

ILLINOIS POLLUTION CONTROL BOARD
December 17, 1998

LAWRENCE C. SWEDA,)
)
 Complainant,)
)
 v.) PCB 99-38
) (Enforcement - Noise, Citizens)
 OUTBOARD MARINE CORPORATION)
 and THE CITY OF WAUKEGAN,)
)
 Respondents.)

ORDER OF THE BOARD (by M. McFawn):

On December 1, 1998, respondent Outboard Marine Corporation (OMC) filed a "Motion to Correct Board Order," in which OMC identified an error in the Board's September 17, 1998 order denying the respondents' motions to dismiss. The Board's order refers to allegations in the complaint as violations of 35 Ill. Adm. Code 901.102; in fact, the complaint alleges violations of 35 Ill. Adm. Code 900.102. The Board's order of September 17, 1998, is hereby corrected by changing all occurrences of "901.102" to "900.102" and replacing the last paragraph on the first page of the order with the following:

Section 900.102 prohibits emission of sound so as to cause noise pollution, *i.e.*, emission of sound that unreasonably interferes with the enjoyment of life or any lawful business or activity. Section 901.104 prohibits emission of sound above certain decibel levels under various circumstances. Mr. Sweda alleges that OMC and Waukegan have violated these provisions through their operation of propane cannons to frighten seagulls away from OMC and Waukegan property on Waukegan Harbor. Comp. at 2-3.

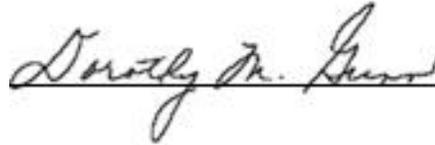
OMC continues to argue that the complaint is frivolous, and now cites to the concurring opinion in Williams v. Schaumburg Park District (May 16, 1996), PCB 96-186. OMC argues that this matter is frivolous because there is no actual environmental harm. This argument, however, is based upon facts not included in the complaint, but instead set forth in the respondents' prior motions to dismiss. The narratives in respondents' motions to dismiss, including that cited by OMC in the present motion, are not evidence and cannot be relied upon by the Board in making any determination in this case. The concurring opinion in the Williams case was predicated on an analysis of the allegations in the complaint. The Board accordingly concludes that the complaint is not frivolous with respect to the alleged violations of Section 900.102.

On December 7, 1998, OMC filed a "Motion to Substitute Name on Service List," requesting that the OMC representative on the service list be changed from president and CEO

David B. Jones to senior counsel Joseph Moran. No response to the motion has been received. This motion is granted, and the service list will be modified accordingly.

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 17th day of December 1998 by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board