

ILLINOIS POLLUTION CONTROL BOARD
October 1, 1998

LUCILLE WATHEN,)
)
 Complainant,)
)
 v.) PCB 99-30
) (Enforcement - Noise, Citizens)
 DANIEL AND WENDY STRYKER,)
)
 Respondents.)

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

This matter comes before the Board on a August 17, 1998 filing of a citizen's complaint (complaint) by Lucille Wathen against Daniel and Wendy Stryker (respondents). Respondents did not respond with a motion to dismiss or a challenge to the Board's jurisdiction within the allotted 14 days. 35 Ill. Adm. Code 103.140 (a). Therefore, the Board makes its determination based on the allegations in the complaint.

The Board finds that the noise pollution allegation in this matter is not duplicitous or frivolous and therefore accepts this matter for hearing.

BACKGROUND

Complainant resides at 649 Elmgate Drive in Glenview, Cook County, and respondents live at 2448 Robincrest Drive in Glenview. Complaint at 2. Complainant alleges that respondents' air conditioner is 25 feet from her home and that noise from the air conditioner prevents her from sleeping in her bedroom. Complainant at 3, 4. Complainant also alleges that the noise disturbs her when she uses her porch. *Id.* Complainant claims that respondents are violating Section 24 of the Illinois Environmental Protection Act (Act). 415 ILCS 5/24 (1996).

DUPPLICITOUS / FRIVOLOUS DETERMINATION

Section 103.124(a) of the Board's procedural rules directs the Board to determine whether or not a citizen's complaint is duplicitous or frivolous. If the complaint is duplicitous or frivolous, the Board shall enter an order setting forth reasons for so ruling and shall inform the parties of its decision. If the Board rules that the complaint is duplicitous or frivolous, this does not preclude the filing of motions regarding the insufficiency of the pleadings. 35 Ill. Adm. Code 103.124(a).

An action before the Board is duplicitous¹ (*i.e.* duplicative) if the matter is identical or substantially similar to one brought in another forum. Brandle v. Ropp (June 13, 1985), PCB 85-68. Nothing in the complaint indicates that this action has been brought before another forum. The complaint is not duplicitous.

An action before the Board is frivolous if it requests relief which the Board cannot grant. Lake County Forest Preserve District v. Neil Ostro, Janet Ostro, and Big Foot Enterprises (July 30, 1992), PCB 92-80. In the case at hand, complainant alleges facts which, if proved at hearing, could result in a finding of noise pollution. Complaint at 3. The Board has the authority to grant relief from the alleged noise pollution if the facts are proved at hearing.

CONCLUSION

The Board finds that, pursuant to Section 103.124(a) of its procedural rules, the noise pollution allegation is neither duplicitous nor frivolous and will be accepted for hearing.

The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and Section 103.125 of the Board's procedural rules. The Clerk of the Board shall promptly issue appropriate directions to the assigned hearing officer.

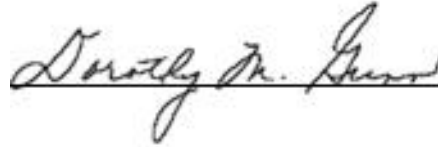
The assigned hearing officer shall inform the Clerk of the Board of the time and the location of the hearing at least 30 days in advance of hearing so that a 21-day public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses, and all actual exhibits to the Board within five days of hearing.

Any briefing schedule shall provide for final filings as expeditiously as possible. If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if, after an attempt the hearing officer is unable to consult with all of the parties, the hearing officer shall unilaterally set a hearing date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

IT IS SO ORDERED.

¹ The Board and the courts have consistently read the term "duplicitous" as "in the sense of being duplicative." See Winnetkans Interested in Protecting the Environment, 55 Ill. App. 3d 475, 479, 370 N.E.2d 1176, 1178, 1179 (1st Dist. 1977); Roy K. Johnston v. ADM-Demeter, Hoopston Division (October 2, 1997), PCB 98-31, slip op. at 2.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 1st day of October 1998 by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board