

ILLINOIS POLLUTION CONTROL BOARD  
December 6, 1989

JOHN ZARLENGA AND )  
JEAN ZARLENGA, )  
 )  
Complainants, )  
 )  
v. ) PCB 89-169  
 ) (Enforcement)  
 )  
PARTNERSHIP CONCEPTS, )  
HOWARD EDISON, BRUCE MCCLARIEN, )  
COVE DEVELOPMENT COMPANY, AND )  
THOMAS O'BRIEN, )  
 )  
Respondents. )

ORDER OF THE BOARD (by J. Marlin):

This matter is before the Board on an October 26, 1989 motion to strike or dismiss and the November 13, 1989 motion for extension of time to file an answer filed on behalf of Partnership Concepts, Howard Edison, Bruce McClarien, Cove Development Company, and Thomas O'Brien. John Zarlenga and Jean Zarlenga ("Complainants") filed a response to the motion to strike or dismiss on November 13, 1989. The Respondents filed a supporting affidavit of Thomas B. O'Brien, Jr. on November 29, 1989.

The motion to strike or dismiss asserts multiple bases for striking or dismissing the complaint:

1. The complaint fails to allege facts in support of the contention that Respondents are in possession of the subject property, and hence subject to the Board's jurisdiction;
2. The complaint fails to cite with specificity the regulations and standards that it alleges the Respondents to have violated; and
3. The complaint alleges "noise pollution" without setting forth specific facts about the emissions it alleges as violations of the Act or regulations.

Further, the motion and the November 29, 1989 affidavit aver that neither Thomas O'Brien nor Cove Development Company "own, operate, or otherwise occupy the property," and seek dismissal as

to or striking these two individual respondents. The motion would convince the Board that the Complainants must quantify the alleged noise in the complaint in order for this matter to proceed. The Respondents conclude, "The complaint is required to provide sufficient facts to reasonably allow preparation of a defense. The complaint states no facts, only conclusions and should therefore be dismissed or stricken."

As to the sufficiency of the complaint, the Board looks to its allegations. The complaint must "fairly and unambiguously inform a defendant as to the nature of an action." Draper & Kramer Inc. v. PCB, 40 Ill. App. 3d 918, 922, 353 N.E.2d 106, 110 (1st Dist. 1976). The complaint "states the issues and assists the defendant in the formulation of his defenses." Id. The complaint must be "sufficiently clear and specific" to allow such defense. Lloyd A. Fry Roofing Co. v. PCB, 20 Ill. App. 3d 291, 305, 314 N.E.2d 350, 354 (1st Dist. 1974). The complainants specifically allege that respondents violated Section 24 of the Environmental Protection Act, Ill. Rev. Stat. 1987, ch. 111½, par. 1024. This provision prohibits emission of "noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act." Ill. Rev. Stat. 1987, ch. 111½, par. 1024. The complaint factually alleges that the noise occurs "at all hours of the day, but it is most severe at nights and on weekends," that it emanates from "air conditioning units, generators, fans and a swimming pool dehumidifier, and that it renders the complainants "unable to sleep at night or spend time in [their] yard." Complaint, par. 6-8. The complaint alleges that the respondents are culpable as having "own[ed], designed, constructed and maintain[ed] a condominium complex" that is the source of these emissions. Complaint, par.4

The Board finds that the complaint sets forth sufficient facts to place the respondents on notice of the violation charged, their activities that result in that alleged violation, the sources of that alleged violation, and the alleged interference that could result in a finding of violation. This complaint fairly and clearly informs the respondents sufficiently that they can formulate a defense.

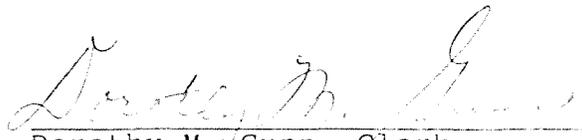
Further, respondents somehow appear to maintain that quantification of the noise is necessary for an adequate complaint. Even if the complainants never present such expert testimony, such is not necessary to result in a finding of violation. The testimony of lay citizens is sufficient. Marblehead Lime Co. v. PCB, 42 Ill. App. 3d 116, 122, 355 N.E.2d 607, 611-12 (1st Dist. 1976). Proof that the noise emissions cause an unreasonable interference with the enjoyment of life or property is alone sufficient. See Ferndale Heights Utilities Co. v. PCB, 44 Ill. App. 3d 962, 968, 358 N.E.2d 1224, 1229 (1st Dist. 1976). The Board will not strike or dismiss the complaint.

As to the individual respondent, Thomas O'Brien, and Cove Development Co., the Board looks to the affidavit of Thomas O'Brien. That affidavit asserts that neither respondent owns, operates, or otherwise occupies the property. This falls far short of affirmatively stating that either individual respondent has absolutely no interest in the property and has engaged in no activity with respect to the property which would have resulted in offending noise emissions. The Board will not dismiss Thomas O'Brien or Cove Development Company. The conflicting assertions of the complaint and the O'Brien affidavit involve factual questions, and potential questions of application of law to facts, which cannot be appropriately resolved by the Board in the context of a motion to dismiss. The Board will not address the issue of whether Thomas O'Brien or Cove Development Company violated Section 24 of the Act until after full development of a factual record at hearing and the submission of post-hearing arguments.

Finally, the Board hereby grants respondents 30 days from the date of this Order, until January 5, 1990, to formulate and file their answer.

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 6<sup>th</sup> day of December, 1989, by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board