

ILLINOIS POLLUTION CONTROL BOARD  
June 5, 2014

CITY OF NASHVILLE, a municipal corporation	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 14-113
	)	(Citizens Enforcement - Noise)
SISCO CORPORATION, d/b/a Sisco Box Corporation	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by C.K. Zalewski):

On February 28, 2014, the city of Nashville (City) filed a complaint (Comp.) against Sisco Corporation (Sisco) regarding noise at Sisco’s facility in Nashville, Washington County. The complaint alleges “cyclone system noise” from 5:30 a.m. to 4:30 p.m. on a daily basis beginning on August 15, 2013. Comp. at 3. For the reasons discussed below, the Board finds the complaint is frivolous, does not accept the complaint for hearing, but provides a time period for filing an amended complaint.

**PROCEDURAL HISTORY**

The City’s February 28, 2014 complaint alleges that Sisco’s “cyclone system” creates noise that results in a nuisance in the City of Nashville. Comp. at 3. On March 27, 2014, Sisco filed a motion for extension of time requesting that the time to file an answer to the complaint be extended until April 10, 2014 because Sisco had, at that time, only recently engaged legal counsel. Sisco also stated that its counsel needed additional time to acquire and review the complete JP Acoustics report (Report) attached to Sisco’s complaint.

On April 10, 2014, Sisco filed a second motion for extension of time, unopposed by the City, stating that counsel for Sisco had reviewed the Report and that Sisco and the City were engaged in settlement discussions. On April 23, 2014, the hearing officer granted Sisco’s second motion for extension of time and extended the deadline for filing of an answer or other responsive pleading to May 23, 2014. On May 23, 2014, Sisco filed an answer to the complaint denying the allegations of noise pollution.

**SUMMARY OF COMPLAINT**

The complaint alleges that the cyclone system operated by Sisco causes an “inconvenience of noise (nuisance)” that began in August 2013. Comp. at 3-4. Specifically, the complaint describes the sections of the Environmental Protection Act or Board regulations being violated as, “[o]riginally filed as Part 1 of Chapter 8: Noise Pollution, effective August 10,

1973; amended at 2 Ill. Reg. 27, p. 223, effective June 26, 1978; amended at 5 Ill. Reg. 6371, effective June 1, 1981; amended at 5 Ill. Reg. 8533, effective August 10, 1981; amended at 6 Ill. Reg. 10960, effective September 1, 1982; codified at 7 Ill. Reg. 13579; amended in R83-7 at 11 Ill. Reg. 3121, effective January 28, 1987.” Comp. at 3.

The Report, attached to the complaint, compared the sound levels at residential property lines near the Sisco facility with State of Illinois Noise Pollution Control Regulations. Report at 1. The Report states that “[s]ound measurements taken at residential property[] lines during the use of the cyclone system indicated sound pressure levels in excess of the Illinois Regulations.” *Id.* at 2. The complaint requests that the Board order respondent to, “[t]ake pollution abatement measures.” Comp. at 4.

### **DISCUSSION**

Under the Act, any person may bring an action before the Board to enforce Illinois’ environmental requirements. *See* 415 ILCS 5/3.315, 31(d)(1) (2012); 35 Ill. Adm. Code 103. In this case, the City alleges noise pollution that has resulted in nuisance. Comp. at 4. The City, however, fails to provide the Board with a citation to the provision in the Act or Board’s regulations that it alleges is being violated by Sisco.

Section 31(d)(1) of the Act provides that “[u]nless the Board determines that [the] complaint is duplicative or frivolous, it shall schedule a hearing.” 415 ILCS 5/31(d)(1) (2012); *see also* 35 Ill. Adm. Code 103.212(a). A citizen complaint is “frivolous” if it 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.

In its complaint, the City cited the source for Part 900 of Title 35 of the Board’s noise pollution regulations (35 Ill. Adm. Code 900.Subpart H) as the specific section of the Act or Board regulations being violated by Sisco. Comp. at 3. The complaint does not contain a citation to a specific section of the Act or the Board’s regulations under which the Board may grant relief. *See* Maurice Whisenhunt v. Jeff Moore, PCB 14-34, slip op. at 2 (Jan. 9, 2014); and *see* Jon Chvalovsky v. Exelon, PCB 14-6, slip op. at 1-3 (Oct. 3, 2013). The Board finds that the complaint is frivolous pursuant to Section 101.202 of the Board’s procedural rules. 35 Ill. Adm. Code 101.202. Therefore, the Board cannot accept the complaint for hearing.

To remedy the deficiencies described above, the Board will allow respondent to file an amended complaint with the Board alleging a violation of a specific section of the Act or Board regulations on which the Board may grant relief. Any such amended complaint must be filed by July 7, 2014, which is the first business day following the 30th day after the date of this order. Failure to file an amended complaint on or before that date will subject this case to dismissal. The amended complaint must comply with the content requirements of the Board’s procedural rules. *See* 35 Ill. Adm. Code 103.204. In addition, a copy of any amended complaint must be served upon respondent, and proof that respondent was so served must be filed with the Board. *See* 35 Ill. Adm. Code 101.304.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 5, 2014, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

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John T. Therriault, Clerk  
Illinois Pollution Control Board