

ILLINOIS POLLUTION CONTROL BOARD  
April 3, 1997

DONALD AND VERNA BRYANT,	)	
	)	
Complainants,	)	
	)	
v.	)	PCB 97-158
	)	(Enforcement - Citizens - Noise)
	)	
DOUG HEIL and HARRISBURG TRUSS	)	
COMPANY,	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter comes before the Board on the filing of a complaint by Donald and Vern Bryant on March 13, 1997 against Doug Heil and Harrisburg Truss Company (HTC). On March 19, 1997 HTC filed its response. Respondent Doug Heil has not filed a response.

In the complaint the Bryants allege that respondents violated Section 24 of the Illinois Environmental Protection Act (Act) and the Board's regulations at 35 Ill. Adm. Code 900.102 due to "noise caused by operation of machinery at Harrisburg. . . revving of fork lift motor, crashing and banging, running of chain saw and loud music". (Complaint at 3.) The Bryants allege that the noise "has resulted in an unreasonable [interference with the] use and enjoyment of complainants' property, disturbance during the night of our sleep which endangers the physical and emotional health and well being of complainants, depresses value of complainants' property". (Id.) The Bryants request that the Board order respondents to cease and desist from working before 7:00 a.m. and later than 10:00 p.m., and from further violations of applicable statutes and regulations. (Complaint at 4.)

On March 19, 1997 HTC filed its response in which HTC denies complainants' allegations. (Response at 1.) HTC asserts that the complaint is frivolous because HTC notified the Illinois Environmental Protection Agency (Agency) of the allegations and the Agency chose not to inspect the complaint. HTC further contends that the complaint is frivolous because its operations have been in existence since the early 1970s and are located in an "enterprise zone". (Response at 2.)

Section 103.123(a) of the Board's procedural rules, which implement Section 31(b) of the Act, provides that the Chairman shall place the matter on the Board's agenda for the Board to determine whether the complaint is duplicitous or frivolous. (35 Ill. Adm. Code 103.123(a) (1994); 415 ILCS 5/31(b) (1994).) This section further states that if the complaint is duplicitous or frivolous, the Board 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).)

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in another forum. (Brandle v. Ropp (June 13, 1985), PCB 85-68.) An action before the Board is frivolous if it fails to state a cause of action upon which relief can be granted by the Board. (Citizens for a Better Environment v. Reynolds Metal Co. (May 17, 1973), PCB 73-173.) HTC's arguments that the complaint is frivolous do not fall within the Board's definition of frivolous. Therefore, the Board finds that, pursuant to Section 103.124(a), the evidence in this matter does not indicate that this complaint is either duplicitous or frivolous. This matter shall proceed to hearing.

The hearing must 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 Section 103.125 of the Board's rules. (35 Ill. Adm. Code 103.125.) The Clerk of the Board shall promptly issue appropriate directions to that assigned hearing officer.

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 public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding the 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. 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 the parties, the hearing officer shall unilaterally set a hearing date.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the \_\_\_\_ day of \_\_\_\_\_, 1997, by a vote of \_\_\_\_\_.

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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board