

ILLINOIS POLLUTION CONTROL BOARD
July 30, 1992

JOHN ZARLENGA and)	
JEAN ZARLENGA,)	
)	
Complainants,)	
)	
v.)	PCB 89-169
)	(Enforcement)
PARTNERSHIP CONCEPTS,)	
HOWARD EDISON, BRUCE MCCLAREN,)	
COVE DEVELOPMENT COMPANY,)	
THOMAS O'BRIEN, BLOOMINGDALE)	
PARTNERS, an Illinois Limited)	
Partnership, and GARY LAKEN,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by J. Anderson):

On July 7, 1992, Partnership Concepts, Howard Edison, Bruce McClaren, Cove Development Company, Thomas O'Brien, Bloomingdale Partners, and Gary Laken (respondents) filed a motion to amend the Board's February 27, 1992 Final Opinion and Order in this matter and a motion for expedited consideration. On July 23, 1992, John and Jean Zarlenga (Zarlenga) filed their response to respondents' motion to amend.

BACKGROUND

On October 23, 1989, the Zarlengas filed a noise complaint. In their complaint, the Zarlengas alleged that the individual air conditioners, generators, fans, and swimming pool dehumidifier located at the respondents' apartment complex (One Bloomingdale Place) emit excessive noise beyond the boundaries of the complex in violation of Section 24 of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1991, ch. 111½, par. 1024).

On May 9, 1991, the Board issued an interim opinion and order finding that respondents had violated Section 24 of the Act and 35 Ill. Adm. Code 900.102. While several remedial options were mentioned at hearing, there were certain informational deficiencies in the record with regard to a program to reduce the noise being emitted from the complex. Accordingly, in order to assist the Board in determining the most appropriate remedial action for the abatement of the noise, the Board ordered respondents to have a competent individual or firm prepare a report describing, evaluating, and analyzing, to the maximum extent possible, all methods of control. The Board also noted that each control option should include the anticipated noise reduction resulting from the implementation of each option, cost of implementation, and an estimate of a reasonable time for

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implementation.

On October 31, 1991, respondents submitted a "Report of Noise Control Options for the Reduction of Sound Emissions from Mechanical Units at One Bloomingdale Place, Bloomingdale, IL" by Kirkegaard & Associates (Kirkegaard). The Kirkegaard report evaluated that nature of the noise at One Bloomingdale Place, set forth several noise abatement options, and recommended the following phased approach to control the noise emitted from One Bloomingdale Place:

1. Install intake and exhaust silencers on the 64 individual air conditioners.
2. If the resulting noise reduction is found to be acceptable to the Board and/or the Zarlengas, proceed no further.
3. If the resulting noise reduction is deemed unacceptable to the Board and/or the Zarlengas, install silencers on the Zephyr unit.
4. If, upon implementation of treatments 1 and 3, the noise reduction is found to be unacceptable to the Board and/or the Zarlengas, construct a sound barrier wall around the Zephyr unit.

On January 6, 1992, the Zarlengas filed a response to respondents' noise report. In their response, the Zarlengas stated that, after talking with Mr. Gregory Zak of the Illinois Environmental Protection Agency (Agency), they had decided to "stand on the report" and to forego any further pleadings with the Board.

On February 27, 1992, the Board issued its final opinion and order in this matter. Although the Board recognized that the Kirkegaard report did not address either the structural or engineering feasibility of the recommended course of action, it crafted its order to mirror the phased approach recommended by Kirkegaard. In order to avoid a situation where the remedy was not initiated in a timely manner, the Board also ordered respondents to cease and desist from violations of Section 24 of the Act and 35 Ill. Adm. Code 900.102 no later than one year of the date of the order. In addition, because the Board realized that concerns such as the time needed for structural and engineering feasibility studies and weather (as it relates to the time needed to implement and test the effectiveness each phase) could affect respondents' ability to implement the order in a timely manner, the Board noted that respondents could file a motion for reconsideration of the order pursuant to 35 Ill. Adm. Code 103.241(b) and (c) if such concerns had an impact upon the implementation of the recommended course of action.

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Respondents' Motion for Expedited Consideration

In its motion for expedited consideration, respondents' request that the Board consider its motion to amend on an expedited basis. In support of its motion, respondents state that after the Board issued its February 27, 1992 order, they discovered new evidence that shows that the required noise reduction actions are infeasible and that more efficient and feasible measures are available. Respondents add that they wish to implement the proposed remedy as soon as possible because the noise emitted from One Bloomingdale Place is loudest in the summer.

The Board grants respondents' motion for expedited consideration, and is ruling on respondents' motion to amend at the first regularly scheduled Board meeting after it received the Zarlengas' response to respondents' motion.

Respondents' Motion to Amend the Board's February 27, 1992 Final Opinion and Order

In its motion to amend, respondents ask that the Board amend its February 27, 1992 order because 1) that portion of the order requiring the installation of silencers on the individual air conditioners is infeasible, and 2) because there is a feasible and more efficient means to reduce the noise emitted from One Bloomingdale Place.

In support of its request to amend, respondents state that, after they received the Board's February 27, 1992 order, they requested Superior Mechanical Industries (SMI), a heating and air conditioning firm, to investigate the structural and engineering feasibility of installing silencers on the individual air conditioners. SMI analyzed the impact of the proposed silencers and reviewed the proposal with the manufacturer of the individual air conditioners. SMI concluded that installation of the silencers would result in a potential life safety hazard because the addition of the silencers would cause the silencer's discharge gases to recirculate into the fresh air intake of the unit during heating operation and thus, endanger the health of the tenants. (Resp. motion - Ex. A., p. 2)

Respondents add that installation of the silencers would place an undue financial burden on respondents by increasing the respondents' maintenance costs, reducing the value of One Bloomingdale Place, and increasing respondents' potential legal liability. Specifically, respondents state that attaching silencers to the individual air conditioners involves grafting at least 60 two foot high by two foot wide by 5 foot long units, each weighing 104 pounds, on the south facade of the apartment complex and that such duct work would obscure the view out of the windows on the south side of the building. (Id. p. 1.)

Respondents add that the silencers will reduce the aesthetic appeal of the building, from both inside and outside, and thus diminish the value of the property. Moreover, respondents state that the continuing maintenance necessary to maintain the appearance of the steel galvanized duct work will be costly. (Id.) Finally, respondents state that while the silencers might reduce overall sound levels, they will result in greater compressor noise and thus, may increase rather than mitigate the rumbling from the individual air conditioners. (Id.)

In connection with its review of the feasibility of installing the silencers, SMI examined alternative means to abate the noise. SMI concluded that replacing the current chassis and cylinder compressors with new chassis and rotary compressors would reduce overall sound and eliminate the rumbling emitted from the individual air conditioners. (Id. pp.2, 3.) Respondents retained Shiner & Associates, Inc. (Shiner), an acoustical engineering and consulting firm, to review the matter and determine the effectiveness of SMI's proposal by conducting sound measurements of the units as modified with the replacement chassis and compressors. After its review, including sound measurements from a test unit with the proposed replacement apparatus, Shiner concluded that the installation of new chassis and rotary compressors would substantially mitigate the noise and were the most effective solution. (Resp. motion - Ex. D, p. 3.) Shiner also agreed with SMI that the silencers would not effectively abate the rumbling. (Id.)

Respondents state that the installation of new chassis and compressors will eliminate the problems which render installation of the silencers infeasible. More specifically, respondents state the proposed plan removes the need to install 12,480 pounds of piping on the building. Respondents add that this option is a more cost-effective approach. Specifically, respondents state that the cost of the renovation will be approximately \$80,000, which is \$23,00 less than the installation of the silencers. (Resp. motion - Ex. E.)

As for the Zephyr unit and the clubhouse air conditioner, respondents state that they will remove and relocate the units to the other side of the building. Respondents state they fully intend to resolve the noise problems and comply with the Board's February 27, 1992 Order. They add that they have acted expeditiously and diligently with respect to their determinations concerning feasibility and the alternatives. In fact, respondents state that they have begun to relocate the Zephyr unit and the clubhouse air conditioner and expect to complete the relocation within 20 days. Respondents also assert they should be able to complete the replacement of chassis and compressors on the individual air conditioners within 60 to 90 days.

In response to the proposed plan, the Zarlengas state that

they agree to the immediate removal and relocation of the Zephyr unit and clubhouse air conditioner. The Zarlengas add that they agree to respondents' plan for the individual air conditioners provided that the respondents agree to furnish the Zarlengas with all of the data generated by Shiner in the preparation of the proposed plan, and to permit the Zarlenga's expert to examine the reconditioned units to determine whether the noise levels have been adequately reduced or eliminated and whether the noise reduction plan meets the requirements of the Board's February 27, 1992 Opinion and Order. The Zarlengas add that, should the modifications fail to reduce or eliminate the noise problem, the parties will proceed with further measures and/or modifications necessary to adequately reduce or eliminate the noise problem.

DISCUSSION

Because both parties agree with the proposed remedy, the Board will grant respondents' motion to amend the Board's February 27, 1992 Order in accordance with the approach and time frames set forth in the motion. The Board, however, emphasizes that it is not, in this order, making a determination on whether the noise reduction resulting from the proposed remedy will be acceptable. The Board will also order the respondents to furnish the Zarlengas with all of the data generated by Shiner in the preparation of the proposed plan. In order to avoid a situation where the remedy is not initiated in a timely manner, the Board will also order respondents to cease and desist from violations of Section 24 of the Act and 35 Ill. Adm. Code 900.102 no later than one year of the date of this Order.

Finally, the Board wishes to take note of the Zarlengas' comment that the parties will proceed with further measures if the modifications fail to reduce or eliminate the noise problem. Although the Board does not object to any agreement between the parties if the noise problem persists, we emphasize that the Zarlengas must file another complaint if it believes that the noise problem persists and the respondents do not agree.

This Opinion constitutes the Board's findings of facts and conclusions of law in this matter.

ORDER

For the foregoing reasons, the Board hereby orders Bloomingdale Partners, Mr. Howard Edison, Mr. Bruce McClaren, and Mr. Gary Laken to undertake and perform the following actions:

1. Respondents shall remove and relocate the Zephyr unit and the clubhouse air conditioner to the other side of the building as proposed. The relocation shall be completed no later than 20 days from the date of this order.

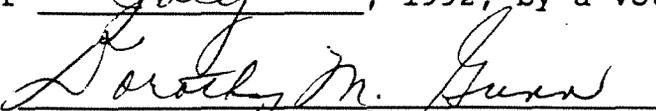
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2. Respondents shall replace the chassis and compressors on the 60 individual air conditioners servicing the 64 apartment units at One Bloomingdale Place that face the Zarlengas' town home. The modifications shall be completed as soon as practicable but, in no event, later than 90 days from the date of this order.
3. Respondents shall furnish the Zarlengas all of the data generated by Shiner & Associates in the preparation of the proposed plan.
4. The complete noise abatement program shall be in operation not later than October 30, 1992.
5. Respondents shall cease and desist from violations of Section 24 of the Environmental Protection Act, Ill. Rev. Stat. 1991, ch. 111½, par. 1024, and 35 Ill. Adm. Code 900.102 effective upon attainment of compliance, but in no case later than October 30, 1992. Failure to comply with the provisions of this order may subject respondents to civil penalties.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1991, ch. 111½ par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also Castenada v. Illinois Human Rights Commission (1989), 132 Ill.2d 304, 547 N.E.2d 437).

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Final Opinion and Order was adopted on the 30th day of July, 1992, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board