

ILLINOIS POLLUTION CONTROL BOARD
April 17, 2008

DANIEL J. BEERS,)
)
 Complainant,)
)
 v.) PCB 04-204
) (Enforcement - Noise)
 DAVE CALHOUN (LET IT SHINE CAR)
 WASH),)
)
 Respondent.)

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

On May 20, 2004, David J. Beers (complainant) filed a complaint against Dave Calhoun (Let It Shine Car Wash) (respondent). Section 31(d)(1) of the Environmental Protection Act (Act) allows any person to file a complaint with the Board. *See* 415 ILCS 5/31(d)(1) (2006); 35 Ill. Adm. Code 103.204, 103.212(a). In this case, the complainant alleged that the respondent violated Sections 23 and 24 of the Act (415 ILCS 5/23, 24 (2006)) and Section 900.102 of the Board's noise regulations (35 Ill. Adm. Code 900.102). The complainant further alleged that the respondent violated these provisions by causing or allowing noise pollution from "blow driers" and "beeper alarms" at the car wash. The complaint concerns respondent's "Let It Shine Car Wash" facility at 2115 Cherry Lane, Pekin, Tazewell County.

In an order dated July 22, 2004, the Board found that, because Section 23 of the Act sets forth the General Assembly's findings on excessive noise and states the purpose of the Act's Title VI on noise, Section 23 cannot be violated. The Board accordingly struck from the complaint as frivolous the alleged violation of Section 23. *See* 35 Ill. Adm. Code 101.202 (defining "frivolous"). In the same order, the Board otherwise accepted the complaint for hearing.

Under Section 31(d)(2) of the Act,

[w]henver a complaint has been filed by a person other than the Attorney General or the State's Attorney, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the hearing requirement of subdivision (c)(1) of this Section. Unless the Board, in its discretion, concludes that a hearing should be held, no hearing on the stipulation and proposal for settlement is required. 415 ILCS 5/31(d)(2) (2006).

On April 11, 2008, the parties filed a stipulation and proposed settlement (Stip.), accompanied by a motion (Mot.) for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2006)). This filing is authorized by Section 31(d)(2) of the Act (415 ILCS 5/31(d)(2) (2006)). *See* 35 Ill. Adm. Code 103.301(a). The motion states that "[t]he

parties have reached an agreement on all outstanding issues in this matter” and that they “agree that a hearing on the Stipulation and Proposal for Settlement is not necessary” Mot. at 1. The Board grants the parties’ request for relief from the hearing requirement. *See* 415 ILCS 5/31(d)(2) (2000); 35 Ill. Adm. Code 103.301(a).

Section 103.302 of the Board’s procedural rules sets forth the required contents of stipulations and proposed settlements. 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of respondent’s operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2006)). The parties have satisfied Section 103.302. The respondent neither admits nor denies the alleged violations. Under the terms of the parties’ proposal for settlement, the respondent agrees to perform the following actions to mitigate noise projected toward complainant’s property:

1. Respondent will obtain and install blower mufflers from Stenberg Welding & Fabricating, Inc., 223 N. Omland Ave., Fosston, MN, 56542. The parties understand that the mufflers are prototypes. They are believed to be helpful, but performance is not guaranteed or warranted by the manufacturer.
2. Respondent will install a 4-foot noise barrier wall as described in Dr. Schomer’s report. The barrier will be composed of metal and glass.
3. Respondent will install the noise mitigation measures no later than June 30, 2008. Stip. at 5-6.

The Board accepts the stipulation and proposed settlement. This opinion constitutes the Board’s findings of fact and conclusions of law.

ORDER

The Board accepts and incorporates by reference the stipulation and proposed settlement.

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) (2006); *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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 17, 2008, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board