

ILLINOIS POLLUTION CONTROL BOARD  
May 6, 2004

GINA PATTERMANN,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	PCB 99-187
BOUGHTON TRUCKING AND	)	(Citizens Enforcement - Noise, Air)
MATERIALS, INC.,	)	
	)	
Respondent.	)	

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

Complainant, Ms. Gina Patterman, alleges that the noise from respondent's rock crushers and trucking operations and the dust from respondent's rock crushers and dynamite operations violate noise and air pollution prohibitions of the Environmental Protection Act (Act) and the Board's rules.

On November 10, 2003, respondent, Boughton Trucking and Materials, Inc. (Boughton), filed a motion for summary judgment in its favor in this citizen's enforcement matter accompanied by a motion for leave to file a reduced number of copies of attachments to the motion for summary judgment. On December 23, 2003, Boughton filed a motion for Board action on the motion for summary judgment. Ms. Patterman filed a response on December 29, 2004, accompanied by a motion to file *instanter*. As discussed below, the Board grants Boughton's motion for summary judgment with respect to the alleged numerical noise violations, and denies the motion with respect to the alleged nuisance noise and air pollution violations. The Board directs the parties to hearing on the remaining contested issues.

**PROCEDURAL BACKGROUND**

On June 17, 1999, the complainants Gina Patterman, Lisa Collins, and Deen Collins filed a citizens' enforcement complaint against Boughton, located in Plainfield, Will County. On September 23, 1999, the Board dismissed some of the violations alleged in the complaint as frivolous and accepted the balance of the complaint for hearing.

On August 2, 2002, counsel for the complainants withdrew representation. On January 24, 2003, Boughton moved the Board to dismiss original complainants in the matter, Lisa Collins and Deen Collins. On February 20, 2003, the Board granted the motion, dismissed the complainants, and amended the caption to reflect Gina Patterman as the sole complainant.

Discovery was complete as of May 2, 2004. Discovery included depositions of Ms. Patterman and four of her witnesses: Mr. William Jene, Ms. Carlene Jenkins, Ms. Lisa Collins, and Mr. Donald Boudreau. Boughton included those depositions with the motion for summary judgment as Attachments 7, 8, 9, 10, and 11, respectively. Boughton also attached the affidavits

of three of its own witnesses: Mr. Wayne Szepelak, Mr. Dale Kessen, and Mr. Michael McCann. Mot. Att. 12, 13, and 14.

### **PRELIMINARY MATTERS**

On November 10, 2003, Boughton moved the Board for summary judgment, accompanied by a motion for leave to file a reduced number of copies of lengthy attachments to the motion. On December 23, 2003, Boughton moved the Board to take action on its motion for summary judgment, reasoning that Ms. Patterman was given extra time to respond and still had not. On December 29, 2003, Ms. Patterman responded to Boughton's motion and moved the Board to allow in response *instanter*. Boughton replied to Ms. Patterman's response on January 29, 2004.

The Board grants two of the three outstanding motions discussed above. The Board allows Boughton to file a reduced number of copies of lengthy attachments and accepts Ms. Patterman's late response.

#### **Motion to File Reduced Number of Lengthy Exhibits**

Boughton's motion for summary judgment includes 18 attachments, three of which are affidavits. Boughton asserts that two of the affidavits include lengthy exhibits. Exhibit C to the affidavit of Mr. Wayne Szepelak (Attachment 12) is a visible emissions compliance test report. Exhibit B to the affidavit of Mr. Michael McCann (Attachment 14) is a report entitled "Property Value Impact Study & Highest & Best Use Analysis." Due to the length of the exhibits, Boughton seeks leave to file only an original and three copies of the full reports and five copies of just the narrative reports without the data. Boughton contends that conclusions from the data are stated in the narrative reports, included in all copies of the motion for summary judgment. Specifically with regard to Exhibit B of the McCann affidavit, Boughton asserts that aerial photos and subdivision plats contained in the full reports are reproduced in Attachment 16 to the motion for summary judgment and included in all copies of the motion for summary judgment.

The Board grants Boughton's motion. Section 101.302 of the Board's procedural rules requires an original and nine copies of all documents filed with the Board in enforcement proceedings unless the Board or its procedural rules provide otherwise. 35 Ill. Adm. Code 101.302(h). The Board finds Boughton's filing sufficient and grants Boughton's motion for leave to file an original and three copies of Exhibit C to Attachment 12 and Exhibit B to Attachment 14, to the motion for summary judgment.

#### **Motion to File Response Late and Motion for Board Action**

As discussed above, on December 23, 2003, Boughton moved the Board to take action on its motion for summary judgment, reasoning that Ms. Patterman was given extra time to respond and still had not. On December 29, 2003, Ms. Patterman responded to Boughton's motion and moved the Board to allow its response *instanter*. Ms. Patterman explained that her counsel was hospitalized and, as a result, responding in a timely fashion was impossible. Boughton replied to Ms. Patterman's response on January 29, 2004. The Board accepts Ms. Patterman's late response and denies Boughton's motion for Board action.

## **FACTS**

### **The Facility**

Boughton began operations at its 111th Street quarry in 1985. Mot. Att. 12, pars. 14-17. Mr. Szepelak explained that because Will County is particularly rich in accessible natural limestone deposits, there are four limestone quarries within Wheatland Township alone. Mot. Att. 12, pars. 9, 14.

When Boughton began operations, Mr. Szepelak testified the surrounding area was zoned for agriculture and mining. Mot. Att. 12, par. 15. Mr. Szepelak stated that the River Run subdivision, where Ms. Patterman and her witnesses live or have lived, was built right up to the boundary of the Boughton's property between 1990 and 2001. Mot. Att. 12, par. 16. Mr. Szepelak notes that the DuPage River separates the subdivision and the quarry.

Boughton employs 33 people on a full-time basis and 2 people on a part-time basis. Mot. Att. 12, par. 10. Boughton also uses about 35 contract drivers. Mr. Szepelak stated that Boughton paid \$5,451,000 in payroll expenses in 2002, and on average, Boughton pays \$1 million in federal income taxes and \$200,000 in state income taxes. Mot. Att. 12, par. 11. In 2003, Boughton will pay \$514,476 in state and local sales taxes and over \$70,000 in property tax. *Id.*

### **Operations**

Mr. Dale Kessen is the superintendent of the Boughton 111th Street quarry. Regarding hours of operation, Mr. Kessen testified Boughton begins plant operations at 7 a.m. Mr. Kessen stated that Boughton rarely blasts before 10 a.m. or after 4 p.m. The quarry opens at 6am only for customer truck loading. Mot. Att. 13, pars. 13-18. Mr. Kessen notes that he has seen customers with fully loaded trucks leaving competing quarries in the area as early as 6 a.m., and that he has heard Vulcan's crushers operating as early as 6 a.m.

Mr. Kessen confirmed that Boughton ceases operations at 4 p.m. in the winter and 5 p.m. in the summer. Boughton operates from 7 a.m. and 12 p.m. on Saturdays and the quarry is closed on Sundays. Mot. Att. 13, pars. 13-18.

Mr. Kessen also explained that since 1999, Boughton has implemented several blasting methods that reduced noise and ground vibration. Mr. Kessen states that blast records show a reduction in air blast levels by over 6 decibels (dB), which equates to a reduction in audible noise by more than half.

Mr. Kessen described a berm that is located to the north and northwest that screens quarry and plant operations from most of the River Run subdivision. Mr. Kessen estimated that the berm is over 50 feet high and stands approximately 65-70 feet above the DuPage River.

### **Noise Measurements**

Ms. Patterman stated she took noise measurements from her house in November 2002, using a Radio Shack sound meter. Ms. Patterman testified she used no formal procedure. Mot. Att. 7, pp. 64, 75. Ms. Patterman stated she has a noise log (Mot. Att. 7, pp. 71-72), but did not provide it at her deposition, in any discovery requests, or attach it to her response.

Mr. William Jene stated in his deposition that he had taken noise measurements on his property with a sound meter he had purchased, but that he did not keep any records. Mot. Att. 8, pp. 29-30. The remaining three witnesses said they had not taken any measurements. Mot. Att. 10, pg. 32, Att. 9, pg. 26, and Att. 11, pg. 58-59.

To her response, Ms. Patterman attached survey notes performed by Boughton and dated March 29, 2000. Resp. Exh. A.

### **APPLICABLE STATUTORY LANGUAGE**

Section 9(a) of the Act prohibits the violation of any Board air standards or regulations. Section 201.141 of the Board's regulations similarly sets forth a prohibition against causing air pollution in violation of any Board regulation or air quality standard. 415 ILCS 5/9(a) (2002); 35 Ill. Adm. Code 201.141.

Section 9(b) of the Act prohibits the construction, installation, or operation of any equipment that causes or is designed to prevent air pollution without, or in violation of, an Agency-issued permit. 415 ILCS 5/9(b) (2002).

Section 24 of the Act provides that:

No person shall emit beyond the boundaries of his property any noise 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).

Similarly, the Board's noise nuisance prohibition is found at Section 900.102 and provides:

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 [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.

Sections 901.102(a) and (b) prohibit the emission of sound during daytime and nighttime hours from any property-line-noise source located on Class C land to any receiving Class A land in access of certain numeric limitations at each of nine difference frequencies. 35 Ill. Adm. Code 901.102(a), (b). Section 901.104 prohibits the emission of impulsive sound from any receiving Class C land that exceeds a specified numeric allowable A-weighted sound level when measured on any receiving Class A land. 35 Ill. Adm. Code 901.104.

In order to determine compliance with Sections 901.102 and 901.104, measurements of sound emissions must be taken in strict compliance with the procedures set forth in Section 900.103(b). 35 Ill. Adm. Code 900.103(b). Section 900.103(b) establishes that measurements must be based on Leq averaging using a reference time of at least 1 hour or, for steady sound, 10 minutes. All measurements of steady sound must be corrected for background noise and in accordance with the procedures in Part 910 of the regulations and must be in conformity with American National Standard Institute specifications. *Id.*

### **STANDARD OF DECISION**

Summary judgment is appropriate when the pleadings and depositions, together with any affidavits and other items in the record, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 693 N.E.2d 358 (1998); People v. City of Waukegan, PCB 01-104, slip op. at 2 (Aug. 23, 2001). In ruling on a motion for summary judgment, the Board “must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party.” Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370; Waukegan, PCB 01-104, slip op. at 2.

Summary judgment “is a drastic means of disposing of litigation,” and therefore it should be granted only when the movant’s right to the relief “is clear and free from doubt.” Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370, citing Purtill v. Hess, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986). Even so, while the nonmoving party does not have to prove its case, it must “present a factual basis which would arguably entitle [it] to a judgment.” Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994); Waukegan, PCB 01-104, slip op. at 2.

The Board's procedural rules provide that “if the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment.” 35 Ill. Adm. Code 101.516.

### **BOUGHTON’S MOTION FOR SUMMARY JUDGMENT**

Boughton argues that discovery in this proceeding is now closed, and the pleadings, discovery responses, depositions, and admissions on file and affidavits attached to this motion constitute all of the evidence that would be admissible at hearing. Boughton argues that Ms. Patterman cannot add to the evidence in the record at this point in the proceeding. Mot. at 3. Boughton continues that, based on this evidence, Ms. Patterman has failed to establish that Boughton has violated any Board regulation or provision of the Act, and the Board should find summary judgment in its favor. Mot. at 2.

In the complaint, Ms. Patterman alleges violations of Section 9 of the Act and Section 201.141 of the Board regulations regarding air pollution. Ms. Patterman alleges violations of daytime and nighttime numeric noise limitations, Sections 901.102(a) and (b) of the Board regulations, impulsive sound numeric limitations, Section 901.104 of the Board regulations, noise pollution, Section 900.102 of the Board regulations, and unreasonable noise at Section 24 of the Act. 415 ILCS 5/9 (2002); 35 Ill. Adm. Code 201.141, 901.102(a), (b), 901.104, 900.102;

415 ILCS 5/24 (2002). Boughton argues that Ms. Patterman has not produced evidence supporting any of these allegations.

### **Permit and Numeric Noise Violations**

Boughton contends that Ms. Patterman's claim under Section 9 of the Act is vague. Boughton contends Ms. Patterman has not alleged, and no witness has testified to, any permit violation under Section 9(b) of the Act. Nonetheless, Boughton maintains that should the Board find an alleged violation of Section 9(b), the Board should also find summary judgment in its favor.

Next, Boughton claims Ms. Patterman has presented absolutely no evidence of a regulatory violation of any numeric emission limitation under Section 901.102 or 901.104 of the Board's regulations.

Section 901.102(a) and (b) prohibit the emission of sound during daytime and nighttime hours, respectively, from any property-line-noise source located on Class C land to any receiving Class A land. Section 901.104 prohibits the emission of "impulsive sound" from any receiving Class C land when measured on any Class A land.

Boughton argues that the survey notes do not demonstrate a numeric violation. Boughton argues that, in fact, the notes themselves state the protocol used was to conduct a "rough compliance test" and not measured based on Leq averaging and a reference time of one hour as required by the Board's numerical noise regulations.

Regardless, Boughton contends the survey notes conclude that daytime limits were not being violated. The notes also conclude that nighttime limits could be violated were Boughton to operate during nighttime hours. However, Boughton maintains it does not operate during nighttime hours. To the extent that Ms. Patterman made sound measurements, she states that she followed no formal procedures in recording them. Accordingly, because Ms. Patterman has presented no sound measurements taken in accordance with Board numerical noise regulations, Boughton argues the Board should grant summary judgment in its favor under Sections 901.102(a), (b) and 901.104 of the Board regulations.

### **Nuisance Noise and Air Violations**

Boughton states that in a claim for nuisance noise and air pollution violations, the issue is whether noise and dust emissions have "unreasonably interfered" with the complainant's enjoyment of life. Mot. at 10-11. Boughton claims that Ms. Patterman has failed to present evidence that Boughton's noise and air emissions are unreasonable or that emissions from the facility have caused an unreasonable interference with her enjoyment of life. Boughton contends that determining whether emissions are unreasonable requires an examination of the Section 33(c) factors, and a review of the evidence shows that Ms. Patterman's allegations are not supported by evidence of unreasonable emissions. Boughton contends the evidence overwhelmingly favors Boughton even if viewed in a light most favorable to Ms. Patterman. Accordingly, Boughton concludes it is entitled to judgment in its favor on all allegations of nuisance noise and air pollution. Mot. at 12.

Boughton proceeds through an analysis of the 33(c) factors, ultimately concluding that while it does not dispute an interference of noise and dust, Ms. Patterman has not established that the interferences are unreasonable.

### **MS. PATTERMAN'S RESPONSE**

Ms. Patterman argues that the question under review is whether Ms. Patterman has presented *prima facie* evidence establishing the elements of her claim, and whether in response, Boughton has presented uncontradicted facts that would entitle Boughton to judgment as a matter of law. Resp. at 3; citing Estate of Stewart, 236 Ill. App. 3d at 7-8. Ms. Patterman continues that a Section 33(c) analysis is premature at the summary judgment stage and that she is not obligated to introduce evidence on each of the Section 33(c) factors. Resp. at 3; citing Loschen v. Grist Mill Confections, Inc., PCB 97-174 (Sept. 18, 1997). Ms. Patterman contends she intends to present facts and testimony regarding Boughton's noise and dust emissions at hearing.

Ms. Patterman's primary argument is that Boughton has not met its burden of producing uncontradicted facts on each of Ms. Patterman's alleged violations. Resp. at 4. Ms. Patterman contends that Boughton focuses only on whether the alleged noise and dust emissions are unreasonable. Ms. Patterman continues that the issue of unreasonableness is a question of fact that should be decided after hearing where she may present facts relating to the Section 33(c) factors. Resp. at 5; citing Loschen, PCB 97-174. Ms. Patterman argues that under the summary judgment standard, the Board must construe the evidence liberally in her favor. Resp. at 5.

Ms. Patterman argues that she has adequately alleged violations of the Act and Board regulations. Resp. at 6-7. Regarding her five witnesses, Ms. Patterman claims they have testified to the existence of noise and air emissions as well as the substantial interference the emissions have caused in their daily lives. Resp. at 6.

Ms. Patterman further states that Boughton is not entitled to summary judgment because material issues of fact remain concerning the severity and reasonableness of dust and noise emissions. Resp. at 7. Ms. Patterman addresses the relevant witness testimony with respect to both dust and noise in turn.

### **BOUGHTON'S REPLY**

In reply, Boughton reiterates that for the purposes of summary judgment, the only issue is whether the facts that Ms. Patterman has set forth through her own deposition testimony and that of her witnesses are sufficient to establish that Boughton caused both nuisance noise and air pollution. Reply at 4. Boughton states it does not dispute Ms. Patterman's or her witnesses' observations. Boughton specifically contests two of Ms. Patterman's arguments as legally incorrect: the burden of proof and ripeness of this matter for summary judgment. *Id.* In summary, Boughton argues that discovery is complete, this matter is ripe for summary judgment, and that in light of the evidence presented, the Board should grant judgment in its favor.

Boughton argues it is not premature to consider the Section 33(c) factors. Further, Boughton contends that Ms. Patterman's burden as the complainant is not merely to prove an interference by dust and noise, but to present evidence of an unreasonable interference; an essential element of her claims under both Section 9(a) and Section 24 of the Act.

Boughton states that discovery is complete as of May 2, 2003, and contrary to her contentions, Ms. Patterman cannot present additional evidence at hearing that was not available during discovery. Reply at 5, 6; citing Colls v. City of Chicago, 212 Ill. App. 3d 904, 954, 571 N.E.2d 951 (1st Dist. 1991). Boughton reasons that to allow complainants to not produce evidence during discovery on the essential elements of their claims would render the discovery process an exercise in futility. Reply at 6.

Regarding burden of proof, Boughton concedes Ms. Patterman is correct that she does not have the burden of proving all of the Section 33(c) factors. Reply at 8; citing Processing & Books v. PCB, 64 Ill. 2d 68, 75-77; 351 N.E.2d 865 (1985). However, Boughton emphasizes that Ms. Patterman does have the burden of proving all essential elements of the alleged air and noise pollution violations. Incinerator, 59, Ill. 2d at 300. As stated above, here, Boughton argues that unreasonableness is an essential element of both claims. Boughton again addresses each of Ms. Patterman's alleged claims and argues there is no genuine issue of material fact as to any of them. Reply at 9.

### **DISCUSSION**

The Board grants Boughton's motion for summary judgment on the alleged permit and regulatory claims, but denies Boughton's motion on the nuisance noise and air pollution allegations. The Board finds summary judgment is inappropriate here where there remain genuine issues of material fact and Boughton has not demonstrated it is entitled to summary judgment as a matter of law.

In the original complaint, Ms. Patterman alleged a violation of Section 9 of the Act without specifying a subsection. In the motion for summary judgment, Boughton argues that should the Board find that Ms. Patterman alleged violations of both Sections 9(a) and (b) of the Act, it is entitled to judgment under both sections. As discussed above, Section 9(a) prohibits causing or allowing air pollution in violation of any Board regulation or standard. 415 ILCS 5/9(a) (2002). Section 9(b) prohibits the construction, installation, or operation of any equipment that causes or is designed to prevent air pollution without, or in violation of, an Agency-issued permit. 415 ILCS 5/9(b) (2002).

In her response, Ms. Patterman alleges only a violation of Section 9(a) of the Act. Resp. at 8. The Board finds Ms. Patterman referenced no other subsection of Section 9 of the Act in the past 5 years of pleadings, throughout discovery, or in her response to Boughton's motion for summary judgment. The Board will not assume allegations where none have been plead. Therefore, summary judgment is not appropriate with respect to Section 9(b) of the Act because the Board finds that Ms. Patterman has not plead any such allegation.



The Board finds that Boughton has proven that no genuine issues of material fact exist with respect to the alleged numerical noise limits and that Boughton is entitled to judgment as a matter of law on those claims. As Boughton states, the Board finds no noise log prepared by Ms. Patterman in the record. Further, Ms. Patterman admits that when recording noise measurements, she followed no formal procedures, as required by Board regulations, to establish daytime and nighttime numeric noise violations or impulsive sound numeric violations. Accordingly, the Board finds Boughton is entitled to summary judgment on the alleged violations of Sections 901.102(a), (b) and 901.104 of the Board regulations.

In nuisance noise and air enforcement proceedings, the threshold issue is whether the sounds have caused an interference with the complainants' enjoyment of life or lawful business activity. Interference is more than the ability to distinguish sounds attributable to a particular source. The sounds must objectively affect the complainant's life or business activities. *See e.g., Village of Matteson v. World Music Theatre Jam Prod., LTD and Gierczyk Development, Inc.*, PCB 90-146 (Apr. 25, 1991); *Katsak v. St. Michael's Lutheran Church*, PCB 89-182 (Aug. 30, 1990); *Zivoli v. Dive Shop*, PCB 89-205 (Mar. 14, 1991). Further, the complainant bears the burden of persuasion on the essential elements of the alleged violations. 415 ILCS 5/31(e) (2002).

The Board finds that summary judgment on the nuisance noise and air pollution allegations at this time is not appropriate. It is undisputed, and the parties' motions and affidavits show, that there exist interferences from both noise and air pollutants. If the Board finds that a respondent's air contaminants or sound emissions have interfered with the enjoyment of life, the Board then considers the factors set forth in Section 33(c) of the Act (415 ILCS 5/33(c) (2002)) to decide whether the interference is unreasonable, so as to constitute an air pollution or nuisance noise violation. *Wells Mfg Co. v. PCB*, 73 Ill. 2d 226, 383 N.E.2d 148 (1978); *Mystic Tape, Div. of Borden, Inc. v. PCB*, 60 Ill. 2d 330, 328 N.E.2d 5 (1975); *Incinerator, Inc. v. PCB*, 59 Ill. 2d 290, 319 N.E.2d 794 (1974).

Boughton moved for summary judgment on the basis that even if Boughton caused noise and air emissions that interfered with Ms. Patterman's enjoyment of life, the record did not show that the interferences were unreasonable. In reviewing the pleadings and discovery, the Board finds that genuine issues of material fact exists regarding the extent and reasonableness of the interferences by noise and dust emissions.

Regarding dust, Ms. Patterman's witness, Ms. Lisa Collins testified in her deposition that the dust caused her to sell her house and move from the River Run property. Resp. at 9. Mr. Donald Boudreau testified that he keeps the windows of his house closed in the spring and summer in the front and back of the house because the dust is too great. Resp at 11. Ms. Carlene Jenkins stated that her family doesn't use the backyard because of the dust in her deposition. Resp. at 12. Finally, in her deposition, Ms. Patterman testified that dust accumulates on the furniture, kitchen and bathroom counters, and tables, and that she can rarely open her windows because of the dust.

The testimony regarding noise also reveals genuine issues of material fact. Ms. Jenkins testified in her deposition that the noise from blasts at Boughton woke her daughter. Resp. at 15.

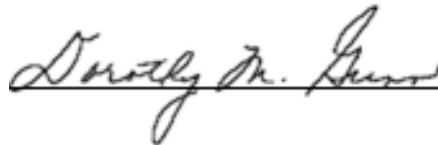
Mr. Boudreau testified that the noise has gotten apparently louder, and that the noise wakes his children. Resp. at 18, 19. Therefore, the extent of the noise and dust from the facility and the impact it has on the complainant continue to pose genuine issues of material fact. Accordingly, the Board denies summary judgment as to the allegations of nuisance noise and air pollution because genuine issues of material fact exist and Boughton has failed to demonstrate it is entitled to summary judgment as a matter of law.

### **CONCLUSION**

The Board accordingly grants Boughton's motion for summary judgment with respect to the alleged numerical noise violations, Sections 901.102(a), (b) and 901.104 of the Board's regulations. 35 Ill. Adm. Code 901.102(a), (b), 901.104. The Board denies respondent's motion for summary judgment with respect to the nuisance noise and air violations, Sections 9(a) and 24 of the Act and Sections 201.141 and 900.102 of the Board's regulations, and directs the parties to proceed to hearing on those issues and the issue of remedy, if any. 415 ILCS 5/9(a) (2002), 24; 35 Ill. Adm. Code 201.141, 900.102. The Board directs its hearing officer to expeditiously schedule and conduct hearing on the remaining contested issues.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 6, 2004, by a vote of 5-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board