

ILLINOIS POLLUTION CONTROL BOARD  
September 23, 1999

AUSTIN WALSH and LISA WALSH, )  
 )  
Complainants, )  
 )  
v. ) PCB 00-35  
 ) (Enforcement - Citizens, Noise)  
MAX KOLPAS and BETTY KOLPAS, )  
 )  
Respondents. )

ORDER OF THE BOARD (by E.Z. Kezelis):

This matter comes before the Board on an August 25, 1999 filing of a citizens enforcement case by Austin and Lisa Walsh (Walshes) against Max and Betty Kolpas (Kolpas). The Walshes also filed a certificate of service on August 25, 1999, showing that the Kolpas were personally served with a copy of the complaint on August 3, 1999. The Kolpas have not responded to the complaint.

In the complaint, the Walshes allege noise violations relating to the Kolpas' operation of an air conditioning unit. Specifically, the Walshes allege that the Kolpas have violated Sections 23 and 24 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/23, 24 (1998)) and Section 900.102 of the Board's regulations (35 Ill. Adm. Code 900.102).

Section 103.124(a) of the Board's procedural rules directs the Board to determine whether or not a citizens complaint is duplicitous or frivolous. 35 Ill. Adm. Code 103.124(a). Except as discussed below, the Board finds that the complaint is not duplicitous or frivolous, and therefore accepts this matter for hearing.

BACKGROUND

The Walshes moved into their home in Mt. Prospect, Cook County, Illinois, in July 1996. The Kolpas are neighbors to the Walshes in Mt. Prospect. The air conditioning unit involved in this complaint is located between the two homes. The Walshes allege that, beginning in 1996 and continuing yearly from May through October, the Kolpas' air conditioning unit has caused a "clattering sound like metal being pounded on metal" while operating when the outside temperature is less than 71 degrees. The Walshes allege that they are most often disturbed by this noise during sleeping hours and that the noise level in their home ranges from 64 to 68 decibels. The Walshes maintain that they have attempted to resolve this problem with the Kolpas but have been unsuccessful.

DUPLICITOUS/FRIVOLOUS DETERMINATION

Section 103.124(a) of the Board's procedural rules implements Section 31(b) of the Act. Section 103.124(a) provides:

The Clerk shall assign a docket number to each complaint filed . . . the Chairman shall place the matter on the agenda for Board determination whether the complaint is duplicitous or frivolous. If the Board rules that the complaint is duplicitous or frivolous, it shall enter an order setting forth its reasons for so ruling and shall notify the parties of its decision. If the Board rules that the complaint is not duplicitous or frivolous, this does not preclude the filing of motions regarding the insufficiency of the pleadings. 35 Ill. Adm. Code 103.124(a).

Duplicitious

An action before the Board is duplicitious if the matter is identical or substantially similar to one brought in this or any other forum. Brandle v. Ropp (June 13, 1985), PCB 85-68.

The Board has not identified any other cases, identical or substantially similar to this, pending in this or any other forum. Therefore, based on the record before us, this matter is not duplicitious.

Frivolous

An action before the Board is frivolous if it requests relief which the Board cannot grant ( Lake County Forest Preserve Dist. v. Ostro (July 30, 1992), PCB 92-80), or if it fails to state a claim upon which relief can be granted (People v. State Oil Company (August 19, 1999), PCB 97-103).

In the present case, the Walshes allege violations relating to the operation of the Kolpas' air conditioning unit. Specifically, the Walshes allege that the Kolpas have violated Sections 23 and 24 of the Act (415 ILCS 5/23, 24 (1998)) and Section 900.102 of the Board's Regulations (35 Ill. Adm. Code 900.102). With the one exception discussed below, the Walshes allege facts which, if proven at hearing, could result in a finding of violation for which the Board could grant relief.

The one exception to this frivolous determination is regarding the alleged violation of Section 23 of the Act. Section 23 of the Act contains only legislative statements of purpose as opposed to prohibitions on activity. See 415 ILCS 5/23 (1998). The Board has previously held that there can be no violation of Section 23. See Brunson v. MCI Worldcom, Inc. (January 7, 1999), PCB 99-71. Regarding the Section 23 allegations, the Walshes fail to state a claim upon which relief can be granted. Therefore, to the extent that the complaint alleges violations of Section 23 of the Act, those allegations are frivolous and are stricken from the complaint.

CONCLUSION

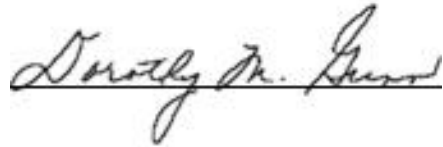
The Board finds that, pursuant to Section 103.124(a), the complaint, with the previously noted exception, is neither duplicitious nor frivolous and is therefore accepted for hearing.

The hearing should be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and with Section 103.125 of the Board's procedural rules. 35 Ill. Adm. Code 103.125.

The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 30 days in advance of hearing so that a 21-day public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses, and all actual exhibits to the Board within five days of hearing.

Any briefing schedule shall provide for final filings as expeditiously as possible. If, after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if, after an attempt, the hearing officer is unable to consult with all of the parties, the hearing officer shall unilaterally set a hearing date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 23rd day of September 1999 by a vote of 6-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board