

ILLINOIS POLLUTION CONTROL BOARD
July 10, 2003

MARK and CYNTHIA HEYWOOD,)
)
Complainants,)
)
v.) PCB 03-211
) (Citizens Enforcement – Noise)
DAN and DARLEEN SHEEHAN,)
)
Respondents.)

ORDER OF THE BOARD (by M.E. Tristano):

On May 2, 2003, Mark and Cynthia Heywood (complainants) filed a noise pollution complaint against Dan and Darleen Sheehan (respondents). See 415 ILCS 5/31(d) (2002); 35 Ill. Adm. Code 103.204. Complainants allege that respondents violated sections 900.102, 900.102(a), and 900.102(b) of the Board's noise regulations. 35 Ill. Adm. Code 900.102, 900.102(a), and 900.102(b). Complainants allege that respondents violated these provisions by the operation of the air conditioning unit and the pool filter.

Section 103.221(a) of the Board's procedural rules directs the Board to determine whether a citizen's complaint is duplicative or frivolous. 35 Ill. Adm. Code 103.212(a). On June 9, 2003, the Sheehans filed a response.

BACKGROUND

Complainants state that they live at 10217 South Bell, in Chicago, Cook County, which is next door to the respondents. Comp. at 1. Complainants allege that the operation of the air conditioner between the homes and the pool filter causes noise pollution. Comp. at 2.

The complainants report that the noise generated by the air conditioner and the pool filter begins in May and continues during the day and night through October. The air conditioner and pool filter never ceases to operate during these months. Comp. at 2.

The complainants allege that the noise generated from the air conditioner and pool filter have resulted in an unreasonable interference with the use and enjoyment of the property. Complainants state that the noise interferes with their sleep at night, endangers the physical and emotional health and well-being of the complainants, and depresses the value of their property. Comp. at 3.

Complainants request that the Board enter an order directing the respondents to cease and desist from further violations of the applicable statutes and regulations and, more specifically, to relocate the source of the noise pollution to a more suitable location. Comp. at 3.

DUPLICITIVE AND FRIVOLOUS DETERMINATION

Section 103.212(a) of the Board's procedural rules implements Section 31(d) of the Act, providing that the Board shall schedule a hearing upon receipt of a citizen's complaint, unless it determines that the complaint is duplicative or frivolous. 35 Ill. Adm. Code 103.212(a).

Duplicative

A matter is duplicative if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 103.202. The Board has not identified any other cases, identical or substantively similar to this, pending in this or any other forum.

Frivolous

An action before the Board is frivolous if it requests relief that the Board does not have the authority to grant or if the complaint fails to state a cause of action upon which the Board can grant relief. 35 Ill. Adm. Code 101.202. In this case, complainants allege facts which, if proven at hearing, could result in a finding of noise pollution. The Board has the authority to grant relief from the alleged noise pollution if the facts are proved at hearing.

CONCLUSION

The Board finds that the alleged violations of the Board's regulations is neither duplicative nor frivolous, and accepts it for hearing. The Board directs that this matter proceed to hearing as expeditiously as practicable. Among the hearing officer's responsibilities is the "duty . . . to ensure development of a clear, complete, and concise record for timely transmission to the Board." 35 Ill. Adm. Code 101.610. A complete record in an enforcement case thoroughly addresses, among other things, the appropriate remedy, if any, for the alleged violations, including any civil penalty.

If a complainant proves an alleged violation, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Environmental Protection Act (Act) to fashion an appropriate remedy for the violation. *See* 415 ILCS 5/33(c), 42(h) (2000). Specifically, the Board considers the Section 33(c) factors in determining, first, what to order the respondents to do to correct an on-going violation, if any, and, second, whether to order the respondents to pay a civil penalty. The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation, such as the character and degree of any resulting interference with protecting public health, the technical practicability and economic reasonableness of compliance, and whether the respondents have subsequently eliminated the violation.

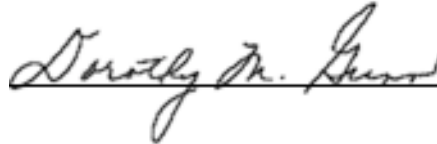
If, after considering the Section 33(c) factors, the Board decides to impose a civil penalty on the respondents, only then does the Board consider the Act's Section 42(h) factors in determining the appropriate amount of the civil penalty. Section 42(h) sets forth factors that may mitigate or aggravate the civil penalty amount, such as the duration and gravity of the violation,

whether the respondents showed due diligence in attempting to comply, any economic benefit that the respondents accrued from delaying compliance, and the need to deter further violations by the respondents and others similarly situated.

Accordingly, the Board further directs the hearing officer to advise the parties that in summary judgment motions and responses, at hearing, and in briefs, each party should consider: (1) proposing a remedy for a violation, if any, including whether to impose a civil penalty, and supporting its position with facts and arguments that address any or all of the Section 33(c) factors; and (2) proposing a civil penalty, if any, including a specific dollar amount, and supporting its position with facts and arguments that address any or all of the Section 42(h) factors.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 10, 2003, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board