

ILLINOIS POLLUTION CONTROL BOARD
September 4, 2003

DAVID and JACQUELYN MCDONOUGH,)
)
Complainants,)
)
v.) PCB 00-163
) (Citizens Enforcement - Noise)
GARY ROBKE,)
)
Respondent.)

ORDER OF THE BOARD (by T.E. Johnson):

This case is before the Board on a motion to modify the Board's February 6, 2003 order filed by Gary Robke (Robke) on July 28, 2003. To date, no response to the motion has been filed. For the reasons set forth below, the Board grants Robke's motion.

BACKGROUND

On March 27, 2000, David and Jacquelyn McDonough (complainants) filed a complaint against Robke. In that complaint, the complainants allege that Robke violated noise nuisance provisions under Section 24 of the Environmental Protection Act (Act) (415 ILCS 5/24 (2002)) and Section 900.102(a) of the Board regulations. 35 Ill. Adm. Code 900.102(a). The complainants asserted that the violations were caused by Robke's operating a 24-hour self-service car wash in Mascoutah, Illinois. The complainants stated that noise generated by the car wash equipment, patrons, and their vehicles unreasonably interferes with complainants' enjoyment of life and property.

On March 7, 2002, the Board issued an order finding Robke in violation of Section 24 of the Environmental Protection Act, (415 ILCS 5/24 (2002)) and directing him to prepare and file a report detailing what steps could be taken to alleviate the noise emissions. On September 18, 2002, Robke filed his noise report. The complainants filed a response to the noise report on November 18, 2002.

On February 6, 2003, the Board issued an order finding that remedial action, including the construction of a noise wall, the wrapping of the vacuums with noise attenuation material and the silencing of all beeping alarms at the car wash was warranted. In regards to the noise wall, the Board ordered Robke to construct an airtight barrier of uniform elevation that ran contiguously on the southern and western property line of the car wash. The barrier was required to be 12 feet high, consisting of a 6-foot high berm topped with an airtight 6-foot high fence constructed of a solid material with a minimum density of 1 lb per square foot. Robke was given 180 days to construct the wall. See McDonough v. Robke, PCB 00-163 (Feb. 6, 2003).

MOTION

In his motion, Robke asserts that the City of Mascoutah (City) advised him that it would not allow a berm and fence to be constructed in the area as directed by the Board. Mot. at 1. Robke contends that the City is concerned about a power line that runs directly underneath the berm on which Robke planned to construct the noise wall, and that the design prepared in accordance with the Board's order actually places a berm on top of one of the electrical pedestals owned by the City. Mot. at 1-2.

Robke asserts that the Board anticipated that problems with the City might arise and therefore advised Robke in the February 6, 2003 order that he could attempt to modify the order if necessary. Mot. at 2. Robke contends that he is unable to comply with the Board's order requiring a noise wall to be built within 180 days of the February 6, 2003 order, and is further unable to build a noise wall in the location directed by the Board. *Id.*

Robke asserts that the City is willing to discuss possible resolutions and that he will meet with the City and the complainants to discuss the issue. Mot. at 2. Robke requests that the portions of the February 6, 2003 order requiring the construction of a noise wall and berm be stayed pending further discussion with the City. Mot. at 2-3.

DISCUSSION

In ruling on a motion for modification, the Board will consider factors including new evidence, or a change in the law, to conclude that the Board's decision was in error. 35 Ill. Adm. Code 101.520, 101.902. In Citizens Against Regional Landfill v. County of Board of Whiteside, PCB 93-156 (Mar. 11, 1993), the Board observed that "the intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law." Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992).

The complainants have not filed a response to this motion. If a party files no response to a motion within 14 days the party will be deemed to have waived objection to the granting of the motion. *See* 35 Ill. Adm. Code 101.500(d).

On February 6, 2003, the Board recognized that the record was unclear as to whether a variance from City of Mascoutah will be necessary, or obtainable, prior to the construction of a noise wall. McDonough v. Robke, PCB 00-163 (Feb. 6, 2003), slip op. at 5-6. Accordingly, in ordering Robke to construct a noise wall the Board addressed the possibility that Robke would encounter difficulties with the City, and stated that he could attempt to modify this Board order as required.

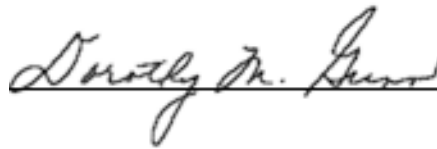
The Board grants Robke's motion, and stays paragraph 3 of the February 6, 2003 order (requiring the construction of a noise wall and berm) until March 1, 2004.

CONCLUSION

As discussed above, the paragraph 3 of the Board's February 6, 2003 order is stayed until March 1, 2004. . The parties are directed to participate in status conferences with the hearing officer every 30 days during the pendency of the stay. In considering any motion Robke may file for an extension of the stay beyond March 1, 2004, the Board will look to see whether he has made good faith efforts toward expeditious abatement of this noise nuisance.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 4, 2003, by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board