

ILLINOIS POLLUTION CONTROL BOARD  
February 11, 1976

ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 75-281  
 )  
 DOMINICK'S FINER FOODS, INC., )  
 an Illinois Corporation, )  
 )  
 Respondent. )

Mr. Larry B. Blackwood, Assistant Attorney General,  
 appeared for the Complainant;  
 Mr. Lucien D. Levaccare, Attorney, appeared for the Respondent.

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

This matter is before the Board on an Enforcement Complaint filed by the Environmental Protection Agency (Agency) on July 22, 1975, and an Amended Complaint filed September 4, 1975, both alleging that Respondent Dominick's Finer Foods, Inc. (Dominick's) caused noise pollution in violation of the Environmental Protection Act (Act), and Ch. 8: Noise Pollution, of the Pollution Control Board Rules and Regulations. In addition to the alleged violations of Section 24 of the Act and Rule 102 of the Noise Regulations in the original Complaint, a second count in the Amended Complaint alleges three specific dates of violation of Rule 202 of the Noise Regulations, which controls sound emitted to Class A land from Class B land.

A Stipulation and Proposal for Settlement was submitted by the parties at a hearing held November 17, 1975, in Chicago. Several stipulated exhibits accompanied the Stipulation and Proposal for Settlement. No other evidence or pleadings are now before the Board.

Because Dominick's has stipulated to all the violations alleged, because the Agency has stipulated that those violations have now been abated, and because the Board will accept the settlement proposed by the parties, we may briefly recite the facts in this matter as fully set out in the Stipulation and Proposal for Settlement.

At its retail food store at 8631 West 95th Street, Hickory Hills, Illinois, Dominick's utilizes a refrigeration system including 42 condenser units with fans, five large roof fans, and associated equipment. Shortly after it began using the refrigeration system in 1973, Dominick's began receiving noise complaints from nearby residents. Beginning in May, 1974, those complaints were taken to the Agency. A June 18, 1974, noise survey by the Agency (Ex. A) indicated violations of Rule 202. From that date through the filing of the Complaint in this matter, Dominick's and the Agency carried on an exchange of communications through conferences, letters and telephone calls.

Throughout that period Dominick's attempted various methods of controlling the noise from its compressor room and the equipment described above. Sound-absorptive vents for the compressor room were ordered by August 6, 1974. Baffles were installed inside the compressor room around that time, but were removed. In early 1975, Dominick's installed spray-on materials throughout its compressor room. In April, 1975 Dominick's installed exterior acoustical baffles over the compressor room vents. None of those strategies worked, as was shown by noise surveys made by Agency personnel and attached as exhibits to the Stipulation.

Finally, subsequent to the filing of this action, Dominick's installed acoustic baffles around the five roof fans for the compressor room. An August 19, 1975 noise survey by the Agency satisfied the Agency that Respondent's noise pollution problems had been abated (Ex.L).

Based on those facts, the parties proposed the following settlement:

(a) Respondent stipulates that the noise surveys attached hereto of noise from the refrigeration systems at its retail food store at 8631 West 95th Street, Hickory Hills, Illinois, taken prior to August, 1975, show that said refrigeration system was causing noise pollution under Rules 102 and 202 of the Noise Pollution Control Regulations.

(b) Respondent agrees to maintain said refrigeration system so as not to cause or allow noise pollution in the future.

(c) Complainant stipulates that, after an initial period of apparent confusion, Respondent has sought to eliminate the noise pollution from said refrigeration system.

(d) Complainant further stipulates that the measures undertaken by Respondent, to wit, installation of K-13 Spray-On Material in the compressor room and installation of acoustic baffles over the exterior vents and the five roof fans, have now satisfactorily abated the noise pollution from said refrigeration system.

(e) Respondent agrees to pay a penalty of \$100.00 for its past violations of Rules 102 and 202 of the Noise Pollution Control Regulations.

(f) This stipulation and settlement applies only to noise from the refrigeration system at Respondent's retail food store at 8631 West 95th Street, Hickory Hills, Illinois, and has no relevance or application to any other noise or other pollution caused by that store or any other facility owned or operated by Respondent.

We find that settlement acceptable, despite the low penalty. We reached this finding based on Dominick's apparent good faith in attempting to abate the violation here. With minor exception, Dominick's has cooperated fully with the Agency and, in addition, used its own initiative in expending approximately \$15,000 in its attempt to solve the problem.

As regards Dominick's present compliance, the Attorney General properly pointed out at hearing that the August 19, 1975 noise survey (Ex.L) indicates a very slight violation of Rule 202 on its face. That violation, however, was attributed at hearing to background ambient noise levels, rather than to Dominick's food store (R.7). We will, in this instance, defer to the parties' (and particularly the Agency's) judgement on that issue. The Agency conducted the survey in question, at the site, and is best able (under the narrow circumstances in this case) to interpret that survey.

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:


1. Respondent Dominick's Finer Foods, Inc. is found to have operated a refrigeration system in a retail food store at 8631 West 95th Street, Hickory Hills, Illinois, in violation of Section 24 of the Environmental Protection Act and Rules 102 and 202 of Chapter 8: Noise Pollution of the Pollution Control Board Rules and Regulations.

2. Respondent shall pay as a penalty for the above violations the sum of One Hundred Dollars (\$100.00), payment to be made within thirty (30) days of the date of this Order by certified check or money order to:

Environmental Protection Agency  
Fiscal Services Division  
2200 Churchill Road  
Springfield, Illinois 62706

3. Respondent shall maintain said refrigeration system so as not to cause or allow noise pollution.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 11<sup>th</sup> day of February, 1976, by a vote of 4-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board