

RECEIVED  
CLERK'S OFFICE

JUN 23 2004

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DANIEL J. BEERS, )  
)  
Complainant, )  
)  
vs. ) PCB No. 2004-204  
)  
DAVE CALHOUN, )  
)  
Respondent. )

**MOTION TO DISMISS**  
**FORMAL COMPLAINT AS FRIVOLOUS**

Now comes the Respondent, DAVE CALHOUN, by his attorneys, CASSIDY & MUELLER, and for his motion to dismiss the formal complaint as frivolous states as follows:

1. The complainant has filed his formal complaint alleging noise pollution.
2. The complainant specifically alleges in the formal complaint, at paragraph 5, that the respondent is in violation of Sections 23 and 24 of the Environmental Protection Act and Section 900.102 of the Regulations.
3. "Frivolous" means that the formal complaint fails to state a cause of action upon which the Board can grant relief. (35 Ill. Adm. Code 101.202).
4. The formal complaint fails to state a cause of action upon which the Board can grant relief. Specifically, the complainant alleges violations of Section 24 of the Illinois Environmental Protection Act, which provides that no person shall emit beyond the boundaries of his property any noise that *unreasonably* interferes with the enjoyment of life and Section 900.102 of the Board's Rules and Regulations provides that no person shall cause the emission of sound beyond boundaries of his property "so as to cause noise pollution in Illinois, or so as to violate any provisions of this chapter." (35 Ill. Adm. Code 900.102).

5. Noise pollution is defined as "the emission of sound that *unreasonably* interferes with the enjoyment of life." (35 Ill. Adm. Code 900.101). To constitute noise pollution, and to state a cause of action for which the Board can grant relief, the petitioner must specifically allege violations of specified rules and regulations to show any noise emitted from the respondent's property "unreasonably" interferes with enjoyment of life.

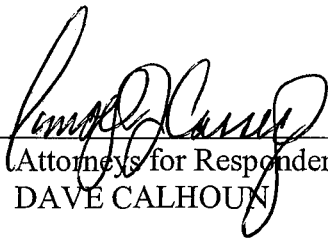
6. Section 25 of the Illinois Environmental Safety Act specifically provides that the Board may adopt rules and regulations prescribing the limitations on noise emission beyond the boundaries of the property of any person. Consistent with that regulatory authority, the Board has enacted Part 901 relating to sound emission standards and limitations for property line-noise-sources as it would specifically relate to Class A, B and C land.

7. The complainant has failed to allege any specific violations of Section 901 of the Board's Rules and Regulations nor has he alleged the proper classification of land from which the noise is being emitted and the proper classification of land to which the noise is being received.

8. Pursuant to Section 31(a) of the Act, the burden of proof is on the complainant to show the respondent has caused noise pollution and absent specific allegations as to the proper classification of land involved and violations of the sound emission standards and limitations for property line-noise-sources, he has failed to state a cause of action and the formal complaint is deemed "frivolous" and should be dismissed.

WHEREFORE, the Respondent, DAVE CALHOUN, by his attorneys, CASSIDY & MUELLER, prays that the formal complaint be dismissed as frivolous due to its failure to state a cause of action.

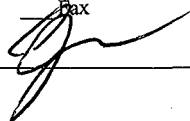
CASSIDY & MUELLER

By:   
Attorneys for Respondent,  
DAVE CALHOUN

PROOF OF SERVICE

The undersigned certifies that on 6/21, 2004 a copy of the foregoing document was served upon all counsel of record at their respective addresses by:

- Deposit in the U.S. Mail
- Hand Delivery
- Fax

By: 

CASSIDY & MUELLER  
323 Commerce Bank Building  
416 Main Street  
Peoria, Illinois 61602  
Telephone: 309/676-0591