

ILLINOIS POLLUTION CONTROL BOARD

March 2, 2000

STEPHEN M. LARDNER,)	
)	
Complainant,)	
)	
v.)	PCB 00-92
)	(Enforcement - Noise, Citizens)
DOMINICK'S FINER FOODS, INC., THE)	
LANDOWNER OF LONGMEADOW)	
COMMONS, WASTE MANAGEMENT,)	
MUNDELEIN DISPOSAL, and BFI,)	
)	
Respondents.)	

ORDER OF THE BOARD (by M. McFawn):

On December 1, 1999, the Colony of Longmeadow HOA, through Stephen M. Lardner, its director, filed a formal complaint alleging that respondent Dominick's has violated several statutes and regulations concerning noise pollution. On January 6, 2000, the Board adopted an order in which it found that the complaint was not frivolous or duplicitous, but that Lardner, a non-attorney, could not represent the Colony of Longmeadow HOA in this case. The Board granted the Colony of Longmeadow HOA 30 days to file an amended complaint, either through an attorney or by its members individually rather than as an association.

On January 24, 2000, attorney William G. Harris filed an appearance on behalf of Dominick's. The appearance indicates that Dominick's correct corporate name is "Dominick's Finer Foods, Inc." The caption is hereby amended to reflect this respondent's correct corporate name.

On February 2, 2000, the Board received a "Motion for Leave to File Amended Formal Complaint" filed by Lardner, "for and on behalf of Complainants." The proposed amended complaint is brought on behalf of 14 individual complainants, listed in Appendix A to the motion and complaint. Just as Lardner could not represent the Colony of Longmeadow HOA, under the Attorney Act, 705 ILCS 205 (1998), he may not represent other individuals. If the other persons identified in Appendix A wish to participate in this case as complainants, they must represent themselves or be represented by attorneys; Lardner cannot act on their behalf. The Board also notes that under Section 101.103(g) of the Board's procedural rules, 35 Ill. Adm. Code 101.103(g), each party is required to sign the original of each document filed, and that each document must include the party's phone number. The only complainant who signed the amended complaint and included his phone number was Lardner.

The amended complaint adds four additional respondents: Waste Management, Mundelein Disposal, BFI, and the unidentified owner of Longmeadow Commons Shopping Center. The owner of Longmeadow Commons was served in care of its agent, Mid-Northern Equities Management, Ltd.

(Mid-Northern). Because the amended complaint contains new claims, we review it again to determine whether it is frivolous or duplicitous. The amended complaint alleges the same violations that the Board found were not frivolous in its order of January 6, 2000. See County of Longmeadow HOA v. Dominick's (January 6, 2000), PCB 00-92. Accordingly, the Board concludes that the amended complaint is not frivolous. Paragraph 10 of the complaint, which was certified by Lardner, states that no other action is known to the complainants. Am. Comp. at 4. No respondent has brought any other action to our attention. We cannot, therefore, find that the amended complaint is duplicitous.

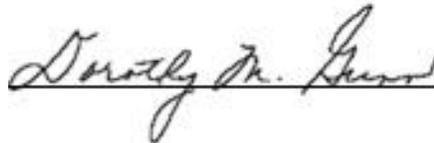
Neither Dominick's nor any of the newly-added respondents has opposed the motion to file the complaint. Mid-Northern sent a letter dated February 15, 2000, to the Board in response to the complaint, but the letter did not specifically object to the filing of the amended complaint; rather, it identified steps taken by Mid-Northern in an attempt to resolve this matter. Mid-Northern did not seek any specific relief from the Board.

The Board concludes that Lardner himself has complied with the requirements for filing a proper complaint, but that the other named complainants have not. The Board grants the motion to file an amended complaint; however, only Lardner at this point will be considered a complainant. The caption is hereby amended to reflect that Lardner is the complainant.

If the other persons named in Appendix A wish to participate in this case as complainants, they may file petitions to intervene in accordance with 35 Ill. Adm. Code 103.142. The Clerk of the Board is directed to provide a copy of the Board's procedural rules to Lardner along with this order. The Board notes that its procedural rules are also available on its World Wide Web site [<http://www.ipcb.state.il.us/title35/35conten.htm#a>].

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 March 2000 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