

ILLINOIS POLLUTION CONTROL BOARD  
September 18, 1980

JENNIE BAILEY, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 80-6  
 )  
 VILLAGE OF MILL SHOALS, )  
 )  
 Respondent. )

MRS. JENNIE BAILEY APPEARED PRO SE AS THE COMPLAINANT.  
MR. R. MICHAEL DRONE APPEARED FOR THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

Jennie Bailey filed this enforcement action on January 7, 1980, alleging that the Village of Mill Shoals (Village) caused dust pollution by grading an oiled street and resurfacing with limestone without reoiling. While no specific rule or regulation violated has been cited, the Board waives any procedural defects in the complaint and construes the complaint to allege a violation of Section 9(a) of the Environmental Protection Act (Act): Air Pollution.

Hearing was held on April 10, 1980, at which one member of the public, William Adams, was present and testified. Jennie Bailey, Walter Bailey (her husband) and Carol Bailey (her daughter) testified on behalf of Jennie Bailey. Paul Hobson and Allen Simpson testified on behalf of the Village.

Jennie Bailey testified that she and her husband live on Jackson Street in the Village and that from sometime in the last week in August, 1979, when the road was resurfaced, until the time of the hearing, there was dust whenever the sun shone and the road was dry (R.18).

The threshold question, as argued by the Village, is whether dust can be considered an air pollutant under the Act (R.52-3). Section 9(a) of the Act proscribes causing or allowing the discharge of a "contaminant into the environment ...so as to cause... air pollution." Under Section 3 of the Act, "contaminant" includes "any solid... from whatever source." "Air pollution" is defined as "the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, or to property, or to unreasonably interfere with the enjoyment of life or property."

Based on these Sections, the Board finds that dust can be an air pollutant, but since there has been no showing of injury to plant or animal life or to property, the question in this case becomes whether there has been a sufficient showing of injury to human life or of an unreasonable interference with the enjoyment of life or property.

Walter Bailey testified that Jennie Bailey had to visit a doctor because of the dust (R.10). Paul Hobson (Hobson), the Village President, testified that he was unaware of anything in the gravel or dust which would be injurious to human life (R.37), but that testimony is accorded little weight since there was no showing that he had any expertise in the matter. Walter Bailey also testified that "it is not a fit place for residence in the condition things are in " (R.9). While they have not had to move out, even temporarily, they have had to "shut" their house and "live under an air conditioner" (R.10-11). Neither of these statements are rebutted.

Carol Bailey, who has periodically lived in Walter and Jennie's Bailey's home, testified that the dust is caused by large grain trucks which have been rerouted down Jackson Street to the grain elevator (R.25). She further testified that during the summer and fall these trucks run full time from very early to very late in the day (R.25-6).

The degree of dust is also supported by Complainant's Exhibits 1-7 which are photographs showing the dust caused by trucks moving along the street.

Thus, while the injury to human life seems speculative at best, the Board finds that there has been an interference with the enjoyment of life and property. The Board must next determine whether this interference was unreasonable. The factors listed in Section 33(c) of the Act are useful in this regard.

First, the degree of injury or interference is not great in terms of its scope, i.e. few people are affected, but it has been substantial in its effect on Jennie and Walter Bailey.

Second, there is clearly social and economic value to the cause of the source of the pollution. Grain must be transported and trucks are used for this purpose.

Third, the pollution source is certainly suitable to the area in which it is located. There is, however, a question as to whether Jackson Street, with its unoiled limestone surface is an appropriate route to be used. Walter Bailey testified that the trucks were rerouted down Jackson Street because a Town Board member's wife's aunt lives on the other road to the elevator (R.23).

However, Hobson testified that Jackson Street was chosen because only two families lived on that route and it would cause the least inconvenience. In cross-examination he admitted that there was a route to the elevator on which no one was living, but that it would be nearly impossible for the trucks to make it down those streets because of turn clearance (R.46-8).

Allen Simpson (Simpson) reinforced this testimony, citing the difficulty of the trucks in using other routes and the rerouting being done to accommodate the elevator (R.50), but noted on cross-examination that the trucks also had some difficulty using Jackson Street (R.51).

Fourth, it is clearly technologically practicable to reduce the emissions, but a question of economic reasonableness was raised by the Village. Hobson testified that the Department of Transportation decides what annual maintenance is to be done and that no other funds are available (R.32-4,36,39-43). However, on cross-examination he admitted that the Village does make a recommendation as to how funds are spent (R.47). Further, when the rerouting of the elevator traffic was done, the Behimer and Kissner elevator, the major beneficiary of this rerouting, signed an agreement with the Village to "maintain the road and keep it passable at all times" (R.31-2). Therefore, it may well be that the cost of oiling or otherwise reducing the dust could be borne by that company.

On the basis of these considerations, the Board finds that the Village has violated Section 9(a) of the Act by allowing the routing of truck traffic onto Jackson Street causing sufficient dust to interfere with Jennie Bailey's enjoyment of her life and property. The Board further finds that it is economically reasonable to do so. Finally, the Board finds that on the basis of the criteria in Section 33(c) of the Act, no penalty should be imposed.

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

#### ORDER

1. The Village of Mill Shoals is in violation of Section 9(a) of the Environmental Protection Act.
2. Within 15 days of the date of this Order the Village shall cease and desist from such violation and shall take such steps as will reduce the dust to a reasonable level on Jackson Street.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 18<sup>th</sup> day of September, 1980 by a vote of 5-0.

Christan L. Moffett  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board