

ILLINOIS POLLUTION CONTROL BOARD  
September 3, 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). The Board accepted the Behrmanns first amended complaint on April 2, 1998, and their second amended complaint on June 4, 1998. On July 23, 1998, the Behrmanns filed a motion for leave to file, accompanied by a third amended complaint. No response has been filed by Okawville Farmers Elevator - St. Libory (Farmers Elevator).

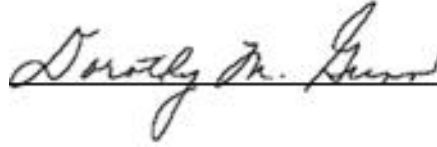
The motion for leave to file asserts that the third amended complaint seeks to add allegations that Farmers Elevator's industrial grain elevator business produces heavy dust, and that the dust emissions are in violation of Section 9(a) of the Illinois Environmental Protection Act (Act). 415 ILCS 5/9(a) (1996). The Behrmanns state that no undue surprise will result from the third amended complaint as discovery is ongoing and no depositions have yet occurred. The Behrmanns note that a hearing date is not currently scheduled, and that no discovery deadlines are in effect. The Behrmanns assert that allowing the third amended complaint would further the efficient administration of justice by including all complaints against Farmers Elevator in the same action.

As stated, 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 filing 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 People v. Chemetco Inc. (May 7, 1998), PCB 96-76.

The Board grants the Behrmanns' motion for leave to file, and accepts the third amended complaint. Any undue surprise resulting from the third amended complaint can be remedied by allowing Farmers Elevator the opportunity to respond. The hearing officer and the parties are encouraged to expedite this proceeding in a manner consistent with Board practices.

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 3rd day of September 1998 by a vote of 7-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board