ILLINOIS POLLUTION CONTROL BOARD June 4, 1998

SCOTT and SHELLY BEHRMANN,)	
Complainants,)))	
V.	ý	PCB 98-
)	(Enforce
OKAWVILLE FARMERS ELEVATOR - ST. LIBORY,)	
SI. LIDORI,)	
Respondent.)	

PCB 98-84 (Enforcement - Noise - Citizens)

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). The Board denied Okawville Farmers Elevator - St. Libory's (Farmers Elevator) first motion to dismiss on March 19, 1998, and ordered this matter to proceed to hearing. On April 2, 1998, the Board accepted the Behrmanns' first amended complaint. Farmers Elevator filed a motion to dismiss the amended complaint on April 22, 1998. Complainants filed their response on April 23, 1998. On May 6, 1998, the Behrmanns filed a brief in support of their response to the motion to dismiss, as well as a second amended complaint accompanied by a motion for leave to file.

The Board grants the Behrmanns' motion for leave to file, and accepts the second amended complaint. Farmers Elevator's motion to dismiss the first amended complaint is, therefore, moot, and will not be addressed by the Board.

The motion for leave to file asserts that the second amended complaint seeks only to add allegations that the noise emissions previously complained of constitute violations of 35 Ill. Adm. Code 901.104 and 901.106. The Behrmanns state that no undue surprise will result from the second amended complaint as no further discovery will be required as a result of the additional allegations. Farmers Elevator has not filed a response to the motion for leave to file.

Although the Board rules do not directly address the requirements for the filing of an amended complaint, Section 103.210(a) of the Board's rules provides that pleadings may be amended to conform with the proof so long as no undue surprise results that cannot be remedied by a continuance. 35 Ill. Adm. Code 103.210(a). The Board has allowed complaints to be amended pursuant this section. See <u>People v. Chemetco Inc.</u> (May 7, 1998), PCB 96-76.

The Board grants the Behrmanns' motion for leave to file, and accepts the second amended complaint. Any undue surprise resulting from the amended complaint can be remedied by allowing Farmers Elevator the opportunity to respond. The remaining pleadings are rendered moot by the acceptance of the second amended complaint.

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 4th day of June 1998 by a vote of7-0.

Dorothy Mr. Sur

Dorothy M. Gunn, Clerk Illinois Pollution Control Board