

ILLINOIS POLLUTION CONTROL BOARD
April 2, 1998

SCOTT and SHELLY BEHRMANN,)	
)	
Complainants,)	
)	
v.)	PCB 98-84
)	(Enforcement - Noise - Citizens)
OKAWVILLE FARMERS ELEVATOR -)	
ST. LIBORY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J. Yi):

On December 11, 1997, the Board received a citizen's enforcement complaint filed by Scott and Shelly Behrmann (Behrmanns). On March 19, 1998, the Board denied the Okawville Farmers Elevator - St. Libory's (Farmers Elevator) motion to dismiss, and ordered this matter to proceed to hearing in accordance with the March 12, 1998, hearing officer order.

On March 23, 1998, the Behrmanns filed a motion for leave to file a first amended complaint (motion) and an amended complaint. The motion asserts that the complainants did not describe noise pollution attributable to truck traffic in the complaint. The motion states that it would be expedient to address every source of noise pollution caused by Farmers Elevator, and that Farmers Elevator is not prejudiced by the filing of the amended complaint.

On March 30, 1998, Farmers Elevator filed an objection to the motion. Farmers Elevator states that the amended complaint raises different issues and factual situations than does the complaint. Farmers Elevator contends that the amended complaint includes allegations of noise pollution arising from truck traffic, and the original complaint concerns noise pollution from aeration fans only. Farmers Elevator asserts that the additional issues raised present evidence problems not contemplated on March 6, 1998, when the discovery schedule and potential hearing dates were discussed. Farmers Elevator requests that the Board either deny the motion or, if the motion is granted, strike the March 11, 1998 hearing officer order setting a discovery schedule and give Farmers Elevator the opportunity to file responsive pleadings.

Section 103.210(a) of the Board's rules addresses amendments to pleadings. Section 103.210(a) provides:

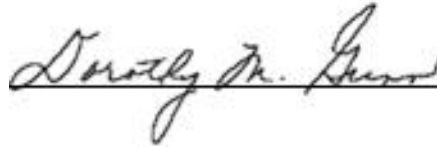
- a) Proof may depart from pleadings and pleadings may be amended to conform to proof, so long as no undue surprise results that cannot be remedied by a continuance.

The Board grants the Behrmanns' motion for leave to file, and accepts the first amended complaint. Any undue surprise resulting from the amended complaint can be remedied by allowing Farmers Elevator the opportunity to respond. To that end, the discovery schedule contained in the March 11, 1998, hearing officer order is stricken. Farmers Elevator may respond to the amended complaint pursuant to the timelines set forth in the Board's procedural rules. The parties are directed to contact the hearing officer in this matter to establish a new discovery schedule and a hearing date. 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.

The Board notes that the pleadings in this matter do not indicate that they are filed on recycled paper as required by Section 101.103(d) of the Board's rules. Pursuant to Section 101.103(d), all documents, excluding exhibits, filed with the Board by an attorney must be filed on recycled paper, and must indicate this fact on the first page of the certificate of service or the notice of filing. This requirement may be waived upon a finding of the Board under Section 101.103(e). No Section 101.103(e) waiver has been requested or granted. Thus, the Board will no longer accept for filing any pleading in this matter that does not comply with the provisions of Section 101.103(d).

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