

ILLINOIS POLLUTION CONTROL BOARD
October 11, 1990

JOSEPH P. COMER and)
MICHELLE S. COMER d/b/a)
FLAMINGO LAKE,)
)
Complainants,) PCB 90-145
) (Enforcement)
v.)
)
GALLATIN NATIONAL CO.,)
)
Respondent.)

ORDER OF THE BOARD (by J. Anderson)

This matter is before the Board on Respondent Gallatin National Co.'s ("Gallatin") Motion to Dismiss filed August 13, 1990. Complainants filed their response on September 19, 1990. The Respondent's motion argues that the Complaint filed is duplicitous and frivolous. For reasons given below, the motion is denied.

The Respondent's motion requests dismissal because the complaint "fails to state a claim upon which relief can be granted." The Complaint requests relief for sound emissions which emanated from construction of Respondent's balefill. The emissions stopped over one year ago. Gallatin claims that the Board cannot grant relief for violations which have now ceased. In this regard, Gallatin is mistaken. These claims are not barred by any statute of limitations that Gallatin has shown us.

Gallatin also claims the matter is frivolous because it requests injunctive relief which is prospective only. Our review of both the Complaint and Response reveals that the Complainants ask for finding of violations based upon Gallatins' prior conduct and also request relief related to noise emissions expected from future construction activities. The Board may not grant prospective injunctive relief for noise violations. (See Section 24 of the Illinois Environmental Protection Act, Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1024). It may, however, issue a cease and desist order if past violations are proven as alleged. Therefore, the Board does not find the Complaint to be frivolous.

Lastly, Gallatin claims the complaint is duplicitous because its development permit currently pending discusses steps it will take to monitor sound emissions levels near Complainant's property. The Board finds this circumstance irrelevant to its determination on this matter.

For the above reasons, Gallatin's Motion to Dismiss is denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Order was adopted on the _____ day of _____, 1990, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board