

ILLINOIS POLLUTION CONTROL BOARD
September 20, 2001

REBECCA S. LAWRENCE,)
)
Complainant,)
)
v.) PCB 02-10
) (Citizens Enforcement - Noise)
NORTH POINT GRADE SCHOOL c/o UNIT 5)
DISTRICT OFFICE,)
)
Respondent.)

ORDER OF THE BOARD (by S.T. Lawton, Jr.):

On July 25, 2001, complainant, Rebecca Lawrence, filed a complaint with the Board. The complaint alleges that North Point Grade School (North Point), c/o the Unit 5 District Office, operates air conditioning units on the roof of the school at 2602 East College Avenue in Bloomington, McLean County, Illinois, in a manner that violates noise provisions of the Environmental Protection Act (Act) and Board regulations. Respondents filed an answer to the complaint on September 5, 2001, which did not address the issue of whether the complaint was duplicitous or frivolous.

Section 103.212(a) of the Board's procedural rules directs the Board to determine whether a citizen's complaint is duplicitous or frivolous. 35 Ill. Adm. Code 103.212(a). Except as discussed below, the Board finds the complaint is neither duplicitous nor frivolous, and accepts this matter for hearing.

BACKGROUND

Lawrence states in her complaint that she lives at 6 Sun Pointe Court in Bloomington, Illinois, which is in close proximity to North Point. Comp. at 1, 3.¹ Lawrence alleges that large air conditioning units, installed on the west side of North Point in August 1999, cause constant and consistent noise pollution. Comp. at 3. Lawrence states that, during the 7 months of operation, the units run 24 hours a day, 7 days a week. Comp. at 3. Lawrence alleges that the noises range from a "loud start up of a fan motor through its running cycle, [to] a running motor with a constant humming sound when the air conditioning fan shuts off." Comp. at 3. The fan cycle allegedly runs for 3 minutes, and then shuts off for 3 to 5 minutes. Comp. at 3.

Lawrence alleges that North Point operated the air conditioning units from August to November in 1999, and from April to November in 2000. Comp. at 3. Lawrence states that North Point activated the units again in April 2001 and the noise is ongoing. Comp. at 3.

¹ On July 25, 2001, Rebecca Lawrence filed with the Board the complaint in this matter, which is referred to as "Comp. at ____."

Lawrence alleges that sound meter readings taken 25 feet from the North Point property line span from 60 to 65 db during the day and 67 to 75 db during nighttime hours. Comp. at 3.

Lawrence alleges in her complaint that the noise from the air conditioning fan at North Point results in an unreasonable interference with the use and enjoyment of her property. Comp. at 4. Lawrence states that the noise disturbs and prevents sleep during the day and night hours, endangers her physical and emotional health and wellbeing, and depresses the value and resale potential of her property. Comp. at 4.

DUPLICITIOUS/FRIVOLOUS DETERMINATION

Section 103.212(a) of the Board's procedural rules implements Section 31(d) of the Act, providing that the Board shall schedule a hearing upon receipt of a citizen's complaint, unless it determines that the complaint is duplicitous or frivolous. 35 Ill. Adm. Code 103.212(a).

Duplicitious Determination

A matter is duplicitous if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. The Board has not identified any other cases, identical or substantively similar to this, pending in this or any other forum.

Frivolous Determination

An action before the Board is frivolous if the complaint requests relief that the Board does not have the authority to grant, or "fails to state a cause of action upon which the Board can grant relief." 35 Ill. Adm. Code 101.202. Lawrence alleges North Point runs air conditioning units on the roof of its school in a manner which violates Sections 23, 24 and 33(c) of the Act (415 ILCS 5/23, 24, 33(c) (2000)) and Sections 900.102, 900.102(a), and 900.102(b) of the Board's regulations (35 Ill. Adm. Code 900.102, 900.102(a), 900.102(b)). Complainants request that the Board directs respondents to: permanently and immediately stop using the air conditioning units at North Point until the respondents eliminate the noise pollution so as to prevent further harm and health dangers to Lawrence; and cease and desist from violating the Act and Board regulations.

Section 23 and 33(c) Allegations are Stricken as Frivolous

The Board finds the alleged violations of Sections 23 and 33(c) of the Act are frivolous. Section 23 of the Act only contains legislative objectives as opposed to prohibitions on activity. *See* 415 ILCS 5/23 (2000); Walsh v. Koplas, PCB 00-35, slip op. at 2 (Sept. 23, 1999). A person can not violate Section 23 of the Act. *Id.* Complainants, in alleging violations of Section 23 of the Act, fail to state a claim upon which relief can be granted.

Lawrence similarly cannot allege a violation of Section 33(c) of the Act. This section only lists factors that the Board considers when making its orders and determinations. *See* 415 ILCS 5/33(c) (2000). The Board utilizes this section to weigh evidence in cases involving allegations of noise pollution. *See* Furlan v. University of Illinois School of Medicine, PCB 93-

15, slip op. at 16 (Oct. 3, 1996). However, a person cannot be in violation of this section. For the above reasons, the Board finds the allegations concerning Sections 23 and 33(c) of the Act are frivolous, and orders that these allegations to be stricken from the complaint.

Section 24 and Sections 900.102, 900.102(a) and (b) as Alleged are Not Frivolous

The complaint also alleges noise pollution in violation of Section 24 of the Act and Sections 900.102, 900.102(a) and 900.102(b) of the Board's regulations. Section 24 provides:

No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act. 415 ILCS 5/24 (2000).

Section 900.102 of the Board's regulations prohibits someone from causing or allowing noise pollution, such as noise that unreasonably interferes with the enjoyment of another's life or property. 35 Ill. Adm. Code 900.102; *see also* 415 ILCS 5/3.02 (2000).

Sections 901.102(a) and (b) of the Board's regulations prohibit sound emissions above regulatory limits during daytime or nighttime hours from a source on Class A, B or C land to any receiving Class A land. 35 Ill. Adm. Code 901.102(a) and (b). The complaint alleges that the constant noise generated by the air conditioning units occurs 24 hours a day, 7 days a week, during the 7 months the units are in operation. Comp. at 3. Lawrence further alleges that sound meter readings taken 25 feet from the North Point property line span from 60 to 65 db during the day and 67 to 75 db during nighttime hours. Comp. at 3. The noise from North Point could possibly exceed the maximum levels of sound permitted by 35 Ill. Adm. Code 901.102(a) and (b) of the Board's regulations. Since these allegations state a cause of action upon which the Board can grant relief, and the Board can grant the relief that Lawrence requested, the Board finds that the alleged violations of Section 24 of the Act and Sections 900.102, 900.102(a), and 900.102(b) of the Board regulations are not frivolous.

CONCLUSION

The Board finds that the allegations that North Point violated Section 24 of the Act and Sections 900.102, 900.102(a), and 900.102(b) of the Illinois Administrative Code are neither duplicitous nor frivolous, and accepts this matter for hearing. The Board finds the allegations that North Point violated Sections 23 and 33(c) of the Act are frivolous, and strikes them from the complaint.

The Board directs that this matter proceed to hearing as expeditiously as practicable. The Board will assign a hearing officer to conduct hearings consistent with this order and Sections 101.600 and 101.612 of the Board's rules. *See* 35 Ill. Adm. Code 101.600, 101.612.

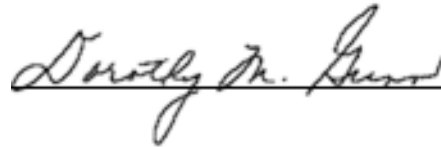
The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 30 days in advance of the hearing so that a 21-day public notice of the hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a

statement regarding credibility of witnesses, and all actual exhibits to the Board within five days of the hearing.

Any briefing schedule shall provide for final filings as expeditiously as possible. It is the responsibility of the hearing officer to guide the parties toward prompt resolution or adjudication of this matter, through whatever status calls and hearing officer orders he determines are necessary and appropriate.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order on September 20, 2001, 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