

ILLINOIS POLLUTION CONTROL BOARD

September 21, 2000

MICHAEL R. PAWLOWSKI and DIANE K. PAWLOWSKI,)	
)	
Complainants,)	
)	
v.)	PCB 99-82
)	(Enforcement – Citizens, Noise)
DAVE JOHANSEN and TROY QUINLEY, individually and d/b/a BENCHWARMERS PUB, INC.,)	
)	
Respondents.)	
)	

ORDER OF THE BOARD (by G. T. Girard)

On August 8, 2000, complainants filed a “Motion for Consideration of Final Opinion and Order” (C Mot.). On August 15, 2000, respondents filed a “Motion in Response to Complainants’ Motion for Consideration of Final Opinion and Order” (R Mot.). On August 18, 2000, complainants filed a response to the respondents’ motion (C Resp.).

For the reasons indicated below, the Board grants the complainants’ motion for consideration of a final opinion and order and denies respondents’ motion.

BACKGROUND

On December 18, 1998, Michael and Diane Pawlowski (complainants) filed a complaint against David Johansen and Troy Quinley individually and d/b/a Benchwarmers Pub (respondents). In that complaint, the complainants alleged that the respondents violated Sections 23 and 24 of the Environmental Protection Act (Act) (415 ILCS 5/23 and 24 (1998)) and 35 Ill. Adm. Code 900.102 (the Board’s noise regulations). Complainants charged that noise generated in Benchwarmers Pub on West Locust Street in Fairbury, Livingston County, Illinois, had unreasonably interfered with complainants in an adjacent building.

A hearing was held on November 8 and 9, 1999, in Fairbury, Illinois, before Board Hearing Officer Amy Muran Felton. Complainants filed a posthearing brief on December 13, 1999, and a reply on January 5, 2000. Respondents filed their posthearing brief on January 3, 2000.

On April 6, 2000, the Board entered an opinion and order, finding that the noise from Benchwarmers Pub had unreasonably interfered with the complainants’ lives. Although Benchwarmers Pub is suitably located and has social and economic value, the noise substantially interfered in the lives of complainants who have priority of that location. Finally, there are practical solutions which are economically reasonable to alleviate the interference. Having found that there were unreasonable interferences, the Board found that respondents violated Section 24 of the Act and 35 Ill. Adm. Code 900.102.

In the April 6, 2000 opinion and order the Board directed that the respondents file a report prepared by a qualified acoustical consultant by June 5, 2000. The report was to include a plan for reducing the sound levels reaching the complainants’ residence and reducing the vibrations through the floor and walls of complainants’ residence.

On July 13, 2000, the Board denied respondents’ motion to reconsider the April 6, 2000 opinion and order.

ARGUMENTS

Complainants in their motion are asking that the Board issue a final opinion and order in this proceeding. Respondents are asking for an order which would allow access to complainants' property. The Board will summarize the position of the parties, respectively, in the complainants' motion, then respondents' motion and finally the response of the complainants.

Complainants' Motion

Complainants seek a final order in this matter asserting that respondents have failed to comply with the Board's April 6, 2000 order. C Mot. at 2. Specifically, complainants maintain that respondents have not filed a report prepared by a qualified acoustical consultant. *Id.* Complainants further assert that they have not been asked to provide access to their home for testing purposes. *Id.* Thus, complainants ask that the Board enter a final order which includes direction to remove all means of noise pollution from Benchwarmers Pub. C Mot. at 3.

Respondents' Motion

Respondents maintain that on April 12, 2000, the jukebox and speakers were removed from the Benchwarmers Pub. R Mot. at 2; Exh. A; Exh. B. Respondents also assert that they have not had live music at Benchwarmers Pub since March 17, 2000. *Id.* The only sound emitting "devices" which remain on the premises are televisions without external speakers, telephones without speakers, a personal radio in the kitchen, and people. R Mot. at 2.

Respondents obtained a written report from Thadd Walter, the owner of H & W Systems in Fairbury, Illinois. R Mot. at 2. The report sets forth recommendations for noise reduction at Benchwarmers Pub. *Id.* These recommendations include adding insulation and dry wall or even changing the layout of the bar. R Mot. Exh. C.

Respondents maintain that they would agree to have live music on site only with complainants' agreement. R Mot. at 3. Respondents maintain that they have undertaken "significant action" to reduce the noise level. R Mot. at 4. Respondents also assert that the Board's order did not allow respondents access to Complainants' home for testing purposes. Thus, respondents are seeking an order granting them the authority to have testing performed by respondents' consultant or an independent consultant in complainants' home. R Mot. at 4. Respondents also seek authority to "reduce volatile sound" found by the consultant pursuant to the H & W Systems Report on Sound Proofing." R Mot. at 4.

Complainants' Response

In response to respondents' filing, complainants express several concerns. First complainants note that removal of the jukebox may not be permanent. C Resp. at 3. Also, if the Board were to allow live entertainment, such as disc jockeys and bands, with permission of the complainants, complainants are concerned that when they disagree with respondents the matter will simply end up back before the Board. C Resp. at 2. The complainants are also concerned that there is very little information on the television and radio still in place at Benchwarmers Pub. C Resp. at 2.

Complainants also question the credentials of Thadd Walter with H & W Systems Inc. C Resp. at 3. Complainants maintain that Exhibit C, attached to respondents' motion, does not determine what could be done to reduce noise, but is an estimate of costs of certain noise reduction materials. C Resp. at 3. The complainants assert that Exhibit C does not indicate that any analysis was performed. C Resp. at 3. Complainants provided a copy of Exhibit C to John Yerges who testified for complainants at hearing. *Id.* Yerges indicates that the measures are not sufficient to address the noise problem. C Resp. Exh. 1.

DISCUSSION

After reviewing the Board's opinion and order of April 6, 2000, as well as the filings currently before the Board, the Board is convinced that it is time to enter a final order in this matter. The Board does agree that

respondents have failed to abide by the Board's April 6, 2000 order and the Board is disconcerted by this failure. The Board had given the respondents the opportunity to evaluate the noise pollution and develop a solution. Respondents have not done so. In fact, the only filing the Board has received from respondents which addresses noise reduction is Exhibit C to the motion. There is no catalogue of qualifications, no analysis provided, and no recommendations. In short, Exhibit C is merely a list of estimates for various projects which may or may not reduce noise emissions.

The Board acknowledges that respondents have removed the jukebox and speakers from the site and that respondents have not had live entertainment since the Board's April 6, 2000 opinion and order. The record in this case indicates that these sources produced unreasonable noise. Therefore, their removal eliminates the sources of the unreasonable noise pollution. If the sources of the unreasonable noise pollution have been removed, then a detailed plan for reduction of noise pollution in Benchwarmers Pub is not necessary to resolve this case. However, we share complainants' concern about the permanence of such removal. The Board also notes that the only "expert" which has been provided to the Board in this proceeding is John Yerges. Yerges recommends removal of the jukebox and speakers as well as discontinuing live entertainment. Therefore, the Board will include such a prohibition in its order.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter

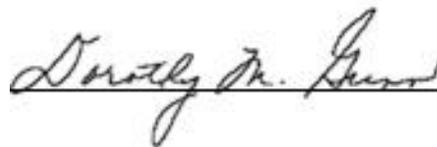
ORDER

1. The Board finds that David Johansen and Troy Quinley individually and d/b/a Benchwarmers Pub (respondents) have violated Section 24 of the Act (415 ILCS 5/24(1998)) and 35 Ill. Adm. Code 900.102.
2. Respondents shall cease and desist from violations of the Act and the Board's regulations.
3. Respondents shall remove from the premises and shall not reinstall any jukebox or music-playing device with external speakers, unless they would not be in violation of Section 24 of the Act (415 ILCS 5/24(1998)) and 35 Ill. Adm. Code 900.102.
4. Respondents shall cease and desist from live entertainment, including disc jockeys and live bands, unless they would not be in violation of Section 24 of the Act (415 ILCS 5/24(1998)) and 35 Ill. Adm. Code 900.102.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 145 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 21st day of September 2000 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board