

ILLINOIS POLLUTION CONTROL BOARD
May 6, 1976

GEORGE E. SAMPLE,)
)
 Complainant,)
)
 v.) PCB 75-442
)
 ROBERT L. AND SHIRLEY PECKHAM,)
)
 Respondents.)

OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin):

This matter is before the Board on a formal Complaint filed by Mr. Sample on November 12, 1975, alleging that Respondents operated an attic exhaust fan between 8:30 A.M. and 10:00 P.M. daily during the summer of 1975, in violation of Rules 102 and 202 of Chapter 8: Noise Pollution, of the Board's Rules and Regulations. A hearing was held in the matter on January 15, 1976 in Edwardsville, Illinois.

Mr. Sample and the Peckhams are neighbors in East Alton, Illinois, residing at 138 Dalewood and 130 Dalewood, respectively. The Record indicates that starting around July, 1975, the Peckhams operated an attic fan for home cooling purposes, (Compl. Ex. 1, p. 3; R. 8-10). The fan being located close to Mr. Sample's bedroom window, he complained to the Peckhams about its noisy operations on several occasions during July and August, 1975 (R. 8-15).

Mr. Sample then went to the Environmental Protection Agency (Agency) for assistance. Although the Agency stated to Mr. Sample that it has a policy against handling "neighbor-to-neighbor" complaints, it nonetheless conducted a noise survey for him, measuring the sound from the Peckham's attic fan, (Compl. Ex. 1, containing a letter from the Agency to Mr. Sample, with attached noise survey results).

The Agency's noise survey notwithstanding, we cannot find a violation by Respondents of Rule 202. Rule 208(a) of Chapter 8: Noise Pollution, providing an exception for the applicable standard Land Use Classification Manual Codes, precludes such a finding. The allegation of a violation of Rule 202 must be dismissed.

Turning to the alleged Rule 102 "nuisance" violation, the Board has before it on that issue only the mutually contradictory evidence of Complainant and Respondents. Mr. and Mrs. Sample's testimony in support of this allegation is, essentially, met equally by direct contradiction from the Peckhams. We are not in a position to choose among these witnesses who is to be believed and, for that reason, are unable to find a violation of Rule 102. That allegation must also be dismissed.

Besides those evidentiary problems, the Record here contains basic flaws as regards the factors which the Board must consider under §33(c) before finding a violation. For example, the only evidence on the subject of technical and economic feasibility is in Respondent's Exhibit 1, which simply states that the movement of the Sample's fan would require rewiring and, therefore, some added expense. (Note that Respondent's Ex. 1 is a two paragraph letter from a "contractor," purporting to make an expert judgement on the subject of the fan's proper placement.)

Given these shortcomings in the Record, we cannot find a violation. Even if we could, it is not certain that any judgement could be made on a record such as this regarding the appropriate remedy.

This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that this matter be dismissed without prejudice.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 6th day of May, 1976, by a vote of 5-0.


Christian L. Moffett, Clerk
Illinois Pollution Control Board