

ILLINOIS POLLUTION CONTROL BOARD
November 15, 2001

ILA M. NEATHERY and DENISE C. FLECK,)
)
Complainants,)
)
v.)
) PCB 02-14
GREG and KAREN BOUILLON d/b/a) (Citizens Enforcement – Noise)
THIRSTY’S, and TERRILL L. and SARAH E.)
LOVING,)
)
Respondents.)
)

ORDER OF THE BOARD (by T.E. Johnson):

On July 30, 2001, Ila M. Neathery and Denise C. Fleck (complainants) filed a complaint in this matter. On October 1, 2001, an attorney for respondents Greg and Karen Bouillon d/b/a Thirsty’s (Bouillons) filed an entry of appearance, a motion for leave to file an answer *instanter*, an answer with affirmative defenses, and a motion to dismiss. On October 4, 2001, the complainants filed a response to the motion to dismiss. This order grants the Bouillon’s motion for leave to file *instanter*, denies the Bouillon’s motion to dismiss, and directs this matter to hearing.

**MOTION FOR LEAVE TO FILE ANSWER, AFFIRMATIVE DEFENSE,
AND MOTION TO DISMISS INSTANTER**

On August 9, 2001, the Bouillons filed a letter addressing the complaint. On September 20, 2001, the Board issued an order regarding the letter both as an answer to the complaint and a motion to dismiss the complaint as frivolous. On that date, the Board denied the motion to dismiss, and accepted an August 9, 2001 letter as an answer denying the material allegations of the complaint.

On October 1, 2001, an attorney for the Bouillons entered an appearance, and filed a motion for leave to file an answer *instanter*, accompanied by an answer to the complaint, affirmative defenses, and a motion to dismiss. As noted, the Bouillon’s August 9, 2001 letter was previously accepted as an answer. The Bouillons make no reference to this answer in their motion for leave to file. The complainants did not object to the motion for leave to file. Accordingly, the motion is granted. The answer, affirmative defenses, and motion to dismiss are accepted. The answer will supplant the Bouillons’ previously filed answer.

MOTION TO DISMISS

In their motion, the Bouillons assert that the complainants have not filed with the Board or served the respondents with a notice as required by 35 Ill. Adm. Code 103.204(a), but have instead filed only a cover letter and a complaint with the Board. In addition, the Bouillons argue that neither the cover letter nor the complaint contain the statement required by 35 Ill. Adm. Code 103.204(f). The Bouillons argue that complainants' failure to comply with the requirements of 35 Ill. Adm. Code 103.204 mandate that the complaint be dismissed.

The complainants reply that the complaint was properly filed with the "Information for Respondent Receiving Complaint" notification attached, and that this fact is confirmed in the Bouillons' August 9, 2001 letter. The complainants attach a copy of a return receipt signed on July 27, 2001 by Greg Bouillon. The complainants request that the motion to dismiss be denied.

Section 103.204 of the Board's rules provides in part:

- a) An enforcement proceeding will be commenced by the service of a notice and complaint by registered certified mail, messenger service, or personal service upon all respondents and the filing of 1 original and 9 copies of the notice and complaint with the Clerk.
* * *
- f) Any party serving a complaint upon another party must include the following language in the notice: "failure to file an answer to the complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to the proceeding, the Clerk's Office or an attorney." 35 Ill. Adm. Code 103.204(a),(f).

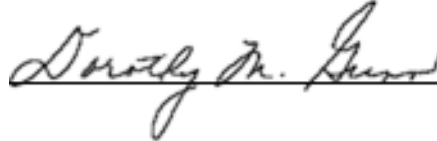
The motion to dismiss is denied. The complaint was properly filed with the Board and served by certified mail. The cover letter and the attached notice entitled "Information for Respondent Receiving Complaint" are sufficient to comply with the requirements of Section 103.204(a). Although the requirements of 103.204(f) were not followed, the Bouillons have, to date, timely filed two answers to the complaint. Therefore, any error resulting from the complainants' failure is harmless, and the motion to dismiss is denied.

CONCLUSION

The Bouillons' answer and affirmative defenses are accepted, but their motion to dismiss is denied. A hearing is currently scheduled for December 4, 2001. The Board directs the hearing officer to proceed expeditiously to hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 15, 2001, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board