

ILLINOIS POLLUTION CONTROL BOARD

July 17, 1975

LUCILLE WATHEN,                    )  
    Complainant,                    )  
                                      )  
          v.                            )                    PCB 74-482  
                                      )  
MAE V. CHANDLER,                    )  
    Respondent.                     )

MR. LANCE HADDIX, attorney for Complainant.  
MR. ADAM P. STACH, attorney for Respondent.

OPINION AND ORDER OF THE BOARD (by Dr. Odell)

On December 19, 1974, Ms. Lucille Wathen filed a formal Complaint with the Illinois Pollution Control Board (Board) against her neighbor, Ms. Mae V. Chandler. Complainant alleged that Respondent, in operating her central home air-conditioning condenser unit, allowed the emission of noise beyond the boundaries of her property "so as to cause noise pollution in Illinois, in violation of Rule 102 of the State of Illinois Noise Pollution Control Regulations" (Chapter 8). Complainant charged that the outside unit interfered with normal activities; interrupted sleeping habits; made the bedrooms, screened porch, and backyard unusable for study or relaxation; caused anxiety and irritability; depressed property values; and threatened the hearing and health of all five family members. The Complainant and her husband, both musicians, live in Glenview, Illinois.

A hearing took place on February 19, 1975, in Skokie, Illinois. Ms. Chandler lives on the northeast corner of the intersection of Elmgate and Robincrest streets in Glenview, Illinois (Comp. Ex. 2). Her house faces south. The Complainant lives on adjoining property immediately north of Ms. Chandler. Complainant's home faces north. The air-conditioner is located in the Respondent's backyard, and noise from the unit is emitted into the adjoining backyard of the Complainant and the bedrooms facing Respondent's property. The homes are 27 feet apart (R. 9) with the central air-conditioning unit independent of Respondent's house but located next to it (R. 119). The unit is 25 feet from the wall of Complainant's home (R. 10). The new unit was installed in the summer of 1973 (R. 17) at a cost of approximately \$1,000 (R. 130). Complainant does not have air-conditioning in her home and relies on open windows for ventilation and cooling (R. 14). The air-conditioner's motor produces simultaneously a high and low hum with a pitch of E on the treble staff (R. 11).

Complainant unsuccessfully attempted in 1973 to convince Respondent to alter the operation of her unit (R. 17). Since the unit met all Village requirements and was conveniently located near the existing furnace ducting system, Respondent refused to make any changes (R. 110, 120). Upon inspection by the installer, the air-conditioner was found to be operating properly (R. 116).

The Illinois Environmental Protection Agency (Agency) took noise measurements at four sites on Complainant's property on June 28, 1974. All tests were conducted during the day. No separate background noise tests were carried out. Emission levels were highest at Complainant's bedroom window, site 1 (R. 73). At all four locations, levels in excess of the permissible limits for nighttime noise were recorded (Comp. Ex. 2). However, in none of the tests was the sound level recorded at or beyond 25 feet from the property-line-noise-source (R. 73).

Complainant stated that the air-conditioning unit makes sleep difficult so that at times she is forced to sleep in the basement (R. 17). The excessive noise makes it impossible for her to enjoy her side porch (R. 26). Mr. Wathen, who stipulated to his wife's answers (R. 44), indicated that the noise does at times interfere with his sleep. The noise is also annoying when he is on the porch (R. 50). The noise has had a deleterious effect on his wife's health and has made her irritable (R. 52). No other member of the family has mentioned to him problems from the air-conditioning (R. 51).

The Board adopted Noise Regulations on July 26, 1973. In the accompanying Opinion the Board stated: "Although our jurisdiction would cover disputes between residential neighbors, we feel that local authorities may be better suited in terms of providing an immediate solution to the problem." In the matter of Noise Pollution Control Regulations R72-2, 8 PCB 703, 25 (July 31, 1973). However, because of the structure of the Illinois Environmental Protection Act (Act) we cannot decline jurisdiction in this case. We find a violation of Rule 102 of Chapter 8. We find that unreasonable interference has been proven based on the standards in Section 33(c) of the Act. First, sleeping habits were disturbed and customary uses of private property were interrupted. Second, although the pollution source has value, its worth is diminished because of its interference with the normal activities of others. Third, although the source is suitably located, emissions began after Complainant was living in her home. Fourth, technically practical and economically reasonable means do exist to limit the noise emissions. Based on all these facts, we conclude that unreasonable interference under Rule 102 of Chapter 8 has been established.

In determining an appropriate remedy, we reiterate the neighborhood nature of the difficulties and the fact that the harm caused is not severe. Respondent must make reasonable efforts to reduce the emissions by, for example, installing a barrier or baffle near the unit to deflect the emissions back

towards her own property. Relocation of the unit is another possibility. Other procedures calculated to achieve the same result could also be carried out.

This constitutes the findings of fact and conclusions of law of the Board.

ORDER

IT IS THE ORDER of the Pollution Control Board that:

1. Respondent shall cease and desist violating Rule 102 of Chapter 8 within 60 days of the adoption of this Opinion and Order.

2. Respondent shall carry out appropriate methods to limit the noise emissions from her property. Such procedures shall be completed within 60 days of the adoption of this Order.

3. Respondent shall report to the Board her efforts to control the noise emissions from her air-conditioning unit. The report shall be sent to the Board at 309 West Washington Street, Suite 300, Chicago, Illinois 60606 within 90 days of the adoption of this Opinion and Order.

Mr. Zeitlin dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 17<sup>th</sup> day of July, 1975, by a vote of 4-1.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board