

ILLINOIS POLLUTION CONTROL BOARD
March 19, 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):

On December 11, 1997, the Board received a citizen's enforcement complaint filed by Scott and Shelly Behrmann (Behrmanns). On December 19, 1997, the Okawville Farmers Elevator - St. Libory (OFESL) filed a request for an extension of time. The Board issued an order accepting this matter for hearing, and granting, in part, OFESL's request for an extension of time on January 8, 1998. The Board allowed OFESL until January 7, 1998, to answer the complaint and set forth affirmative defenses, but held that any other type of response remains subject to the requirements of Section 103.140 of the Board's rules. 35 Ill. Adm. Code 103.140(a).

On January 5, 1998, OFESL sent an answer containing affirmative defenses and motion to dismiss to the Board for filing. On February 27, 1998, the Behrmanns filed a motion to proceed to hearing. OFESL filed a response to the motion to proceed to hearing on March 4, 1998. On March 5, 1998, the Behrmanns filed a response to affirmative defenses, a response to motion to dismiss, and a motion for leave to file.

The Board accepts OFESL's answer and motion to dismiss in this matter. The extension of time granted by the Board excludes any response other than the answer and any affirmative defenses set forth by respondent. However, OFESL filed the motion to dismiss on January 5, 1998; three days before the Board order concerning the request for an extension of time was issued. No objection to the filing of the motion to dismiss has been raised by the Behrmanns, and the Board finds that no prejudice will result in accepting the motion.

The Board accepts the Behrmanns' response to affirmative defenses and response to motion to dismiss. In the motion for leave to file, the Behrmanns state that they had no knowledge of OFESL's motions until March 2, 1998, and that they requested copies of the pleadings at that time. No objection to the filing of the responses has been raised by OFESL.

The motion to proceed to hearing requests that a date of final hearing be scheduled within two weeks of the March 27, 1998, status hearing. In its response, OFESL objects to the motion to proceed to hearing, and states that fairness dictates that the parties should be

allowed a reasonable time for discovery. Recently, the parties have agreed to a discovery schedule that calls for all discovery to be completed by June 15, 1998. A final pre-hearing conference is scheduled for May 22, 1998. See the March 12, 1998, hearing officer order. In light of this agreement, the motion to proceed to hearing is moot.

In the motion to dismiss, OFESL asserts that the Behrmanns request immediate relief in paragraph 9 of the complaint. OFESL maintains that because the Board cannot order OFESL to discontinue the use of the aeration fans as requested, that the complaint is frivolous. OFESL asks that the complaint be dismissed and that the request for relief prior to hearing be stricken.

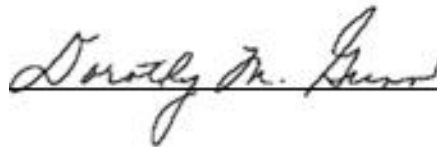
In their response, the Behrmanns state that although the Board cannot order OFESL to discontinue the use of the aeration fans permanently prior to hearing, it would be reasonable for the Board to enter an order at the present time mandating that OFESL cease operation of the aeration fans during the night.

After considering the arguments of both parties, the Board denies OFESL's motion to dismiss. The complaint requests that the Board order OFESL to permanently discontinue use of the aeration fans, relocate the noise pollution source to a more suitable location, or install the proper equipment on said grain bins so as to eliminate noise pollution. The Board considers this a request for a cease and desist order as is specifically requested in paragraph 9 of the complaint. The Board agrees that a grant of relief prior to the hearing would exceed the Board's authority in this matter. However, a review of the complaint does not reveal that the Behrmanns are requesting pre-hearing injunctive relief. Thus, the motion to dismiss is denied.

This matter will proceed to hearing in accordance with the March 12, 1998, hearing officer order. 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 19th day of March 1998, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board