resumed in the early evening. Comp. at 3. Ms. Zierer also wrote a letter addressed to the Board on behalf of Mrs. Kamholz (Comp. Exh. 8), even though Ms. Zierer did not actually witness the dirt bike riding on the neighbor's property at any time. Tr. at 101, 105.

Ms. Ann Gilman, a county board member for McHenry County for more than 12 years, also received a phone call from Mrs. Kamholz on Mother's Day, 2001, and first recognized the noise over the phone as being a "very, very loud buzzing motorcycle machinery noise." Ms. Gilman went over to witness the Sporleders riding on their property and then advised Mrs. Kamholz to attend a county board meeting to inform the county board of the noise problem. Tr. at 35. Ms. Gilman lives about a mile and a half away from the Kamholzes and can hear the Sporleders riding from her own house. Tr. at 29, 32.

Mr. Ray Feffer, a friend of the Kamholzes, stated that when he visited their house one day in June 2001, he heard dirt bike noises coming from the Sporleders' property that made it impossible for him to converse outside with the Kamholzes.

The complainants contacted Ms. Lillian Carucio, a real estate agent, to help them look for a new home in April 2002. Tr. at 53. Ms. Carucio testified that in her opinion a buyer would think twice about purchasing property where dirt bikes were racing up and down on adjacent property.

Mr. Gregory Wright is a carpenter and did carpentry work at the Kamholzes home on Saturday, August 10, 2001. Tr. at 136. On that date, Mr. Wright saw the respondents riding two motorcycles on their property. Mr. Wright said the motorcycles were very noisy and when they went by, it was difficult for Mr. Wright to hear Mr. Kamholz speaking. Tr. at 137.

Natalie and Stephen Secor have both witnessed dirt bike riding on the Kamholzes' property on holidays and during the summer months. Tr. at 145, 158. Both say the noise created by the dirt bikes is very loud and it interferes with them sitting and visiting with the Kamholzes. Tr. at 148, 157. Stephen has seen dust come from the bikes. Tr. at 155. Natalie has seen dust and smelled exhaust while the riding takes place. Tr. at 159.

Michael Dworzynski has seen multiple dirt bikes riding at the same time and describes the noise as very loud. On Mother's Day 2001, Michael saw several dirt bikes on the complainants' property that were loud and smelled exhaust fumes. Tr. at 175.

Mr. Kamholz stated the noise from the dirt bike riding caused him stress and interfered with him taking a nap or watching television. Mr. Kamholz stated his children used to ride a mini-bike in front of their house. Tr. 200.

The Kamholzes hired Mr. Greg Zak, by that time a private noise consultant, to help them assess their noise complaints. Pursuant to Mr. Zak's advice, the Kamholzes purchased a Radio Shack digital sound level meter, model # 33-2055. Exh. 15. Mr. Zak instructed Mrs. Kamholz in the proper use of the meter to obtain sound level measurements that would be admissible

under Section 900.102 of the Board regulations. Tr. at 208. Mrs. Kamholz took noise measurements on 10 different days from July 24, 2001 through September 28, 2001. Exh. 15. Mrs. Kamholz recorded her distance away from the noise sources, the time the measurements were taken, and the range at which she took the measurements. *Id.* Mr. Zak personally checked the calibration of the Kamholzes' sound level meter when he did an inspection of the Kamholz property on September 3, 2002, and determined the meter was calibrated correctly. Tr. at 210.

In his analysis of the decibel readings and video taken by Mrs. Kamholz, Mr. Zak determined there is a significant variation of sound levels. Mrs. Kamholzes' decibel readings span from the 60s up to the mid 90s dBA (A-weighted sound level measurement) (Exh. 15) in a residential area where the limit is approximately 55 dBA, and where Mr. Zak measured the ambient noise level as approximately 45 dBA. Tr. at 210, 222. In this regard, Mr. Zak testified that the measurement range of sound levels represent a sound power increase of up to 1,000 times greater than the levels allowed for an industrial noise source. *Id.* Mr. Zak noted this is one of the most significant sound impacts he has seen in many years. Tr. at 223. Even a possible five to six decibel rate of error in the readings is inconsequential when compared to the sound levels in this proceeding. Tr. at 226.

Mr. Zak said that in his opinion a noise barrier would not be an appropriate solution to the Kamholzes' noise problem. At most, a noise barrier would reduce the noise only about 15 dBA, where a reduction of approximately 40 dBA is necessary. The best solution, according to Mr. Zak, is that the Sporleders load the vehicles on a trailer and take them to an area suitable for riding, as they have done in the past year. Tr. at 235.

Mariane Sporleder stated she and her husband have lived next door to the Kamholzes since 1973. Natalie Kamholz rode the first mini-bike in the area on the Kamholzes' property in 1976. Tr. at 249. Mrs. Sporleder said the time her grandsons spent with their motorcycle, dirt bike, and truck engines has taught them how to fix motors and learn other mechanical skills. Tr. at 253. Mrs. Sporleder added she never let her grandsons ride after 8 p.m. or before 11 a.m. Tr. at 255. Mrs. Sporleder had her grandsons avoid the corner nearest to the Kamholzes property when they rode their bikes after the complaint was filed in this proceeding. Tr. at 279. Additionally, the Sporleders built a six-foot tall privacy fence (Tr. at 302) and planted evergreens to attempt to block the noise. Tr. at 260.

Mr. Lawrence Sporleder stated that the property to the rear of the Sporleders' property was zoned as Estate 3 under the McHenry County zoning ordinance within the last year. Prior to that time, it was zoned as farmland. Tr. at 288. Mr. Sporleder allows his grandsons to ride from 10 a.m. to 8 p.m. Mr. Sporleder claimed notice of this action was the first time he and his wife were aware of a noise problem. Tr. at 289. Furthermore, Mr. Sporleder said his grandsons would have stopped riding had the Kamholzes contacted the Sporleders earlier. Tr. at 269.

Motorized Vehicles

The following motorized vehicles were used by the respondents during all or part of the ten years prior to May 28, 2002 (Resp. to Mot. to Compel):

1. 1996 Kawasaki – KX250 – 2 cycle

2. 1993 Polaris – 350 Trail Boss – 2 cycle
3. 1993 Suzuki – RM 250 – 2 cycle
4. Two 4 cycle go-karts

All of the vehicles were equipped with a factory installed muffler and spark arrester.

APPLICABLE LAW

Section 9(a) of the Environmental Protection Act provides that:

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act.

“Air Pollution” is defined by the Act “as the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.” 415 ILCS 5/3.02 (2002).

Section 24 of the Act prohibits a person from emitting noise beyond her property that “unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act.” 415 ILCS 5/24 (2002).

Section 33(c) of the Act provides that:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

- i. The character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- ii. The social and economic value of the pollution source;
- iii. The suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
- iv. The technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- v. Any subsequent compliance. 415 ILCS 5/33(c) (2002).

Section 900.101 Definitions

Noise pollution: the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity. 35 Ill. Adm. Code 900.101.

Section 900.102 Prohibition of Noise Pollution

No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the Illinois Environmental Protection Act, so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter. 35 Ill. Adm. Code 900.102

DISCUSSION

In the discussion below, the Board analyzes the alleged air pollution violations, the validity and usefulness of the noise measurements taken by the Kamholzes, the alleged nuisance noise violations, and whether the noise emitted by the Sporleders rises to the level of an unreasonable interference with the Kamholzes' enjoyment of life and their property. In all of these matters, the burden of proof lies with the complainant..

Air Pollution

The Kamholzes allege that the fumes and exhaust produced when the Sporleders ride vehicles off-road on their property cause the Kamholzes headaches, sore throats and emotional problems. Comp. at 3. The Board finds that there was an emission of fumes and exhaust and that the Sporleders caused the dust. The video showed the Sporleders riding dirt bikes, a truck, and cars and emissions of exhaust as a result of such riding. *See* Comp. Group Exh. 9. Furthermore, several witnesses testified they smelled exhaust and fumes coming from the Sporleders' property between the years of 1997 and 2001. The Sporleders did not dispute that their vehicles were the source of fumes and exhaust.

The Kamholzes have not met their burden of proof to show that the exhaust and fumes injured their health or interfered with the enjoyment of life or property. The Board does not consider any lay witness testimony regarding the effects the exhaust and fumes had on their health. The complainants did not present any medical experts to show a link between the exhaust and fumes and the complainants' alleged health problems. The Board finds there is no injury to the Kamholzes' health from the exhaust and fumes.

The Kamholzes did present evidence in attempt to show the exhaust and fumes caused an interference with their enjoyment of life and property. For example, the Kamholzes closed windows and stopped entertaining outdoors because of the dust and fumes. The Sporleders rode dirt bikes and an ATV as close as 70 feet from the Kamholzes' home. However, evidence introduced by the Kamholzes indicated that the Kamholzes smelled exhaust fumes, but not that the fumes, rather than the noise, caused them to close their windows or prevent them from using any part of their property. The Board finds the Kamholzes did not meet their burden of proof to show the exhaust and fumes interfered with the enjoyment of life or property.

Sound Measurements and Numeric Noise

Standards

The Kamholzes agreed at hearing that the Sporleders did not violate the Board's numeric noise standards. Tr. at 16. However, in the closing brief, the Kamholzes reallege a violation of the Board's daytime numeric noise standards found at Section 901.102(a). 35 Ill. Adm. Code 901.102(a). The Board discusses this allegation below.

In order to prove a violation of Section 901 of the Board rules, all measurements and measurement procedures must comply with the standards and practices established by the American National Standards Institute, Inc. (ANSI) and be based on Leq averaging, using a reference time of one hour. 35 Ill. Adm. Code 900.103(b). Mrs. Kamholz did not conduct measurements in compliance with these regulations. Her measurements were not taken based on Leq averaging using a reference time of one hour and she did not use an ANSI Type I meter to take the measurements. Therefore, the Board finds no violation of the Board's numeric noise standards.

The Board does find, however, that the A-weighted sound levels obtained by Mrs. Kamholz are reasonably accurate. Mrs. Kamholz measured the noise by using a Radio Shack digital sound meter. Mr. Zak instructed her how to properly use the meter. As Mr. Zak testified, even if the measurement error were in the range of five to six decibels, the error would be inconsequential when compared to the magnitude of the actual measured sound levels.

A-weighting sound levels is a means to compensate for the way the sound is perceived by the human ear. A sound with a given decibel level at a higher frequency seems louder to the human ear than a sound with the same decibel level at a lower frequency. *See Noise Pollution Control Regulations*, R72-2 slip op. at 10-11 (July 31, 1973). For a given sound measurement, the sound levels at various frequencies are weighted by either subtracting or adding weighting factors using a scale and then the weighted values at each frequency are combined to obtain a single A-weighted decibel level for the sound. *Id.* at 11.

The Board has not developed numeric noise sound limits based on A-weighted sound levels for Section 901.102 because the characteristics of noise sources vary so much that the correlation between A-weighted sound levels and subjective reaction does not always hold true. *Id.* at 26. However, the Board has acknowledged that A-weighted sound levels "may be helpful in assessing, on a preliminary basis, a potential noise problem." *Id.* In light of this, the Board finds that the A-weighted sound levels are relevant in this case.

The noise measurements were introduced as evidence in this proceeding, but the Board will only consider the measurements with respect to a finding of unreasonable interference with the enjoyment of life. *Zivoli v. Somebody's Bar and Restaurant*, PCB 90-200 (May 21, 1992).

Nuisance Noise Violation

The Kamholzes allege that the Sporleders violated Section 24 of the Act and Section 900.102 of the Board's noise regulations. 35 Ill. Adm. Code 900.102; 415 ILCS 5/24; Comp. Br. at 3. Together these provisions prohibit the emission of nuisance noise beyond the boundaries of one's property. *Charter Hall Homeowner's Ass'n and Jeff Cohen v. Overland Transp. Sys., Inc.*,

and D.P. Cartage, Inc., PCB 98-81, slip op. at 19 (Oct. 1, 1998); *citing* Zivoli v. Prospect Dive and Sport Shop, Ltd., PCB 89-205, slip op. at 8 (Mar. 14, 1991). In determining whether noise emissions rise to the level of a nuisance, the Board performs a two-step analysis. Young v. Gilster-Mary Lee Corp., PCB 00-90, slip op. at 8-9 (Sept. 6, 2001). First, the Board must determine whether the noise interferes with the complainants' enjoyment of life and property. *Id.* Second, the Board must consider the factors provided in Section 33(c) of the Act to determine whether the interference is unreasonable. *Id.*; *citing* Charter Hall, PCB 99-81, slip op. at 19-21. As discussed below, the Board finds that the noise created by the Sporleders by allowing their grandsons to ride dirt bikes, ATVs, and trucks on their property unreasonably interfered with the complainants' enjoyment of life.

Interference With Enjoyment of Life

The Board has previously held in nuisance noise proceedings that unreasonable interference is more than the complainants' ability to distinguish sounds attributable to a particular source. Rather, the noise must objectively affect the complainant's life or business activities. *See* Hoffman v. City of Columbia, PCB 94-146, slip op. at 15-16; Zivoli, PCB 89-205, slip op. at 9.

The riding interfered with the Kamholzes enjoyment of life in many ways. The Kamholzes had difficulty talking on the phone, taking a nap, and eating a meal due to the noise. The Kamholzes could not entertain outside or even hold a conversation while the Sporleders were riding. The loud noises lasted for four to eight hours a day sometimes six or seven days a week. Tr. at 305. The Board finds the noise created by the Sporleders amounts to an interference with the lives of the Kamholzes.

Unreasonableness of Interference

The second step in the nuisance noise analysis is to determine whether the noise from the Sporleders unreasonably interfered with the complainant's enjoyment of life. The Board considers each factor set forth in Section 33(c) of the Act, but need not find against the respondent on each factor to find that the noise was unreasonable. *See* Wells Manufacturing Co. v. PCB, 73 Ill. 2d 266, 233, 383 N.E.2d 148, 151 (1978); Processing and Books, Inc. v. PCB, 64 Ill. 2d 68, 75-77, 351 N.E.2d 865, 869 (1976). For the reasons set forth below, the Board finds that the Sporleders' noise was an unreasonable interference.

The Character and Degree of Injury. Under this factor, the Board assesses whether the noise "substantially and frequently interferes" with the complainants' enjoyment of life and property, "beyond minor or trifling annoyance or discomfort." Kvatsak v. St. Michael's Lutheran Church, PCB 89-182, slip op. at 9 (Aug. 30, 1990).

When the grandsons are in school or working, the noise occurs at nights and on weekends. When the grandsons were not in school and both living at the Sporleders' home during 2001, the noise occurred periodically throughout the day, as many as five days a week. Tr. at 85. There are no allegations of riding during the summer of 2002, nor are there any allegations the noise occurred before 10 a.m. or after 8 p.m. When the riding occurred, it

interfered with the Kamholzes everyday activities in and around the house. They could no longer watch television or take naps. They could no longer entertain outside. The noises could even be heard over the phone and up to a mile and a half away from the Sporleders' property.

Both the Kamholzes and the Sporleders' properties are Class A land pursuant to the Section 901 regulations. 35 Ill. Adm. Code 901.101. As noted by Mr. Zak, the Board's daytime allowable octave band sound pressure levels for receiving Class A land from Class A land equals 55 dBA when A-weighted. *See also* 35 Ill. Adm. Code 901.102. This number represents an acceptable noise level in an outdoor environment for the protection of public health and welfare with an adequate margin of safety. The measured background sound level at the Kamholzes' property was 45 dBA. In comparison, sound measurements taken by the Kamholzes measured as high as 94 dBA and consistently fell in the range of 60 dBA to 90 dBA. The measured sound levels exceeded the A-weighted Board's numeric limits by 5 dBA to 35 dBA. Mr. Zak also noted that a 30-decibel increase in sound level represents a 1000 time increase in sound power. Further Mr. Zak stated that the measured sound levels would have a significant adverse impact on complainants' life. The Board weighs this factor against the respondents.

The Social and Economic Value of the Pollution Source. The Sporleders contend that by riding dirt bikes and ATVs, their grandsons have learned how to fix engines and other motor vehicle parts. The Sporleders also claim that the dirt bikes keep their grandsons occupied and out of trouble. The Board does not find this argument persuasive since Kelly and Donald could learn how motor vehicles work and how to fix engines on their property without causing loud noise emissions. Alternatively, they could ride their dirt bikes for entertainment at a more appropriate location. The Board finds that although the riding may have some social value for the Sporleder family, it does not socially or economically benefit the rest of the community. The Board weighs this factor against the respondents.

The Suitability or Priority of Location. The Kamholzes moved into the area approximately one year before the Sporleders. Since then, the families have been neighbors for 30 years. Thus, while the Kamholzes have priority of location by one year, the families came to the area within a short period of time of one another.

The Board finds that the Sporleders' activities are not suitable to their location. It is not uncommon for residents in the area to have ATVs, tractors, or other kinds of large motorized vehicles. The Kamholzes and the Sporleders live in an area where farmers harvest with combines and other large farm equipment. However, there is a difference between using equipment to do farm work and racing dirt bikes for recreation. Additionally, within the past several years, the zoning classification of adjacent property has changed from farm to estate property. The Board finds that the Sporleders' activities are not suitable to their current location. The Board weighs this factor against the Sporleders.

The Technical Practicability and Economic Reasonableness of Reducing or Eliminating the Emissions. Under this factor, the Board looks at whether the Sporleders can employ readily available, practical, and reasonable means to reduce or eliminate the allegedly offensive noise. Incinerator, Inc. v. PCB, 59 Ill. 2d 290, 298-299, 319 N.E.2d 794, 798 (1974);

Scarpino v. Henry Pratt Co., PCB 96-110, slip op. at 20 (Apr. 3, 1997). The noises complained about by the Kamholzes come from the Sporleders' grandsons riding dirt bikes and other vehicles around their property in the evenings and on weekends when they are home from work and/or school.

The complainants ask the Board to order the Sporleders to cease and desist from causing any further noise pollution. In Mr. Zak's professional opinion a noise wall is not a technically practicable nor economically reasonable solution. However, the Sporleders may abate the noise by hauling their recreational vehicles to an appropriate riding place, thereby solving the noise problem entirely. The Kamholzes claim the problem first began in 1995 when the Sporleders' oldest grandson was 14 years old. The Kamholzes claim they made the Sporleders aware of the problem in 1996, but that the Sporleders did not do anything about the noise until November, 2001. The Board weighs this factor against the Sporleders.

Any Subsequent Compliance. Under this factor, the Board considers whether the Sporleders have attempted to remedy the situation by reducing noise emissions that caused the alleged violations of the Act and Board regulations. The Sporleders have planted evergreens and a privacy fence to reduce the migration of dust and noise. The Sporleders have also modified the path their grandchildren ride with their dirt bikes, avoiding the corner of their property closest to the Kamholzes. Finally, the Sporleders haven't ridden at all since the Kamholzes filed this action in November 2001 but rather haul the vehicles to an appropriate riding location.

The Board finds that the Sporleders made a significant effort to remedy the riding noises after this action was filed. The Board notes, however, that the Sporleders do not necessarily intend to cease riding motor bikes on their property. The Sporleders' closing brief states: "however, Sporleder does have right to enjoy his property, and the riding may resume." Cl. Br. at 11. The Board nonetheless views this 33(c) favorably for the Sporleders.

Weighing all of the 33(c) factors, the Board finds concludes that the noise from the Sporleders unreasonably interfered with the complainants' enjoyment of life and property. The Board will now consider the complainants' requested remedy.

REMEDY

The Kamholzes request the Board to enter a cease and desist order but do not seek a civil penalty or the imposition of any noise control measures. Having considered the 33(c) factors, the Board orders the Sporleders to cease and desist from any further violations of the nuisance noise prohibitions of 415 ILCS 5/24 (2002) and 35 Ill. Adm. Code 900.102 and 901.102, and imposes no civil penalty. Pursuant to the Act and Board regulations, this cease and desist order provides that the Sporleders may operate motorized vehicles on their property so long as the noise emitted does not surpass daytime or nighttime numerical noise limits found at 35 Ill. Adm. Code 901.102. Furthermore, the noise emitted must not amount to a nuisance noise violation as defined by Section 24 of the Act. 415 ILCS 5/24 (2002). Should the Sporleders choose to operate their vehicles in a way that emits noise above permissible levels, the Sporleders must take their vehicles to a location appropriate for such activities.

CONCLUSION

Based on the record before the Board consisting of evidence presented at hearing and arguments set forth in their closing brief, the Board finds that the Kamholzes proved that the Sporleders committed nuisance noise violations. Therefore, the Board finds that Sporleders violated Section 24 of the Act and Section 900.102 of the Board regulations by causing an unreasonable interference with the complainants' enjoyment of life and their property. The Board orders the Sporleders to cease and desist from further noise violations of the Act and Board regulations. The Kamholzes did not meet their burden of proof to show the Sporleders caused air pollution or violated the Board's numerical noise standards.

This opinion and order constitutes the Board's findings of facts and conclusions of law.

ORDER

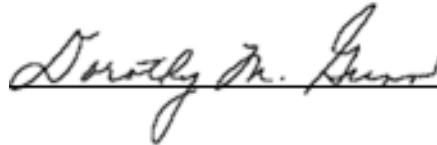
1. The Board finds that the Sporleders violated Section 24 of Act (415 ILCS 5/24) and 35 Ill. Adm. Code 900.102.
2. The Sporleders must cease and desist from further noise violations of the Environmental Protection Act.

IT IS SO ORDERED.

Board Member M.E. Tristano dissented.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2002); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 20, 2003, by a vote of 6-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board