

ILLINOIS POLLUTION CONTROL BOARD
January 22, 1998

CHARTER HALL HOMEOWNER'S)
ASSOCIATION and JEFF COHEN,)
)
Complainants,)
)
v.) PCB 98-81
) (Enforcement - Noise - Citizen)
OVERLAND TRANSPORTATION)
SYSTEM, INC. and D.P. CARTAGE, INC.)
)
Respondents.

ORDER OF THE BOARD (by K.M. Hennessey):

This citizens' noise pollution enforcement complaint comes before the Board for a determination as to whether it is frivolous or duplicitous. The Board finds that the complaint is not duplicitous. The Board finds that while certain minor portions of the complaint must be stricken, the remainder of the complaint is not frivolous and the Board accepts the complaint for hearing. The Board also orders the hearing officer to expedite this proceeding to the extent possible.

BACKGROUND

Charter Hall Homeowner's Association (Charter Hall) and a member of Charter Hall, Jeff Cohen (collectively, complainants) filed a complaint against Overland Transportation System Inc. (Overland) and its allegedly wholly owned subsidiary, D.P. Cartage, Inc. (D.P. Cartage), on December 9, 1997. Complaint (Comp.) at 1, 2. The complaint alleges that Charter Hall is composed of 50 residential property lots along the east and west sides of Charter Hall Drive in Palatine, Illinois. Comp. at 2.

The complaint alleges that since 1995, D.P. Cartage has owned or operated a Palatine Service Center (the "facility") in Palatine, Illinois, immediately to the east of Charter Hall Drive. Comp. at 1-2. Complainants allege that since respondents purchased the facility, respondents have engaged in operations that produce noise that can be heard in the Charter Hall subdivision day and night every month of the year. Comp. at 3.

Complainants allege that the noise constitutes noise pollution in violation of Section 24 of the Illinois Environmental Protection Act, 415 ILCS 5/24 (1996), that the noise violates various Board regulations, and that the noise has interfered with complainants' enjoyment of life or with their conduct of lawful business or activity. Comp. at 4-6. Complainants further allege that the noises will continue unabated unless the Board orders respondents to curtail the noises. *Id.* Complainants request expedited consideration of their complaint.

Complainants request that the Board impose a civil penalty on respondents, along with various cease and desist orders and orders that respondents change the premises and their operations, as well as other relief. Comp. at 6-8. Complainants also request that the Board award attorney fees and expert witness fees “in all appropriate circumstances,” along with an order requiring respondents to post a bond to assure the correction of violations within the time prescribed. Comp. at 8.

DISCUSSION

Section 103.124(a) of the Board’s procedural rules requires that the Board determine whether any citizens’ enforcement action filed with the Board is frivolous or duplicitous.¹ An action is frivolous if it fails to state a cause of action upon the Board may grant relief, or requests relief that the Board cannot grant. Johnson v. ADM-Demeter, Hoopston Division (October 2, 1997), PCB 98-31, slip op. at 2. An action is duplicitous if it is identical or substantially similar to one brought in another forum. Johnson, PCB 98-31, slip op. at 2.

The record does not disclose that any similar action is pending in another forum. The Board concludes that the complaint is not duplicitous.

While the complaint does state a cause of action upon which the Board may grant relief, the Board concludes that portions of the complaint must be stricken. First, the complaint requests that the Board “award attorney fees and expert witness fees in all appropriate circumstances.” Comp. at 8. The Board may award such fees only in cases in which the State’s Attorney or the Attorney General is the plaintiff (and then only under the circumstances described in 415 ILCS 5/42(f) (1996)). See Dayton Hudson Corporation v. Cardinal Industries, Inc. (August 21, 1997), PCB 97-134, slip op. at 7-8. The Board therefore strikes this portion of the complaint.

Second, the Board notes that while the complaint is brought by “Charter Hall Homeowner’s Association and various of its members,” (Comp. at 1), the complaint identifies only one member. Comp. at 1. The Board’s procedural rules do not allow unidentified persons to be complainants, and accordingly the Board has revised the caption to reflect only the Charter Hall Homeowner’s Association and Jeff Cohen, the only member identified in the complaint. Complainants are free to move for leave to amend the complaint to add other specifically named members as complainants.

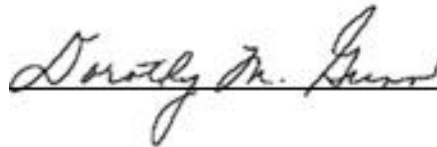
The remainder of the complaint is not frivolous. The Board accepts this case for hearing. The hearing officer must inform the Clerk of the Board of the time and location of the hearing at least 30 days in advance of hearing so that a 21-day public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding the credibility of witnesses, and all exhibits to the Board within five days of the hearing.

¹ The Board and the courts have consistently read “duplicitous” as “in the sense of being duplicative.” See, e.g., Winnetkans Interested in Protecting the Environment v. PCB, 55 Ill. App. 3d 475, 478, 479, 370 N.E.2d 1176, 1178, 1179 (1st Dist. 1977).

If the parties fail to provide an acceptable hearing date or if the hearing officer is unable to consult with the parties, the hearing officer must unilaterally set a hearing date. As noted above, complainants have requested expedited consideration of their complaint. The Board grants that request and orders hearing officer to expedite this proceeding to the extent possible, consistent with the Board's resources.

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 22nd day of January 1998, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board