

ILLINOIS POLLUTION CONTROL BOARD

September 3, 1998

ANTHONY AND KAREN ROTI, PAUL	)	
ROSENSTOCK, AND LESLIE WEBER,	)	
	)	
Complainants,	)	
	)	
v.	)	PCB 99-19
	)	(Enforcement - Noise, Citizens)
LTD COMMODITIES,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by N.J. Melas):

This matter comes before the Board on the July 22, 1998 filing of a citizens' enforcement complaint (complaint) by Anthony and Karen Roti, Paul Rosenstock, and Leslie Weber (complainants). On July 29, 1998, LTD Commodities (LTD) filed a motion to dismiss (Motion) alleging that the complaint was duplicitous and frivolous. Complainants filed an objection to LTD's motion on August 4, 1998 (objection).

The Board finds that the noise pollution allegations in this matter are not duplicitous or frivolous and therefore accepts those portions of the complaint for hearing. However, the Board finds that complainants do not correctly plead that invasive lighting from LTD's parking lot has caused an unreasonable interference with the use of complainants' properties. Therefore, the Board dismisses those portions of the complaint.

BACKGROUND

Complainants allege that LTD is causing noise pollution and light pollution by operating a trucking dock on the north side of LTD's property in Bannockburn, Illinois, in violation of Sections 23 and 24 of the Environmental Protection Act (Act) (415 ILCS 5/23 and 24 (1996)). Complaint at 2-3. Complainants also allege that LTD is causing or allowing the emission of sound and light beyond its property line in violation of 35 Ill. Adm. Code 900.102, 901.102(a), 901.102(b), and 901.104 of the Board's regulations. Complaint at 2-3.

Complainants allege that the noise and light generated from LTD's trucking operations results in an unreasonable interference with the use and enjoyment of their property. Complaint at 3. Complainants request that that Board order LTD to cease and desist from further violations of the Act and Board's regulations, discontinue loading trucks at night or relocate truck docks to another part of the property, stop the lighting system from spreading beyond the property, and other relief that the Board deems appropriate. Complaint at 4.

DUPLICITOUS/FRIVOLOUS DETERMINATION

Section 103.124(a) of the Board's procedural rules implements Section 31(b) of the Act. 415 ILCS 5/31(b) (1996). This Section directs the Board to determine 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 duplicitous or frivolous, this does not preclude the filing of motions regarding the insufficiency of the pleadings. 35 Ill. Adm. Code 103.124(a).

Duplicitous

An action before the Board is "duplicitous"¹ (*i.e.* duplicative) if the matter is identical or substantially similar to the one brought in from another forum. Brandle v. Ropp (June 13, 1985), PCB 85-68.

LTD alleges that the complaint is duplicitous because this case has been brought to the attention of the Village of Bannockburn (Village). Motion at 7. Complainants reply that the Village has urged the parties to work out the matter among themselves. Objection at 3. An informal complaint to a city council is not equivalent to a proceeding before a court or similar forum. Even if an informal complaint before a city council pertains to a case before the Board, the case is not duplicitous. Angela M. White v. Terry & Billy Van Tine & Schneider Transport Inc. (June 23, 1994), PCB 94-150, slip op. at 2. Although the matter before the Village pertains to the instant complaint, it is not duplicitous.

Frivolous

An action before the Board is frivolous if it requests relief which the Board cannot grant. Lake County Forest Preserve District v. Neil Ostro, Janet Ostro, and Big Foot Enterprises (July 30, 1992), PCB 92-80. In the case at hand, complainants allege facts which, if proved at hearing, could result in a finding of noise pollution. Complaint at 3. The Board has the authority to grant relief from the alleged noise pollution if the facts are proved at hearing.

PLEADING

Complainants also allege that LTD is responsible for invasive lighting from its parking lot which unreasonably interferes with the use of complainants' properties. Complaint at 3. However, complainants do not cite any violations of the Act nor the Board's regulations to back up their claim. As a result, the Board will not proceed with the claim.

¹ The Board and the Courts have consistently read the term "duplicitous" as "in the sense of being duplicative." See Winnetkans Interested in Protecting the Environment, 55 Ill. App. 3d 475, 479, 370 N.E.2d 1176, 1178, 1179 (1st Dist. 1977); Roy K. Johnston v. ADM-Demeter, Hoopston Division (October 2, 1997), PCB 98-31, slip op. at 2.

CONCLUSION

The Board finds that, pursuant to Section 103.124(a), the noise pollution allegations are neither duplicitous nor frivolous and will be accepted for hearing. The Board will not accept the invasive lighting allegation for hearing because it is not properly pled.

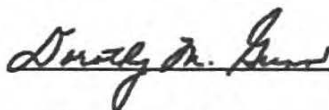
The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and Section 103.125 of the Board's rules. 35 Ill. Adm. Code 103.125. The Clerk of the Board shall promptly issue appropriate directions to the assigned hearing officer.

The assigned hearing officer shall inform the Clerk of the Board of the time and the 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 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 all of 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 3rd day of September 1998 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board