

ILLINOIS POLLUTION CONTROL BOARD  
October 19, 1995

DONNETTA GOTT, LYNDELL CHAPLAIN, )  
GARY WELLS, EARNEST L. ELLISON )  
and MAXINE ELLISON, )  
 )  
Complainants, )  
 )  
v. ) PCB 96-68  
 ) (Enforcement-Air)  
 )  
M'ORR PORK, INC., )  
 )  
Respondent. )

ORDER OF THE BOARD (by E. Dunham):

This matter is before the Board pursuant to a complaint filed September 20, 1995 by Donnetta Gott, Lyndell Chaplain, Gary Wells, Earnest L. Ellison and Maxine Ellison against the respondents, M'Orr Pork, Inc. The complaint alleges that the respondents violated 415 ILCS 5/3.02 and 9 of the Environmental Protection Act (Act) and 35 Ill. Adm. Code 501.402 and 501.405(b) of the Board's air regulations in the operation of a hog confinement facility in Kinderhook, Illinois. As of the date of this order, the Board has not received a response to the complaint. Pursuant to Section 31(b) of the Act the Board must make a determination as to whether the complaint filed is frivolous or duplicitous. (415 ILCS 5/31(b) (1994).)

The Board, on numerous occasions, has in its opinions discussed the meaning of frivolous and duplicitous in the context of citizen enforcement actions. In Citizens for a Better Environment v. Reynolds Metals Co., (May 17, 1973) PCB 73-173, 8 PCB 46, we held that "frivolous" is the "failure to state a cause of action upon which relief can be granted." In Farmers Opposed to Extension of the Illinois Tollway v. Illinois State Toll Highway Auth., (September 16, 1971) PCB 71-159, 2 PCB 119, we held that the "frivolous" provision is designed to avoid expensive and time-consuming hearings on claims that cannot prevail even if the facts alleged are true." After examining our holdings in Citizens for a Better Environment and Farmers, and additionally, Webster's dictionary, the appellate court determined in Winnetkans Interested in Protecting the Environment (WIPE) v. Illinois Pollution Control Board, (1st Dist. 1977), 13 Ill.Dec. 149, 153, 370 N.E.2d 1176, that a "frivolous" pleading is "one that is either legally or factually deficient."

The instant complaint requests that the Board issue an order directing respondents to cease and desist from the alleged violations, and to order the respondent to permanently eliminate the air pollution by relocating the air pollution source to a

more suitable location. The Board has the authority to grant such relief if the alleged facts are proven at hearing. Therefore the Board finds that the complaint is not frivolous.

On the issue of "duplicitous", in the case of Brandle v. Ropp, (June 13, 1985), PCB 85-68, 64 PCB 263, we held:

Duplicitous is not defined in the Act but has been interpreted to apply to complaints which duplicate allegations identical or substantially similar to matters previously brought before the Board. (Citation omitted.) A complaint is also duplicitous if it is identical or substantially similar to one brought in another forum.

In League of Women Voters v. North Shore Sanitary Dist., (October 8, 1970), PCB 70-1,1 PCB 35, the Board held "that the reason for the prohibition of duplicitous complaints is the apprehension that private citizens' complaints 'might flood the Board with too many cases raising the same issue and [might] unduly harass a respondent.'" (WIPE v. IPCB, 13 Ill.Dec. at 153, citing, League of Women Voters, at 36.)

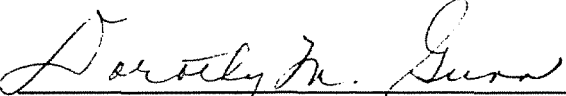
The complainant states that the complainants are not aware of any other cases arising from the same issue in another forum or court. The Board is unaware of any other cases arising from the same issue therefore the Board finds the complaint is not duplicitous and this matter is directed to hearing.

The hearing must be scheduled and completed in a timely manner consistent with Board practices. The hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 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.

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 in conformance with the schedule above. 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 19<sup>th</sup> day of October, 1995, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board