ILLINOIS POLLUTION CONTROL BOARD
February 3, 2005

BONITA SAXBURY and RICHARD SAXBURY,	)	
Complainants,	)	
v.	)	PCB 04-79
	)	(Citizens Enforcement - Noise)
ARCHER DANIELS MIDLAND, HULL, ILLINOIS DIVISION,	)	
Respondent.	)	

BONITA SAXBURY AND RICHARD SAXBURY APPEARED *PRO SE*; and

LEE R. CUNNINGHAM, ARCHER DANIELS MIDLAND COMPANY, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by T.E. JOHNSON):

On November 6, 2003, Bonita Saxbury and Richard Saxbury (complainants) filed a formal noise complaint against Archer Daniels Midland, Hull, Illinois Division (ADM). The complaint alleges that ADM violated Section 24 of the Illinois Environmental Protection Act (Act) (415 ILCS 24 (2002)) as well as 35 Ill. Adm. Code 900.102 by emitting noise at a grain elevator located in Hull, Pike County.

A hearing was held on October 6, 2004, in Pittsfield before Board Hearing Officer Carol Webb. The complainants filed a post-hearing brief on October 25, 2004. On November 12, 2004, ADM filed its post-hearing brief. The complainants filed an "answer" to ADM's brief on November 23, 2004. On September 3, 2004, the parties filed a joint motion for site visit. Both parties addressed the motion for site visit in their briefs. This opinion and order denies the motion as unnecessary.

Based on the evidence presented in this proceeding, the Board finds that the noise emanating from the ADM's facility in Hull does not unreasonably interfere with the enjoyment of the complainants' property.

STATUTORY BACKGROUND

Section 24 of the Act provides:

> 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 the Act. 415 ILCS 5/24 *amended by* P.A. 92-0574, eff. June 26, 2002.

Section 33(c) of the Act provides that:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

i. The character and degree of injury to, or interference with, the protection of the health, general welfare and physical property of the people;

ii. The social and economic value of the pollution source;

iii. The suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;

iv. The technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and

v. Any subsequent compliance. 415 ILCS 5/33(c) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002.

Section 900.101 Definitions

Noise pollution: the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity. 35 Ill. Adm. Code 900.101.

BACKGROUND

On November 6, 2003, the complainants filed a formal noise complaint against the respondents. The complaint concerns noise emanating from fans used at the ADM elevator in Hull located adjacent to the complainants' residence (elevator). Hull has a population of approximately 250 people. Tr. at 60. The elevator is located in the southwest corner of the town, built to existing railroad tracks. Tr. at 61. ADM uses the elevator for long-term grain storage. Tr. at 63. The elevator has one full-time employee and adds two to three employees during harvest. Tr. at 70-71. ADM pays approximately $20,000 per year in property taxes for the elevator. Tr. at 71. Wheat is brought in during the summer and soybeans in the fall. *Id.* ADM buys product from the area surrounding Hull. *Id.* Approximately 750,000 to 1,000,000 bushels of grain go through the elevator each year. Tr. at 73.

The temperature of the grain must be kept close to the outside temperature. Tr. at 71. When the difference in temperature gets too large, aeration fans are used to reduce the

difference. *Id*. Each bin has aeration under the floor, usually by means of a perforated tube. Tr. at 74. Fans are used to bring air through aeration channels and push air up through the grain. *Id*. Once the air is pushed up to the top by bottom fans, top fans pull the air off the top. *Id*. This practice is common to any elevator that stores wheat for a long term. Tr. at 75

The complainants first moved into their residence across the street from the already existing elevator in 1958. Tr. at 13. The complainants' house is the first house to the east of the elevator and is approximately 213 feet away from the bins. Tr. at 70. Approximately 150 feet to the north of a fan is the residence of Robert and Betty Culgrove. Tr. at 70. A drainage ditch runs on the west side of the elevator. Tr. at 70. South of the elevator, approximately 150 to 200 feet, is the residence of Walter and Barbara Ward. *Id*. Russell Gill lives approximately 75-80 feet from the first bin to the west. *Id*. During the 1980s there were several other structures on the site, including a grain dryer that was sometimes run around the clock. Tr. at 52. ADM purchased the elevator in 1998. Tr. at 61. At that time, there were two portable top fans used to draw off the moisture and three bottom fans (one fixed and two portable) that pushed air up to the bin used for aeration. *Id*. The fixed, stationary bottom fan was used on bin number two. *Id*. In the 1980s the elevator was owned by Quincy Soybean. Tr. at 60. At that time there were several more structures around the facility, such as a grain dryer (now out of operation) and a grind and mix feed operation that has been removed. *Id*. In the fall of 2000, Ms. Saxbury complained to ADM about the noise.

In response to the complainants' noise concerns, ADM personnel visited the elevator in October or November of 2000, identified the fans as the most noticeable source of sound, and limited fan usage to the hours of 8:00 a.m. to 5:00 p.m. Tr. at 62. ADM also decided to modify the statutory fan that appeared to be the most significant source of sound by insulating the intake at a cost of approximately $100. Tr. at 63. In 2002, ADM removed that fan and modified the bin it served so a quieter, portable fan could be used as needed. Tr. at 64-65. ADM built enclosures around the two portable bottom fans, insulated them and baffled the air intakes. Tr. at 65-66. The cost for this was approximately $650 plus labor. *Id*. The respondent also replaced motors in the top portable fans running at 3450 revolutions per minute with motors running at 1750 revolutions per minute. *Id*. This cost approximately $600 plus labor. *Id*.

ADM lengthened the air ducts to some bins in order to limit the placement of the portable fan to either of two positions using bins as noise barriers. The positions were selected on the basis of minimizing sound reaching the neighbors. Tr. at 67-68.

In August 2004, the parties completed discovery. A pre-hearing conference was held on September 24, 2004. This matter proceeded to hearing on October 6, 2004. At hearing, the complainants called Richard Saxbury, Kent Thompson, G.W. Dimmitt, and Bonita Saxbury. The complainants produced testimony concerning the noise, but did not offer any noise measurements. The respondents called Kent Thompson. The complainants offered a set of photographs of the site as taken from the complainants' property. The hearing officer accepted the exhibit into evidence as Exhibit 1.

The Board received four public comments on November 1, 2004. Walter and Barbara Ward PC 1, Russel K. Gill PC 2, Jeanie Cox PC 3, and Robert and Betty Colgrove PC 4 all

submitted comments in favor of ADM.

JOINT MOTION FOR A SITE VISIT

On September 3, 2004, the parties filed a joint motion for site visit. In the motion, the parties request the Board to conduct a site visit in order to establish a more comprehensive record in this matter as provided for in 35 Ill. Adm. Code 101.632. Mot. at 1. The parties assert that they believe that actually hearing the sounds emitted from bin dryer fans at the facility would place the Board in a much better position to decide this matter than if the Board were to base its decision solely on the written record. *Id*. On October 7, 2004, the Board reserved ruling on the motion until after the record has been fully developed at hearing.

ADM renewed the motion for a site visit in its post-hearing brief. In the brief, ADM asserts that it is concerned that if the Board were to find that no nuisance exists on the basis of the present record, the complainants might feel that the result was due to their inability to retain a lawyer and a noise consultant, instead of the fact that no noise nuisance exists. ADM Br. at 5. ADM feels that if the Board were to visit the site, the complainants would know their case had been heard. Id.

The complainants also address the motion for a site visit in their reply brief. The complainants assert that they welcome a site visit, but only if the Board can make certain that ADM turns the fans on "full force as they do nearly all the time that they do turn them on." Reply at 4.

Section 101.632 of the Board's procedural rules provides, *inter alia*, that the Board may conduct a site visit to establish a more comprehensive record. 35 Ill. Adm. Code 101.632. The Board's decision in this matter is discretionary. After reviewing the record, the Board finds that a site visit would not assist it in establishing a more comprehensive record. Accordingly, the motion is denied.

NOISE EMISSIONS TESTIMONY

Mr. Richard Saxbury

Mr. Saxbury resides at 260 W. Miller Street, Hull. He has lived there for approximately 47 years. Tr. at 13.

Mr. Saxbury described the noise as loud and horrendous. Tr. at 7. He stated that the noise comes right through the house, and that it has changed to where it now sounds like "part jet and part cement mixer." Tr. at 7. He testified that when ADM moves the fan up and down the line "you can still hear it." *Id*. He testified that there was noise before ADM took over the elevator, but that the noise got really bad when ADM started using what he refers to as "green machines," to pump air into the bottom of the bins – since 2004 or two, three, or four years ago. Tr. at 7-8. He testified that he has left home several times when the fans were "running bad" and that it [the noise] also "wakes you up of a morning too, especially upstairs." Tr. at 9. He notices the noise more in the evening and afternoon. Tr. at 10.

Mr. Saxbury testified that he has never heard the noise before 7:00 a.m. Tr. at 14. He testified that he has heard the noise two or three times at night over the last three years. *Id*. He testified that when he gets sound asleep the noise doesn't wake him up. Tr. at 15.

Mr. Saxbury testified that the fans at the top of the elevator used to be noisier and do not bother him now. Tr. at 16. He testified that the noise isn't exactly the same now as it used to be, but is just as bad. Tr. at 18. He testified that he is able to hold a conversation in his front yard when the fans are on if he stands close enough and talks loud enough. Tr. at 18-19.

Mr. Kent Thomas

Mr. Thomas is the manager of the elevator at Hull. Tr. at 25. He testified that there used to be a fan by his office that was moved behind a concrete block building behind the silos, and that ADM has built what is called a doghouse and insulated fan number 2. Tr. at 27-28. He testified that from his perspective in the office, which is much closer than the complainants' house, the insulation has cut the noise. Tr. at 28. He testified that there is noise in the complainants' yard but that it is not near like it was. Tr. at 30.

Mr. Thomas testified that he has never had difficulty conversing in a normal manner with the complainants on their property when the bottom fans were running. Tr. at 81.

Mr. G.W. Dimmitt

Mr. Dimmitt is the manager of ADM's elevator operation in Quincy. Tr. at 32. He oversees the county elevator operation, including the Hull Division. *Id*. He has been in his current position since 1996. Tr. at 59. Prior to that, he ran a county elevator operation in Missouri for 22 years. *Id*. He testified that the fans are either on or off, and have no additional controls. Tr. at 35-36, 73. He testified that the ideal situation for ADM would be to turn the fans on and leave them on 24 hours a day until the grain was at the appropriate temperature. Tr. at 64. Mr. Dimmitt testified that, from his first conversation with Ms. Saxbury in 2000, he made the decision not to run the fans on weekends. Tr. at 40. He testified that on one occasion in 2000 he was informed by Ms. Saxbury that the fans were running over the weekend. Tr. at 39. After he talked to Ms. Saxbury, he contacted Mr. Thompson, ascertained that the fans were, in fact, running and directed him to turn off the fans for the weekend. *Id*. He testified that the fans have not been run on the weekends or at night since that time. Tr. at 40. He testified that the elevator was closed on December 24, 2003, and he does not believe the fans were running. Tr. at 38.

Mr. Dimmitt testified that, aside from Ms. Saxbury, nobody else has ever complained about the noise of the elevator. Tr. at 62. Mr. Dimmitt testified that ADM has taken a number of actions to lower the sound from the elevators after Ms. Saxbury complained. *Id*. He testified that the stationary axial fan that was removed in 2002 to alleviate the sound was the loudest fan at the elevator – louder than the two bottom portable fans that are centrifugal in design. Tr. at 65. Mr. Dimmitt testified that the changes made to the top fans reduced the sound 70 – 80 % so that one cannot hear it very well at all. Tr. at 66. Mr. Dimmitt described how the elevator is currently operated as follows. With bins 9, 10, and 11, the fan is positioned back in between number 11 and flex tubing is run to the ductwork that has been installed. Tr. at 67. Bins 1 and 2

have the fan set between the concrete block building (closest to the office) and the silo so the noise is knocked down. *Id*. With any of the other bins to the west, the fans are positioned as close as possible to the air duct, but they are to the west. *Id*.

There are now only two positions (designed to minimize noise) that the fans are put in for the bins closest to the street. Tr. at 68. Mr. Dimmitt testified that this has been really effective in lowering the noise to the extent that the complainants said they could hear the fan for bins 1 and 2 coming on and off, but didn't notice it as much when running. *Id*. As to bins 9, 10, and 11 (on the north side), Mr. Dimmitt testified that the changes have reduced the sound. *Id*. He testified that the sound is caused not by the engines but by the movement of air. Tr. at 77. He describes the noise as a high-pitched tone, kind of a whistling sound, like wind blowing through something – a high-pitched, whistling sound. Tr. at 78.

Mr. Dimmitt testified that before any changes were made (in 2000) he was able to hold conversations at the road between the elevator and the complainants' house. Tr. at 68. He testified that in 2000 such conversations could be held, and that those involved in the conversation would not have to raise voices or stand close together anymore than they would if a truck was running or a car driving by. Tr. at 68-69. He testified that the noise level has been reduced quite a bit since then, and that a normal conversation at the road between two people standing 10 – 12 feet apart would be possible. Tr. at 69. Mr. Dimmitt testified that at least four neighbors live the same distance or closer to the elevators than do the complainants. Tr. at 70.

Mr. Dimmitt testified that he is not aware of anything further that ADM could reasonably do at the elevator to reduce the noise. Tr. at 70.

Ms. Bonita Saxbury

Ms. Saxbury resides at 260 W. Miller Street, Hull. She testified that she moved out of the area for a long time, but came back to stay in 1993. Tr. at 47. She is 63 years old. *Id*. She testified that the noise didn't really bother her until the year 2000. Tr. at 49. She testified that Mr. Thompson came over to her house when the fans were running and said he could see there would be a problem and that they might have to buy the complainants out to save his retirement. Tr. at 42-43. She testified that Mr. Dimmitt came into their yard, stood by the open living room window and said, "it's hitting them head on." Tr. at 44. Ms. Saxbury testified that Mr. Dimmitt and an ADM attorney named Mr. Smith have been rude to her. *Id*. She testified that she compiled a calendar of dates and times that the elevator fans were running loudly but has lost the calendar. Tr. at 44-45. Ms. Saxbury agreed that before ADM took over the elevator there was noise. Tr.at 45.

Ms. Saxbury testified that they have had to leave the house many times during the day because of the noise, just to go out and stay away for three or four hours. Tr. at 45, 51. She testified that she left the house the week before the hearing, but cannot remember the actual date. Tr. at 51. Ms. Saxbury cannot estimate how many times she has left her house since January 1, 2004, but thinks it is probably more than ten times. Tr. at 52. She agrees that the elevator has social and economic value and is properly located. *Id*. She believes that ADM can manipulate the noise levels. *Id*. Ms. Saxbury testified that the noise has been bad the last couple of weeks

because there are some other machines running as well as the fans, but that the fans are the primary problem. Tr. at 45-46. She testified that she could hear the fan behind the office turn on and off, but that it is not a very big problem. Tr. at 49. She testified that the top fans are not a problem. Tr. at 50. She testified that the fan with the long tube has changed tones but is still a very loud noise. Tr. at 49.

Ms. Saxbury testified that she started looking into this and contacting people on September 21, 2000. Tr. at 46. She has contacted the Agency. *Id.*

She testified that she is losing hearing each time she goes for a hearing test – that the high sounds are going bad. Tr. at 47. She also testified that the noise makes her very nervous, but that she doesn't have any ailments per se except that she thinks if she listened to the noise long enough she might go over the edge. *Id.* Ms. Saxbury does not have any evidence that her hearing loss is related to the noise from the elevator. Tr. at 48.

ARGUMENT

Complainants' Brief

The complainants assert that the noise from the fans has violated nuisance standards. They contend that the noise comes from a fan used to dry grain that comes directly at them. Com. Br. at 1. The complainants assert that Mr. Dimmitt said the noise came directly at them but denied saying it at hearing. *Id.* The complainants also contend that Mr. Dimmitt falsely stated at the hearing that he had not been in the complainants' yard. *Id.*

The complainants contend that after ADM attempted to fix the problem, the sound coming from the fan is different, but just as loud and obnoxious. Com. Br. at 1. The complainants assert that Mr. Thompson told them he would have to buy their house but later denied making that statement at hearing. *Id.* The complainants contend that ADM must be wrong in saying there is only an on and off switch to the fan because the noise is fairly low at times and so loud at others. *Id.* The complainants argue that there was noise at the elevator before ADM took possession, but that they had never had to leave their home prior to that time. *Id.*

The complainants assert that as they were preparing their brief on October 16, 2004, the fan was running so high and loud that even with all the windows and doors closed the noise was just unbearable. Com. Br. at 1. The complainants argue that if there were no noise problem at the elevator, ADM would not spend time and money trying to fix a problem that didn't exist. *Id.*

The complainants contend that the noise has been detrimental to their well being, mental, emotional, and physical health. Com. Br. at 1. They conclude that ADM should not be above the law, and that ordinary citizens should not be intimidated and overridden by large companies that have attorneys on retainer. *Id.*

ADM's Brief

ADM asserts that it did not ignore the initial complaint, but made a number of changes to their operation to address the concerns. ADM Br. at 2. Specifically, ADM limited the hours of the fan usage to normal weekday business hours, eliminated the fan that produced the most sound, virtually eliminated any sound from the top fans, and greatly reduced the sound from the now-insulated and baffled portable fan in one of the positions to the extent that the complainants can only hear it being turned on and off. *Id*. ADM asserts that even when placed in the other position, the sound produced by the bottom fan has been reduced through insulation and baffling, and by its placement behind one of the bins. *Id*.

ADM asserts that the only persons alleging interference in their lives due to the sounds from the elevator are the complainants. ADM Br. at 3. ADM further contends that it is only Ms. Saxbury who truly feels that the sound is an interference because, except for having signed the complaint, Mr. Saxbury has never complained to ADM, and does not hear very well and wears a hearing aid. *Id*.

ADM asserts that the Board must determine if Ms. Saxbury's reaction to the elevator sounds is due to an aggravation that has gotten out of hand or whether the sound truly constitutes an interference. ADM Br. at 3. However, ADM asserts that even if the Board finds the noise an interference, it must conclude that such interference is not unreasonable based on an analysis of the Section 33(c) factors. ADM Br. at 4.

ADM contends that the character and degree of injury is minor in that the fans are rarely used outside of the hours of 8:00 a.m. and 5:00 p.m. on weekdays, and used little, if at all, during much of the year. ADM Br. at 4. ADM asserts that significant fan usage is limited to July through November, and the amount of usage is generally a couple of days per week in the summer and early fall months, increasing to as much as four or five days per week as winter arrives. *Id*. ADM also notes that on the days the fans are used, they are often not used during the entire working day. *Id*.

ADM asserts that only the complainants have complained of any interference with their enjoyment of life despite the fact that four other homes are as close or closer to the elevator than the complainants. ADM Br. at 4. ADM notes that four of the neighbors have filed public comments stating they are not bothered by the sound. *Id*.

ADM contends that both parties agree the elevator has significant social and economic value and that the fans are a necessary part of the operation. ADM Br. at 4. ADM argues that the elevator is suitable to the area in which it is located and has priority of location. ADM Br. at 5. ADM contends it is reasonable to conclude, as Mr. Dimmit testified, that the sounds were louder in the 1980s than they are today. ADM asserts that in the public comments, the other neighbors state the sounds from the elevator are either less noticeable or no more noticeable than they were when they moved in. *Id*.

ADM asserts that the efforts it has made to minimize the impact from the facility have been effective, and that the impact of the sound is much less than it was when the complainants initially complained. ADM Br. at 4. ADM contends that it is not economically reasonable to reduce the sound emission further and that the record contains no evidence of any means of

doing so. *Id*. ADM contends the sound the complainants hear is not from the fan itself, but from the movement of air through ducting from the fans to and through the bins. *Id*. The air, ADM argues, must go to each of the bins making it very difficult and expensive to block, while still allowing free movement around the property. *Id*.

ADM asserts that the elevator has always been in compliance, but has improved its compliance during its tenure. ADM Br. at 4. ADM contends it has spent approximately $5,600 and placed self-imposed restrictions on its operating hours to reduce the impact of the sound, and that the Board should conclude that this factor supports a finding that any interference is not unreasonable. *Id*.

Complainant's' Reply Brief

The complainants assert that both of them were equally involved in the complaint and all the proceedings, not just Ms. Saxbury, as ADM has argued. Reply at 1. The complainants acknowledge that Mr. Saxbury wears a hearing aid, but asserts he is not totally deaf and can pick up vibrations; vibrations that are plentiful at the Hull elevator. *Id*. The complainants assert that the neighbors who filed public comments did not even have the intestinal fortitude to go to hearing, and the comments are otherwise questionable because all of them have friends that are farmers so their comments are tainted, being prejudicial. Reply at 2.

The complainants assert that if noise pollution bothers one person and affects his lifestyle and enjoyment of life, it is all that is necessary to file a complaint and get due process and the right conclusion. Reply at 2. The complainants assert that Mr. Dimmitt might have said that the noise at the elevator was greater in the 1980s but that he told some untruths at hearing. Reply at 3. The complainants conclude with a quote from Dr. William H. Stewart, former U.S. Attorney General: "Calling noise a nuisance is like calling smog an inconvenience. Noise must be considered a hazard to the health of people everywhere." Reply at 4.

DISCUSSION

The complainants have alleged that respondent violated Section 24 of the Act and Section 900.102 of the Board regulations. 35 Ill. Adm. Code 900.102; 415 ILCS 5/24 (2002). Together these provisions constitute a prohibition against nuisance noise pollution. Charter Hall Homeowner's Association and Jeff Cohen v. Overland Transportation System, Inc., and D. P. Cartage, Inc., PCB 98-81 (Oct. 1, 1998), citing to Zivoli v. Prospect Dive and Sport Shop, Ltd., PCB 89-205, slip op. at 8 (Mar. 14, 1991). In determining whether noise emissions rise to the level of a nuisance noise pollution violation, the Board performs a two-step inquiry. First, the Board determines whether or not the noise constitutes an interference in the enjoyment of complainants' lives and second, considering the factors enunciated in Section 33(c) of the Act, the Board determines whether or not the interference is unreasonable. Charter Hall, PCB 98-81, slip op. at 19-21. The following discussion will address first whether complainants have established that the noise emanating from the fans constitutes an interference with the enjoyment of life and second, whether the noise emissions constitute an unreasonable interference in their lives.

Interference With Enjoyment of Life

The Board has stated that if there is no interference there can be no nuisance noise violation. Zivoli, PCB 89-205, slip op. at 9. Accordingly the Board must first determine whether the sounds have interfered with the enjoyment of life. Furlan v. University of Illinois School of Medicine, PCB 93-15, slip op. at 4 (Oct. 3, 1996). The Board has held that the following disturbances constitute interference: sleeplessness from nightclub noise (Manarchy v. JJJ Associates, Inc., PCB 95-73, slip op. at 10 (July 18, 1996); noise interfering with sleep and use of yard (Hoffman v. Columbia, PCB 94-146), slip op. at 5-6, 17 (Oct. 17, 1996); and trucking operation noise impacting sleep, watching television and conversing (Thomas v. Carry Companies of Illinois, PCB 91-195, slip op. at 13-15 (Aug. 5, 1993).

The complainants testified that the noise from the elevators has been detrimental to their well being, mental, emotional, and physical health. The complainants testified that they have had to leave the house as a result of the noise. Ms. Saxbury cannot estimate how many times she has left her house since January 1, 2004, but thinks it is probably more than ten times. Mr. Saxbury has testified that he has left home several times and has been awakened in the morning when the fans were "running bad." Tr. at 9. However, he also testified that when he is sound asleep, the noise does not wake him. Tr. at 15.

In addition, Ms. Saxbury testified that the noise makes her very nervous, but that she doesn't have any ailments *per se*, except that she thinks if she listened to it long enough she might "go over the edge." Ms. Saxbury has hearing loss, but does not have any evidence that it is related to the noise from the elevator.

Discussion

As previously stated the Board has found that if there is no interference, there can be no nuisance noise violation. Zivoli, slip op. at 9. Therefore, the first step in the Board's inquiry about a nuisance noise violation is whether or not the sounds have interfered with the enjoyment of life. Furlan, PCB 93-15, slip op. at 4. Only if there has been an interference does the Board proceed to the second inquiry of whether the noise unreasonably interferes with the enjoyment of life.

The Board has determined that noise interfering with sleep and use of yard (Hoffman) and trucking operation noise impacting sleep, watching television and conversing (Thomas v. Carry Companies of Illinois) does constitute an interference. Here, the noise impacts the use of the complainants' property, causing them to leave the house on a number of occasions.

Although there is no evidence that the complainants' sleep has been impacted, their lives have been disrupted as a result of the noise. The Board finds that the noise emissions from the elevator interfere with the complainants' enjoyment of life. Accordingly, the Board must consider if the emissions unreasonably interfere with the complainants' enjoyment of life.

Unreasonable Interference, Section 33(c) Factors

The remaining issue is whether the noise from the elevator fans has unreasonably interfered with the complainants' enjoyment of life. Whether an interference is unreasonable is determined by examining the factors set forth in Section 33(c) of the Act. The Board need not find against respondent on each factor to find a violation. *See* Wells Manufacturing Company v. PCB, 73 Ill. 2d 226, 233, 383 N.E.2d 148, 151 (1978) (Wells Manufacturing); Processing and Books, Inc. v. PCB, 64 Ill. 2d 68, 75-77, 351 N.E.2d 865, 869 (1976); Incinerator, Inc. v. PCB, 59 Ill. 2d 290, 296, 319 N.E.2d 794, 797 (1974). The Board will now consider each of the Section 33(c) factors.

The Character and Degree of Injury to, or Interference With the Protection of the Health, General Welfare and Physical Property of the People

In assessing the character and degree of interference that the noise emissions from the fans have caused, the standard applied by the Board is whether the noise "substantially and frequently interferes" with the enjoyment of life, "beyond minor or trifling annoyance or discomfort." Charter Hall, PCB 98-81, slip op. at 21, citing Kvatsak v. St. Michael's Lutheran Church, PCB 89-182, slip op. at 9 (Aug. 30, 1990).

As previously indicated, the complainants assert that the noise from the fan unreasonably interferes with the enjoyment of their lives and property. They specifically point to having to leave the house. The complainants highlight that the noise was high-pitched, shrill and constant, and may be different after the changes made by ADM, but is just as loud and obnoxious. Comp. Br. at 1.

Discussion

In determining the character and degree of injury caused by the noise emissions from the plant, the Board must examine whether the interference was substantial and frequent.

The complainants maintain that the noise is such an interference that they have had to leave their house – at least ten times during 2004. The record contains conflicting testimony on the character of the noise. Mr. Saxbury has testified that he is able to hold a conversation in his front yard when the fans are on, if he stands close enough and talks loud enough. However, Mr. Dimmitt testified that a normal conversation at the road between two people standing 10 – 12 feet apart would be possible. Mr. Thomas testified he has never had difficulty conversing in a normal manner with the complainants on their property when the bottom fans were running. He testified that there is noise in the complainants' yard but that it is "not near like it was" prior to the work performed by ADM to lessen the sound. Further, the residents of the four homes in the immediate vicinity of the elevator – all approximately as close or closer than the complainants – have not complained of interference with their lives.

There is considerable evidence, in the form of testimony from ADM employees and the public comments of local residents, that the noise from the elevators did not generally interfere with enjoyment of life, lawful business or activities in the noise-impacted community as a whole. The Board addressed a similar situation in Sweda v. Outboard Marine Corporation and the City of Waukegan, PCB 99-38 (Aug. 5, 1999). In Sweda, the Board stated that there comes a point at

which the evidence establishes that, whatever the complainants' subjective experience, there is no unreasonable interference when the noise source is evaluated objectively. Sweda, PCB 99-38, slip op. at 12. *See also* Scarpino v. Henry Pratt Co., PCB 96-110 (Apr. 3, 1997) (finding no support in the record for substantial and frequent interference where the Board had conflicting evidence regarding the character and degree of interference). The Board finds that this point has been reached in the instant case. A review of the record indicates that the people in the affected area other than the complainants are not significantly bothered by the noise from the elevator. The Board finds that this factor supports a finding that the interference experienced by the complainants is not unreasonable, and weighs it in favor of ADM.

The Social and Economic Value of the Pollution Source

In assessing this factor, the Illinois Supreme Court has looked to the number of persons that the respondent employed and whether respondent is an important supplier to a particular market. Wells Manufacturing, 73 Ill. 2d at 235-36. The Board has similarly looked to such factors as the number of employees at a facility and the total wages and taxes that a respondent paid. Charter Hall, PCB 98-81, slip. op. at 23-24.

The parties agree that the elevator has social and economic value. Tr. at 52; ADM Br. at 4.

Discussion

The record shows that the elevator has one full-time employee, brings in two to three employees during harvest, and that ADM pays approximately $20,000 per year in property taxes for the elevator. Tr. at 70-71. In addition, ADM buys product from the area surrounding Hull, and approximately 750,000 to 1,000,000 bushels of grain go through the elevator each year. The Board finds that the elevator does have significant social and economic value to the community, and weighs this factor in favor of the ADM.

The Suitability or Unsuitability of the Pollution Source to the Area in Which it is Located, Including the Question of Priority of Location in the Area Involved

Suitability of location is not the only factor the Board examines under this factor. Roti v. LTD Commodities, PCB 99-19, slip op. at 26 (Feb. 15, 2001. The Board also looks to priority of location; however industry cannot rely on priority of location as a mitigating factor if emissions are substantially increased. Roti, PCB 99-19, slip op. at 27, citing Wells Manufacturing 73 Ill. 2d 237. Thus, the Board examines suitability of the location of the source, priority of location and whether emissions have increased when weighing this factor.

The elevator is located in Hull, a town without zoning laws. Tr. at 76. The elevator was built, in part, because of its location next to existing railroad tracks. Tr. at 61. The complainants initially purchased their property, next to the already existing elevator, in 1958. Tr. at 13. Ms. Saxbury moved back into the house in 1993. ADM did not purchase the elevator until 1998. Tr. at 61.

Discussion

When weighing this factor, the Board must consider the suitability of the pollution source to its location, including priority of location. The Hull elevator was in place prior to the complainants' moving into their residence in 1958. The record contains testimony that the emissions from the elevator were louder in the 1980s than in 1998 when the elevator was purchased by ADM, and the complainants have testified that the emissions increased after ADM purchased the elevator in 1998.

The Board cannot ascertain from a review of the record whether or not emissions from the elevator have substantially increased so as to eradicate ADM's priority of location. However, priority of location, a component of which is whether or not the emissions have substantially increased, is only a part of the whether the pollution source is suitable to its location. Although the record is unclear in regards to an increase in emissions, the complainants do not dispute that the elevator is properly located. The record contains no evidence that the elevator is not suitable to the area. Further, at hearing Ms. Saxbury agreed that the elevator was located properly. Tr. at 52. Accordingly, the Board weighs this factor in favor of ADM.

The Technical Practicability and Economic Reasonableness of Reducing or Eliminating the Emissions, Discharges or Deposits Resulting from Such Pollution Source

In considering this factor, the Board must determine whether technically practicable and economically reasonable means of reducing or eliminating noise emissions from the elevator are readily available to ADM. *See* Charter Hall, PCB 98-81, slip op. at 24.

Discussion

The record shows that ADM has made a number of efforts to reduce the noise from the fans. The complainants have not proffered any additional methods of reducing or eliminating the noise. The only evidence on the record regarding this factor was offered by ADM manager Mr. Dimmitt who testified that he is not aware of anything further that ADM could reasonably do at the elevator to reduce the noise. Tr. at 70.

The Board finds that the record does not indicate any technically practicable or economically reasonable remedies to further address the noise from the fans. Accordingly, this factor is weighed in favor of ADM.

Any Subsequent Compliance

Under this factor, the Board analyzes the respondent's attempts to address the emissions that have led to the alleged violations of the Act or the Board's regulations. The complainants do not dispute that ADM has attempted to reduce the noise emissions, and agree that ADM has taken steps that have drastically reduced the noise from the top fans. However, the complainants maintain that the noise from the bottom fans is still an interference.

The record shows that ADM has engaged in substantial remedial efforts to alleviate the

noise. After the complainants notified ADM about the noise complaint, ADM made significant efforts to reduce the noise, including limiting fan usage to the hours of 8:00 a.m. to 5:00 p.m. even though it is preferable for temperature control purposes to run the fans 24 hours a day when necessary. Tr. at 62. ADM also modified the stationary fan that appeared to be the most significant source of sound by insulating the intake, ultimately removing that fan and modifying the bin it served, so a quieter, portable fan could be used as needed; built insulated enclosures around the two portable bottom fans; baffled the air intakes, and replaced the motors in the top portable fans. Tr. at 62-66. The record indicates that ADM spent approximately $5,600 trying to resolve the noise issue.

The Board finds that the respondent made a considerable effort to alleviate noise emissions from the elevator, and weighs this factor in favor of ADM.

CONCLUSION

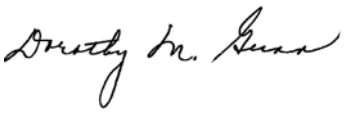
After evaluating the Section 33(c) factors, the Board finds that the interference caused by ADM's use of fans to maintain a proper temperature at their Hull elevator is not unreasonable within the meaning of Section 24 of the Act. In this case, the evidence establishes that, whatever the complainants' subjective experience, there is no unreasonable interference when the noise source is evaluated objectively. *See* Sweda, PCB 99-38, slip op. at 12. While the Board does not doubt the complainants' testimony that the noise interferes with their enjoyment of their life and property, ADM has expended considerable effort and funds to ameliorate the noise. Based on the record before the Board, the Board finds that ADM does not violate Section 24 of the Act and 35 Ill. Adm. Code 900.102. The Board finds that sound emanating from the elevator's fans did not unreasonably interfere with the complainants' enjoyment of their lives and property. This opinion constitutes the Board's finding of fact and conclusions of law.

The Board dismisses the case and closes the docket.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2002); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the above opinion and order was adopted on February 3, 2005, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board