

ILLINOIS POLLUTION CONTROL BOARD
March 16, 2006

ROBERT F. KASELLA, JR. and KELLIE R.)
KASELLA,)
)
Complainants,)
)
v.) PCB 06-1
) (Citizens Enforcement – Noise)
)
TNT LOGISTICS NORTH AMERICA INC.,)
)
Respondent.)

ORDER OF THE BOARD (by A.S. Moore):

On July 5, 2005, Robert F. Kasella, Jr. and Kellie R. Kasella (the Kasellas) filed a complaint against TNT Logistics North America Inc. (TNT). The complaint concerns sound emissions from TNT's tire warehouse distribution facility located at 25850 S. Ridgeland Avenue in Monee, Will County. Today, the Board grants the Kasellas' motion for leave to file an amended complaint against TNT, and gives the Kasellas until April 17, 2006, to do so.

On September 1, 2005, the Board accepted for hearing the Kasellas' original complaint, which was filed *pro se*. The complaint alleges that TNT's sound emissions exceed several of the Board's numeric noise standards (35 Ill. Adm. Code 901.102, 901.103, 901.104, 901.106). The case is in discovery and has not been to hearing. On October 19, 2005, attorneys filed an appearance on behalf of the Kasellas. On December 5, 2005, the Kasellas moved the hearing officer for leave to amend the complaint *instanter* "by pleading a violation of 35 Ill. Adm. Code 900.102." Motion at 2.

Generally, Section 900.102 of the Board's regulations prohibits, among other things, "noise pollution," which is defined as "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. In their motion for leave to amend the complaint *instanter*, the Kasellas note that they are now represented by counsel, and claim that amending the original complaint will not cause undue delay or prejudice. Motion at 1-2. On December 20, 2005, TNT filed a response to the Kasellas' motion for leave. TNT maintains that the motion lacks any information that would enable TNT to either agree with or oppose the motion. Response at 3. On December 27, 2005, the Kasellas filed a reply without seeking leave. See 35 Ill. Adm. Code 101.500(e).

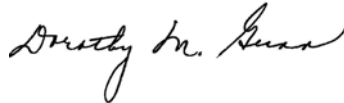
The Board notes that the Kasellas attached no amended complaint to their motion for leave to file an amended complaint *instanter*. The Board agrees with TNT that the amended complaint the Kasellas wish to file must comply with Section 103.204 (35 Ill. Adm. Code 103.204) of the Board's procedural rules. See 35 Ill. Adm. Code 103.206(d); see also Revision of the Board's Procedural Rules: 35 Ill. Adm. Code 101-130, R00-20 (Mar. 16, 2000) (Section 103.206 applies to the filing of an amendment to a complaint that sets forth a new or modified

claim “whether or not the person against whom the claim is made is already a party to the proceeding.”). The Board further agrees with TNT that under Section 103.206(d), the Kasellas’ motion for leave to amend should have been directed to the Board rather than the hearing officer. The Board grants the Kasellas’ motion for leave to file an amended complaint as follows: the Kasellas have until April 17, 2006, to file an amended complaint that complies 35 Ill. Adm. Code 103.204. TNT may file pleadings responsive to the amended complaint within the timeframes set forth in the procedural rules. *See* 35 Ill. Adm. Code 101.506, 103.204(d), 103.212(b).

In light of the above ruling, the Board denies as moot the Kasellas’ February 10, 2006 motion that the hearing officer provide an expedited ruling on the motion for leave to amend the complaint *instantly*. In addition, to allow the response time to expire, the Board reserves ruling on TNT’s February 28, 2006 motion to include communications. *See* 35 Ill. Adm. Code 101.500(d).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 16, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board