

ILLINOIS POLLUTION CONTROL BOARD
January 8, 1998

SCOTT and SHELLY BEHRMANN,)
)
Complainants,)
)
v.) PCB 98-84
) (Enforcement - Noise - Citizens)
OKAWVILLE FARMERS ELEVATOR - ST.)
LIBORY,)
)
Respondent.)

ORDER OF THE BOARD (by J. Yi):

This matter comes before the Board on the December 11, 1997, filing of a citizen's enforcement complaint by Scott and Shelly Behrmann (Behrmanns). On December 19, 1997, the Okawville Farmers Elevator -St. Libory (Okawville Farmers Elevator) filed a request for an extension of time. Behrmanns filed an objection to respondent's request on December 23, 1997.

The Board accepts this matter for hearing. Respondent's request for an extension of time is granted in part.

Background

Complainants allege that Okawville Farmers Elevator is causing noise pollution by operating aeration fans located on grain bins on the southwest side of the Okawville Farmers Elevator (elevator) in St. Libory, Illinois, in violation of Sections 23 and 24 of the Environmental Protection Act (Act). 415 ILCS 5/23 and 24 (1996). Complainants also allege that Okawville Farmers Elevator is causing or allowing the emission of sound beyond the boundaries of its property in violation of 35 Ill. Adm. Code 900.102 and 901.102(a) and (b) of the Board's regulations. Complainants state that the noise being generated from the site is resulting in an unreasonable interference with the use and enjoyment of their property. Complainants request that the Board order Okawville Farmers Elevator to cease and desist from further violations of the applicable statutes and regulations.

Duplicitous/Frivolous Determination

Section 103.124(a) of the Board's procedural rules, which implements Section 31(b) of the Act (415 ILCS 5/31(b) (1996)), provides that this matter shall be placed on the Board agenda for the Board's determination as to whether or not the complaint is duplicitous or frivolous. This section further states that if the complaint is duplicitous or frivolous, the Board shall enter an order setting forth its reasons for so ruling and shall notify the parties of its decision. If the Board rules that the complaint is not duplicitous or frivolous, this does not

preclude the filing of motions regarding the insufficiency of the pleadings. 35 Ill. Adm. Code 103.124(a).

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in another forum. Brandle v. Ropp (June 13, 1985), PCB 85-68. An action before the Board is frivolous if it requests relief which the Board could not grant. Lake County Forest Preserve District v. Neil Ostro, Janet Ostro, and Big Foot Enterprises (July 30, 1992), PCB 92-80. The Board finds that, pursuant to Section 103.124(a), the complaint is neither duplicitous nor frivolous and will be accepted for hearing.

Request for Extension of Time

In the request for extension of time, Okawville Farmers Elevator states additional time to fully investigate the claim is needed. Okawville Farmers Elevator requests through and including January 7, 1998, to respond to the complaint. Behrmann objects to the request, and claims that no reason for an extension exists. Behrmann asserts that respondents will have substantial time before the hearing in which to file any response, and that respondents were made aware of the noise pollution problem in October, 1997.

Okawville Farmers Elevator's request asks for additional time in order to 'respond' to the complaint, but does not clarify in what manner the term 'respond' is being used. Pursuant to Section 103.122(d), a respondent is given thirty days from the receipt of the complaint in which he may file an answer. Service of the complaint in the instant case was achieved on December 4, 1997. Thus, pursuant to Section 103.122(d), respondent may file an answer before January 5, 1998, and Okawville Farmers Elevator's request would result in only two additional days of time in which to answer the complaint.

Section 103.140(a), however, provides that all motions by respondent to dismiss or strike the complaint or challenging the jurisdiction of the Board shall be filed within 14 days after receipt of the complaint. A response pursuant to this section was required to be filed by December 18, 1997. Okawville Farmers Elevator's request for additional time to respond was sent for filing on December 19, 1997.

The Board grants the request for extension of time as follows: Respondent is given until January 7, 1998, to answer the complaint and set forth affirmative defenses. Any other type of response remains subject to the requirements of Section 103.140.

Conclusion

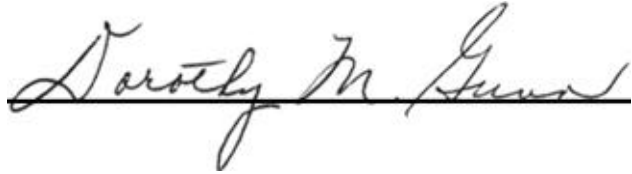
The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and Section 103.125 of the Board's rules (35 Ill. Adm. Code 103.125). The Clerk of the Board shall promptly issue appropriate directions to that assigned hearing officer.

The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 30 days in advance of hearing so that a 21 day public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses, and all actual exhibits to the Board within five days of the hearing.

Any briefing schedule shall provide for final filings as expeditiously as possible. If, after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if, after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

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 8th day of January 1998, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board