

ILLINOIS POLLUTION CONTROL BOARD

December 2, 1993

MARK AND JEANNE DORUFF, WILLIAM	)	
AND MARLA BOLEN, RALPH AND KAREN	)	
NUZZO, GARY AND VALERIE BRAUN,	)	
ROMAN AND GERI MALUK, JAGVIR AND	)	
VICKI SINGH, AUTHUR AND NELLIE	)	
REYES, AND DAN RODRIGUEZ,	)	
	)	
Complainants,	)	PCB 93-204
	)	(Enforcement)
v.	)	
	)	
BLOOMINGDALE ELEMENTARY SCHOOL	)	
DISTRICT 13 AND FGM, INC.,	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by C.A. Manning):

This matter is before the Board pursuant to a five-count complaint filed November 1, 1993 by Mark and Jeanne Doruff, et. al., against the respondents, Bloomingdale Elementary School District 13 (School District) and FGM, Inc (FMG). The complainants allege that respondents violated 415 ILCS 5/23 and 5/24 of the Environmental Protection Act (Act) and 35 Ill. Adm. Code 900.102, 901.102(a) and (b) in their operation of air conditioner chillers at the Erickson Elementary School.<sup>1</sup> Pursuant to Section 31(b) of the Act and 35 Ill. Adm. Code 103.124(a), on November 4, 1993, the School District filed a motion to dismiss the complaint and on November 10, 1993, FGM, also filed a motion to dismiss the complaint. Both motions argue that the complaint is frivolous and, FMG further argues that it is duplicitous. On November 29, 1993, complainants filed a response to the motions. The Board denies the motions to dismiss and sets this matter for hearing for reasons stated below.

The Board recently denied a motion to dismiss brought on frivolous and duplicitous grounds in another citizens enforcement case involving noise pollution currently pending before the Board. Joseph A. Schrantz et al. v. Village of Villa Park et al., (October 21, 1993), PCB 93-161. In Schrantz, the Board explained the meaning of "frivolous":

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<sup>1</sup> The Board's regulations at 35 Ill. Adm. Code 901.102(a) and (b) establish numerical limits for sound emission levels for certain land use classifications. Sections 23 and 24 of the Act are the general provisions prohibiting persons from emitting noise beyond the boundaries of his property so as to unreasonably interfere with the enjoyment of life or any lawful business or activity so as to violate any regulation or standard adopted by the Board under the Act.

The Board has construed "frivolous" to mean "failure to state a cause of action upon which relief can be granted." (Citizens for a Better Environment v. Reynolds Metals Co., (May 17, 1973) PCB 73-173, 8 PCB 46. The Board stated in Farmers Opposed to Extension of the Illinois Tollway v. Illinois State Toll Highway Auth., (September 16, 1971) PCB 71-159, 2 PCB 119: "The 'frivolous' provision is designed to avoid expensive and time-consuming hearings on claims that cannot prevail even if the facts alleged are true." After examining these two Board holdings, and Webster's dictionary<sup>2</sup>, the Appellate Court of Illinois, First District, defined a "frivolous" pleading as "one that is either legally or factually deficient." Winnetkans Interested in Protecting the Environment (WIPE) v. Illinois Pollution Control Board, 13 Ill.Dec. 149, 153, 370 N.E.2d 1176 (1st Dist. 1977)<sup>3</sup>.

The instant complaint requests that the Board issue an order directing respondents to cease and desist from the alleged violations, to permanently reduce the noise by relocation and any other further relief the Board may deem appropriate. The Board has the authority to grant such relief if the alleged facts are proven at hearing. Therefore the Board finds that the complaint is not frivolous.

Schrantz also discussed the meaning of "duplicitous" and in doing so stated the following:

In Brandle v. Ropp, (June 13, 1985), PCB 85-68, 64 PCB 263, the Board held:

Duplicitous is not defined in the Act but has been interpreted to apply to complaints which duplicate allegations identical or substantially similar to matters previously brought before the Board. (Citation omitted.) A complaint is also duplicitous if it is identical or substantially similar to one brought in another forum.

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<sup>2</sup> Webster's Third New Dictionary 913 (1971) defined "frivolous" as "of little weight or importance; having no basis in law or fact...."

<sup>3</sup> "The Board can grant relief by ordering a Respondent to stop the polluting activity and by imposing a fine. The Board cannot grant monetary compensation for damage done to health or property and it cannot impose criminal sanctions such as a jail term. Thus, any request for monetary compensation or the imposition of criminal sanctions would be considered frivolous." (In the Matter of: Duplicitous or Frivolous Determination, (June 8, 1989), RES 89-2, Slip Op. at 2.)

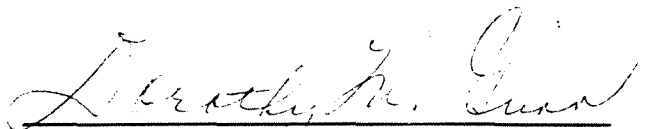
In League of Women Voters v. North Shore Sanitary Dist., (October 8, 1970) PCB 70-1,1 PCB 35, the Board held "that the reason for the prohibition of duplicitous complaints is the apprehension that private citizens' complaints 'might flood the Board with too many cases raising the same issue and [might] unduly harass a respondent.'" WIPE v. IPCB, 13 Ill.Dec. at 153, citing, League of Women Voters, at 36.

The Board finds the complaint is not duplicitous; it is not identical or substantially similar to one brought before the Board or in another forum. FMG's motion raises the possibility of an action before the Bloomingdale Elementary School District. However, FMG fails to state whether the action is substantially identical to that of the instant case currently pending before the Board. Moreover, the complaint presents facts that are matters of first impression for the Board and are not duplicitous in the context of League of Women Voters which pertained to the Board itself being flooded with the same type of case. Finally, FMG's motion does not allege sufficient information about the proceedings before the Bloomingdale Elementary School District 13 Board of Education to demonstrate that a determination made in that forum could arguably make this complaint moot. FMG states that the Bloomingdale Elementary School District 13 Board of Education was scheduled to meet on November 22, 1993 to address what appropriate corrective action may be taken; however, the Board has no information as to the outcome of the meeting.

For the above stated reasons the complaint is not frivolous nor duplicitous in connection with the motions to dismiss, directs this matter to hearing. A hearing officer will contact the parties to schedule a hearing date.

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 <sup>2<sup>nd</sup></sup> day of December, 1993, by a vote of 6-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board