

ILLINOIS POLLUTION CONTROL BOARD
April 2, 1998

RONALD R. AND MELODY L.)	
KANAVERSKIS,)	
)	
Complainants,)	
)	PCB 98-112
v.)	(Enforcement - Noise - Citizens)
)	
M. A. GHALAYINI,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J. Yi):

This matter comes before the Board on the February 25, 1998, filing of a citizen's enforcement complaint by Ronald R. and Melody L. Kanaverskis (Kanaverskis). Also before the Board are respondent M. A. Ghalayini's (Ghalayini) February 25, 1998, response to the complaint; the Kanaverskis' March 2, 1998, reply to Ghalayini's response; Ghalayini's March 5, 1998, reply to the Kanaverskis' reply, accompanied by a motion for leave to file reply instanter; and Kanaverskis' March 12, 1998, reply to the Ghalayini's March 5, 1998, reply.

BACKGROUND

Complainants allege that Ghalayini caused noise pollution by installing and operating a furnace vent and air conditioner in violation of Sections 23 and 24 of the Environmental Protection Act (Act) (415 ILCS 5/23 and 24 (1996)). Complainants also allege that Ghalayini caused or allowed the emission of sound beyond the boundaries of its property in violation of 35 Ill. Adm. Code 900.102, 901.102(a) and (b), and 901.106 of the Board's regulations. Complainants state that the noise generated from the site has resulted in an unreasonable interference with the use and enjoyment of their property. Complainants request that the Board enter an order directing Ghalayini to cease and desist from further violations of the applicable statutes and regulations, and, more specifically, order Ghalayini to re-route the exhaust furnace pipe and permanently discontinue use of the air conditioning unit or move the unit to the rear of the property.

DUPPLICITOUS/FRIVOLOUS DETERMINATION

Section 103.124(a) of the Board's procedural rules, which implements Section 31(b) of the Act (415 ILCS 5/31(b) (1996)), provides that this matter shall be placed on the Board agenda for the Board's determination as to whether or not the complaint is duplicitous or frivolous. 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 requests relief which the Board could not grant. Lake County Forest Preserve District v. Neil Ostro, Janet Ostro, and Big Foot Enterprises (July 30, 1992), PCB 92-80. The Board finds that, pursuant to Section 103.124(a), the complaint is neither duplicitous nor frivolous and will be accepted for hearing.

OUTSTANDING PLEADINGS

The Board has received a number of pleadings in this matter. The pleadings commence with a timely filed response to the complaint, and continue with replies to the response and to each subsequently filed reply. No objection to the filing of any pleading has been received, and the Board accepts all pleadings.

At this time, only one issue raised in the pleadings requires the Board's attention. In the response to the complaint, Ghalayini requests to wait until the weather is warmer in order to determine the level of noise produced by the air conditioning unit. In their March 2, 1998, reply, the Kanaverskis assert that it is necessary to proceed to hearing in a timely manner. The Board agrees that this matter should proceed to hearing in a timely fashion consistent with Board practice. The timeframes inherent in the process should provide the respondent ample time to investigate the noise coming from the air conditioning unit. Thus, the Board orders this matter to proceed to hearing in accordance with standard Board procedure.

CONCLUSION

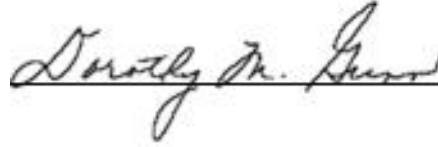
As noted, the Board accepts this matter for hearing. The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and Section 103.125 of the Board's rules (35 Ill. Adm. Code 103.125). 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 a 21 day public notice of 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. 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. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

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 2nd day of April 1998, 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 Board